INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

Vol. XLIX, No. 1 *January 1966*

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Information

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Documents

Supplements

The supplement to the present issue contains the 85th Report of the Governing Body Committee on Freedom of Association.

In addition, a special supplement contains the Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning Persons Employed in the Public Sector in Japan.

A general index to the annual volume (four issues) of the *Official Bulletin* is included in the last issue of each year.

INTERNATIONAL LABOUR OFFICE

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Vol. XLIX, No. 1 *January 1966*

INFORMATION

163rd Session of the Governing Body of the International Labour Office [1]

(Geneva, 16-19 November 1965)

The 163rd Session of the Governing Body of the International Labour Office was held in Geneva from 16 to 19 November 1965.

The agenda of the session was as follows:

1. Approval of the minutes of the 162nd Session.
2. Date, place and agenda of the 51st (1967) Session of the International Labour Conference.
3. Action to be taken on the resolutions adopted by the International Labour Conference at its 49th (1965) Session.
4. Report on the First Session of the Inter-American Advisory Committee (Buenos Aires, 20-24 September 1965).
5. Reports of the Fact-Finding and Conciliation Commission on Freedom of Association.
6. Report of the Meeting of Experts on Respiratory Function Tests in Pneumoconioses (Geneva, 20-28 September 1965).
7. Report of the Meeting of Consultants on Women Workers' Problems (Geneva, 20-28 September 1965).
8. Record of the Preparatory Technical Conference on Fishermen's Questions (Geneva, 18-28 October 1965).
9. Report of the Working Party on the Programme and Structure of the I.L.O.
10. Reports of the Committee on Freedom of Association.
11. Reports of the Financial and Administrative Committee.
12. Report of the Allocations Committee.
13. Report of the Committee on Standing Orders and the Application of Conventions and Recommendations.

[1] The texts of the documents and reports submitted to the Governing Body, which contain full information on the questions dealt with, will be published subsequently in the appendices to the printed minutes of the session.

14. Report of the International Organisations Committee.
15. Report of the Committee on Industrial Committees.
16. Report of the Committee on Operational Programmes.
17. Examination of the representation submitted by the Association of Federal Servants of the State of São Paulo concerning the application of the Labour Inspection Convention, 1947 (No. 81), in Brazil.
18. Composition and agenda of committees and of various meetings.
19. Inter-American Vocational Training Research and Documentation Centre (CINTERFOR).
20. Report of the Director-General.
21. Programme of meetings.
22. Appointment of Governing Body representatives on various bodies.
23. Date and place of the 164th Session of the Governing Body.

The Governing Body was composed as follows:

Chairman : Mr. O. B. DIARRA *(Mali).*

Government group :

Algeria : Mr. D. BENTAMI.
Australia : Mr. B. C. HILL.
Brazil : Mr. L. DE CARVALHO COELHO.
Bulgaria : Mr. A. TZANKOV.
Canada : Mr. J. MAINWARING.
China : Mr. T. LIU.
Ecuador : Mr. E. PONCE Y CARBÓ.
France : Mr. H. HAUCK.
Gabon : Mr. MEBALEY.
Federal Republic of Germany : Mr. F. HAENLEIN.
India : Mr. K. P. LUKOSE.
Italy : Mr. R. AGO.
Japan : Mr. M. AOKI.
Lebanon : Mr. F. N. ABI RAAD.
Liberia : Mr. A. D. WILSON.
Mali : Mr. O. B. DIARRA.
Mexico : Mr. E. BRAVO CARO.
Pakistan : Mr. N. NAIK.
Peru : Mr. E. LETTS.
Poland : Mr. L. CHAJN.
Tanzania : Mr. F. P. MWANJISI.
U.S.S.R. : Mr. N. I. MOLYAKOV.
United Kingdom : Mr. D. C. BARNES.
United States : Mr. G. L. P. WEAVER.

Employers' group :

Mr. G. BERGENSTRÖM *(Swedish).*
Mr. P. CAMPANELLA *(Italian).*
Mr. A. DESMAISON *(Peruvian).*
Mr. E.-G. ERDMANN *(Federal Republic of Germany).*
Mr. M. NASR *(Lebanese).*
Mr. H. M. OFURUM *(Nigerian).*
Sir George POLLOCK *(United Kingdom).*

Mr. M. A. RIFAAT *(United Arab Republic)*.
Mr. N. H. TATA *(Indian)*.
Mr. C. R. VÉGH-GARZÓN *(Uruguayan)*.
Mr. R. WAGNER *(United States)*.
Mr. P. WALINE *(French)*.

Workers' group :

Mr. ABID ALI *(Indian)*.
Mr. F. AHMAD *(Pakistani)*.
Mr. A. BECKER *(Israeli)*.
Mr. H. BEERMANN *(Federal Republic of Germany)*.
Mr. B. BOLIN *(Swedish)*.
Mr. L. L. BORHA *(Nigerian)*.
Mr. R. BOTHEREAU *(French)*.
Lord COLLISON *(United Kingdom)*.
Mr. M. BEN EZZEDDINE *(Tunisian)*.
Mr. R. FAUPL *(United States)*.
Mr. K. KAPLANSKY *(Canadian)*.
Mr. J. MÖRI *(Swiss)*.

The following regular representatives were absent:

Government group :

Australia : Mr. H. A. BLAND.
Canada : Mr. G. V. HAYTHORNE.
France : Mr. A. PARODI.
Federal Republic of Germany : Mr. W. CLAUSSEN.
Mexico : Mr. A. GÓMEZ ROBLEDO.
U.S.S.R. : Mr. I. V. GOROSHKIN.

Employers' group :

Mr. F. A. P. MURO DE NADAL *(Argentine)*.
Mr. WAJID ALI *(Pakistani)*.

Workers' group :

Mr. A. E. MONK *(Australian)*.
Mr. A. SÁNCHEZ MADARIAGA *(Mexican)*.

The following deputy members, or substitute deputy members, were present:

Government group :

Argentina : Mr. R. A. BILLINGHURST.
Congo (Leopoldville) : Mr. O. MANWANA.
Ethiopia : Mr. M. AMEDE.
Morocco : Mr. A. BOUHMOUCH.
Norway : Mr. K. J. ØKSNES.
Philippines : Mr. V. A. PACIS.
Ukraine : Mr. A. S. KISSEL.
Uruguay : Mr. M. J. MAGARIÑOS DE MELLO.
Venezuela : Mr. F. ÁLVAREZ CHACÍN.

Employers' group :

Mr. A. MISHIRO *(Japanese)*.
Mr. A. G. FENNEMA *(Netherlands)*.

Mr. C. KUNTSCHEN *(Swiss)*.
Mr. D. ANDRIANTSITOHAINA *(Malagasy)*.
Mr. T. H. ROBINSON *(Canadian)*.
Mr. M. AL-MASRI *(Jordanian)*.
Mr. M. MONTT BALMACEDA *(Chilean)*.
Mr. A. VERSCHUEREN *(Belgian)*.
Mr. F. YLLANES RAMOS *(Mexican)*.

Workers' group :

Mr. D. COPPO *(Italian)*.
Mr. N. DE BOCK *(Belgian)*.
Mr. A. FAHIM *(United Arab Republic)*.
Mr. Y. HARAGUCHI *(Japanese)*.
Mr. J. J. HERNANDEZ *(Philippine)*.
Mr. G. PONGAULT *(Congolese (Brazzaville))*.
Mr. S. SHITA *(Libyan)*.
Mr. G. KHOURY *(Lebanese)*.
Mr. G. WEISSENBERG *(Austrian)*.

The following representatives of States Members of the Organisation were present as observers:

Austria : Mr. K. FÜRBOCK.
Belgium : Mr. M. HOULLEZ.
Chile : Mr. R. HUIDOBRO.
Cuba : Mr. E. CAMEJO ARGUDÍN.
Czechoslovakia : Mr. P. PAVLÍK.
Hungary : Mr. J. BÉNYI.
Iran : Mr. S. AZIMI.
Iraq : Mr. W. AL-KARAGHOLI.
Israel : Mr. E. F. HARAN.
Netherlands : Mr. T. M. PELLINKHOF.
New Zealand : Mr. W. G. THORP.
Rumania : Mr. T. TABACARU.
Switzerland : Mr. B. ZANETTI.
Turkey : Mr. O. AKSOY.
United Arab Republic : Mr. S. B. NOUR.
Yugoslavia : Mr. K. VIDAS.

The following representatives of international governmental organisations were present:

United Nations : Mr. N. G. LUKER.
Technical Assistance Board : Mr. R. P. ETCHATS.
Office of the High Commissioner for Refugees : Mr. J. ASSCHER.
Food and Agriculture Organisation of the United Nations : Mr. G. DELALANDE.
International Bank for Reconstruction and Development : Mr. E. LÓPEZ HERRARTE.
World Health Organisation : Dr. S. FORSSMAN.
General Agreement on Tariffs and Trade : Mr. P. SOBELS.
Intergovernmental Maritime Consultative Organisation : Mr. N. MERANI.
Organisation of American States : Mr. R. C. MIGONE.
Council of Europe : Mr. F. TENNFJORD.
High Authority of the European Coal and Steel Community : Mr. C. SAVOUILLAN.
European Economic Community : Mr. J. D. NEIRINCK.
Intergovernmental Committee for European Migration : Mr. E. BECERRA.
League of Arab States : Mr. M. EL-WAKIL.

The following representatives of international non-governmental organisations were present as observers:

International Confederation of Free Trade Unions : Mr. A. HEYER.
International Co-operative Alliance : Mr. M. BOSON.
International Federation of Christian Trade Unions : Mr. G. EGGERMANN.
International Organisation of Employers : Mr. R. LAGASSE.
World Federation of Trade Unions : Mr. G. BOGLIETTI.

APPROVAL OF THE MINUTES OF THE 162ND SESSION

Subject to the insertion of the correction received, the Governing Body approved the minutes of the 162nd Session.

DATE, PLACE AND AGENDA OF THE 51ST (1967) SESSION OF THE INTERNATIONAL LABOUR CONFERENCE

The Governing Body decided that the 51st Session of the International Labour Conference should be held in Geneva and should open on 7 June 1967.

At its 162nd Session the Governing Body had made a preliminary examination of the agenda of the 51st Session of the International Labour Conference and had decided to retain the following subjects for further consideration at its 163rd Session with a view to final determination of the Conference agenda [1]:

(a) maximum permissible weight to be carried by one worker;

(b) improvement of conditions of life and work of tenants, sharecroppers and similar categories of agricultural workers;

(c) revision of the Holidays with Pay Convention, 1936.

That decision had been taken on the understanding that the Governing Body would await the conclusions of the Preparatory Technical Conference on the Maximum Permissible Weight to Be Carried by One Worker [2] before determining the exact scope of item *(a)* and that it would receive law and practice reports on items *(b)* and *(c)*.

At its present session the Governing Body noted that the Conference would necessarily have before it the following matters:

Report of the Director-General.

Financial and budgetary questions.

Information and reports on the application of Conventions and Recommendations.

As regards the technical items on the agenda, the Governing Body noted that the following questions were likely to be carried over from the 50th (1966) Session for second discussion:

Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning old-age, invalidity and survivors' pensions.

Examination of grievances and communications within the undertaking.

With respect to new technical items, the Governing Body, after full discussion, took a series of votes in accordance with article 18 of its Standing Orders, which specifies the method of voting to be followed in fixing the Conference agenda. By

[1] See *Official Bulletin*, Vol. XLVIII, No. 3, July 1965, pp. 218-219.

[2] For the agenda, composition and date of this Conference see ibid., pp. 225-226, and below, p. 26.

17 votes to 26, with two abstentions, it decided not to place on the agenda all of the three items which it had retained for further consideration. In the absence of general agreement on the items to be selected, it then took a series of votes to determine, by a process of elimination, the order in which the three above-mentioned items should be considered for inclusion in the agenda. In a first ballot item *(c)*, i.e. revision of the Holidays with Pay Convention, 1936, was eliminated by 39 votes, as against three votes for the elimination of item *(a)* and two for the elimination of item *(b)*. In a second ballot item *(a)*, i.e. maximum permissible weight to be carried by one worker, was eliminated by 27 votes, as against 15 votes for the elimination of item *(b)*. The Governing Body then decided, by 42 votes to nil, to place the remaining item—item *(b)*, i.e. improvement of conditions of life and work of tenants, sharecroppers and similar categories of agricultural workers—on the agenda of the Conference. It further decided, by 30 votes to 12, with one abstention, to place a second new technical item on the agenda and, by 28 votes to eight, with six abstentions, that this should be item *(a)*, i.e. maximum permissible weight to be carried by one worker. Finally, the Governing Body decided, by 24 votes to 16, with three abstentions, not to place a third new technical item on the agenda of the Conference.

In accordance with the decision taken at its 145th Session (May 1960) [1] that the question of technical assistance should be placed on the agenda of the Conference at regular intervals as a recurring item, and not as a special item to be chosen or rejected in competition with proposed new technical items, the Governing Body decided to place an item on technical co-operation on the agenda of the 51st Session of the Conference. It was understood that the Director-General would submit suggestions in this respect early in 1966.

The Governing Body noted that, as a result of the decisions thus taken, and having regard to those items which would necessarily be before the Conference, as well as those likely to be carried over from the 50th (1966) Session for second discussion, the agenda of the 51st (1967) Session of the International Labour Conference would be as follows:

I. Report of the Director-General.

II. Financial and budgetary questions.

III. Information and reports on the application of Conventions and Recommendations.

IV. Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning old-age, invalidity and survivors' pensions (second discussion).

V. Examination of grievances and communications within the undertaking (second discussion).

VI. Maximum permissible weight to be carried by one worker, the exact scope of the item to be determined by the Governing Body in the light of the conclusions of the Preparatory Technical Conference on the Maximum Permissible Weight to Be Carried by One Worker, to be held in Geneva from 25 January to 4 February 1966.

VII. Improvement of conditions of life and work of tenants, sharecroppers and similar categories of agricultural workers.

VIII. Technical co-operation, the exact scope and wording of this item to be determined in the light of the suggestions to be submitted in due course by the Director-General.

[1] See *Official Bulletin*, Vol. XLIII, No. 7, 1960, p. 443.

The Governing Body noted that the Conference would also have before it at its 51st Session a special report on the application of the Declaration concerning the Policy of *Apartheid* of the Republic of South Africa adopted by the Conference at its 48th Session[1], submitted by the Director-General in pursuance of the request contained in paragraph 6 of the operative part of the Declaration.

Action to Be Taken on the Resolutions Adopted by the International Labour Conference at Its 49th (1965) Session

The Governing Body took the decisions summarised below in regard to resolutions adopted by the Conference at its 49th Session.[2]

Resolution concerning Paid Educational Leave

The Governing Body authorised the Director-General—

(a) to communicate the resolution to the governments of member States and, through them, to employers' and workers' organisations and other interested bodies so that they might consider the possibility of taking the first steps called for in the first paragraph of the operative part of the resolution;

(b) to communicate the resolution to U.N.E.S.C.O. and other interested international organisations for their information;

(c) to carry out research and obtain information on provisions relating to paid educational leave, as called for in the second paragraph of the operative part of the resolution; and

(d) to bear in mind the question of the adoption of an international instrument concerning paid educational leave when submitting proposals concerning the agenda of future sessions of the Conference to the Governing Body for its consideration.

Resolution concerning the Conditions of Employment of Domestic Workers

The Governing Body—

(a) requested the Director-General, in making future proposals for the programme of work of the office, to provide for intensified studies and research on the problems of domestic workers in both rural and urban areas, directing particular consideration to the problems of women workers;

(b) authorised the Director-General to communicate the resolution to the governments of member States and, through them, to employers' and workers' organisations;

(c) authorised the Director-General to request member States, on the basis of a questionnaire, to provide detailed information on the legal provisions pertaining to domestic workers in their respective countries; and

(d) requested the Director-General to submit proposals to the Governing Body concerning the early convening of a meeting of experts to study this programme.

The Governing Body noted that, in the light of the information received, the Director-General would submit to it in due course proposals concerning the action to

[1] See *Official Bulletin*, Vol. XLVII, No. 3, Suppl. I, July 1964, pp. 1-4.

[2] For the text of these resolutions see ibid., Vol. XLVIII, No. 3, July 1965, Suppl. I, pp. 19-25 and 26-39.

be taken to give effect to paragraph 2 *(c)* and *(d)* of the operative part of the resolution.

Resolution concerning Vocational Rehabilitation of Disabled Persons

The Governing Body—

(a) invited the Director-General to bear in mind the Vocational Rehabilitation (Disabled) Recommendation, 1955, when preparing proposals for submission to the Governing Body in the near future regarding the selection of Conventions and Recommendations on which reports under article 19 of the Constitution are to be requested;

(b) authorised the Director-General to communicate the resolution to the governments of member States and, through them, to employers' and workers' organisations; and

(c) authorised the Director-General to undertake, resources permitting, the collection and dissemination of information on the measures and techniques employed by member States in the rehabilitation and training of disabled persons for new forms of employment.

The Governing Body noted that, in the light of the information received and collected, the Director-General would submit to it in due course proposals concerning the action to be taken to give effect to clause *(c)* of the operative part of the resolution.

Resolution concerning the Industrial Activities of the International Labour Organisation

The Governing Body—

(a) requested the Director-General to take account of, and implement as far as possible, the conclusions of the resolution concerning the industrial activities of the I.L.O. which fall within his terms of reference;

(b) authorised the Director-General to communicate the resolution to the governments of member States and, through them, to employers' and workers' organisations; and

(c) decided to transmit to its Working Party on the Programme and Structure of the International Labour Organisation, in so far as the latter was concerned, the resolution concerning the industrial activities of the I.L.O., requesting it to take account thereof in the recommendations which it would make to the Governing Body in accordance with its terms of reference.[1]

Resolution concerning the Carrying Out by the International Labour Organisation of Studies of the Social and Economic Consequences of Disarmament

The Governing Body—

(a) noted that the Director-General would keep the General Conference and the Governing Body informed of the work of the I.L.O. in the field of the social and economic consequences of disarmament and of the joint action with other members of the United Nations family undertaken within the framework of the Administrative Committee on Co-ordination; and

(b) authorised the Director-General to communicate the resolution to the governments of member States and, through them, to employers' and workers' organisations as well as to the United Nations and the specialised agencies concerned.

[1] See also below, pp. 11-12.

Resolution Condemning the Government of Portugal on the Grounds of the Forced Labour Policy Practised by the Said Government in Territories under Its Administration

The Governing Body—

(a) authorised the Director-General to communicate the resolution to the governments of States Members of the Organisation and, through them, to employers' and workers' organisations, as well as to the United Nations and the specialised agencies concerned;

(b) requested the Government of Portugal to communicate to the Director-General by 1 February 1966 full information on the measures taken to give effect to the recommendations of the Commission of Inquiry; and

(c) requested the Committee of Experts on the Application of Conventions and Recommendations at its next session (March 1966) to make a special examination of the extent to which the recommendations of the Commission of Inquiry had been implemented and to report thereon.

Resolution concerning the Employment of Young Persons on Surface Work in Mines and Quarries

The Governing Body—

(a) noted, as regards the request that a study should be made of the employment conditions of young persons employed in opencast mines, open quarries and similar operations, that the Director-General intended to give effect to this request; and

(b) requested the Director-General to draw its attention to the question of the employment conditions of young persons employed in opencast mines, open quarries and similar operations when it considered the agenda of future sessions of the International Labour Conference.

Resolution on Agrarian Reform, with Particular Reference to Employment and Social Aspects

The Governing Body—

(a) requested the Director-General to take paragraphs 70, 71 and 72 of the resolution into account when submitting to the Governing Body proposals concerning the agenda of future sessions of the Conference, regional conferences and technical and other meetings; and

(b) authorised the Director-General to communicate the resolution to the Governments of States Members of the I.L.O.—drawing their special attention to the terms of sections A, B and C of the operative part of the resolution—and, through them, to employers' and workers' organisations as well as to the Secretary-General of the United Nations and to the executive heads of the other international organisations concerned.

Report on the First Session of the Inter-American Advisory Committee [1]

(Buenos Aires, 20-24 September 1965)

After considering the report on the First Session of the Inter-American Advisory Committee, held in Buenos Aires from 20 to 24 September 1965, the Governing Body took the following action.

[1] For a brief note on the session see *Official Bulletin*, Vol. XLVIII, No. 4, Oct. 1965, pp. 316-317.

It expressed its deep gratitude to the Government of the Argentine Republic for the facilities placed at the disposal of the Inter-American Advisory Committee and for the cordial welcome extended to it.

It authorised the Director-General to transmit the text of the report of the Committee to the governments of American member States, and through them to employers' and workers' organisations, as well as to the international organisations concerned.

Lastly, the Governing Body noted that, since some of the questions raised in the report were to have been considered by the Organisation of American States, the Organisation of Central American States and the Latin American Free Trade Association before the 163rd Session of the Governing Body, the Director-General had already, after consulting the Governing Body delegation at the meeting and with its concurrence, communicated a copy of the report to these three organisations.

Reports of the Fact-Finding and Conciliation Commission on Freedom of Association

Report of the Panel of the Fact-Finding and Conciliation Commission on Freedom of Association Appointed to Examine the Case relating to Japan

The Governing Body took note of the report of the Panel of the Fact-Finding and Conciliation Commission on Freedom of Association, which it had appointed at its 158th Session (February 1964) [1] to examine the case relating to Japan.[2]

First Report of the Panel of the Fact-Finding and Conciliation Commission on Freedom of Association Appointed by the Governing Body of the International Labour Office to Examine the Complaint of Alleged Infringements of Trade Union Rights Submitted by the Greek General Confederation of Labour against the Government of Greece on 4 September 1964

The Governing Body took note of the first report of the Panel of the Fact-Finding and Conciliation Commission on Freedom of Association which it had appointed at its 162nd Session (May-June 1965) [3] to examine the complaint of alleged infringements of trade union rights submitted by the Greek General Confederation of Labour against the Government of Greece.

Report of the Meeting of Experts on Respiratory Function Tests in Pneumoconioses

(Geneva, 20-28 September 1965)

Report of the Meeting of Consultants on Women Workers' Problems

(Geneva, 20-28 September 1965)

The Governing Body postponed consideration of the papers relating to these items until its 164th Session.

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[1] See *Official Bulletin*, Vol. XLVII, No. 2, Apr. 1964, pp. 83-84.

[2] For the full text of the report see the Special Supplement to this issue.

[3] See *Official Bulletin*, Vol. XLVIII, No. 3, July 1965, pp. 234-235.

Record of the Preparatory Technical Conference on Fishermen's Questions

(Geneva, 18-28 October 1965)

The Governing Body had before it the record of the Preparatory Technical Conference on Fishermen's Questions held in Geneva from 18 to 28 October 1965, together with the texts of the conclusions adopted by the Conference.[1] Having regard to the decision reached at the 160th (November 1964) Session of the Governing Body that the exact scope of the item on fishermen's questions for the agenda of the 50th (1966) Session of the International Labour Conference should be defined in the light of the results of the Preparatory Technical Conference[2], the Governing Body decided to place the following item on the agenda of the 50th (1966) Session of the International Labour Conference for single discussion:

Questions concerning fishermen:

(a) accommodation on board fishing vessels;

(b) vocational training of fishermen;

(c) fishermen's certificates of competency.

The Governing Body also decided that the record of the Preparatory Technical Conference on Fishermen's Questions and the texts of the conclusions adopted by it, together with a questionnaire, should be communicated to member States without delay.

The Governing Body further decided to reduce to two months the period allowed to governments for the preparation of their replies to the questionnaire and likewise to reduce to two months before the opening of the session of the Conference the period by which the final report is to reach governments. It noted that, if this were done, governments might expect to receive the final report by 1 April 1966.

The Governing Body instructed the Director-General to inform member States, when transmitting to them the record of the Preparatory Technical Conference on Fishermen's Questions, that the Preparatory Technical Conference had endorsed a statement to the effect that the discussion by the International Labour Conference at its 50th (1966) Session of the item on fishermen's questions would be greatly facilitated by the presence of experts representative of all sides of the fishing industry, and that it had therefore urged that member States should give all possible consideration to this aspect when determining the composition of their national delegations and take steps to ensure that competent representatives of the fishing industry were included in such delegations.

Report of the Working Party on the Programme and Structure of the I.L.O.

The Governing Body had before it the report of the Working Party on the Programme and Structure of the I.L.O. set up at the 160th Session (November 1964)[3], which had held its third session in Geneva from 1 to 6 November 1965.

The Governing Body approved the conclusions contained in the report, which related to the major I.L.O. programme areas of conditions of life and work and the development of social institutions, and decided to communicate the report to the International Labour Conference at its 50th (1966) Session as the second report of the Working Party, for discussion in connection with the Report of the Director-General (Part II). It instructed the Director-General to make available to the

[1] See also below, pp. 30 and 97-143.

[2] See *Official Bulletin*, Vol. XLVIII, No. 1, Jan. 1965, p. 6.

[3] Ibid., pp. 11-12.

Conference, as an annex to the report of the Working Party, a summary of the communications received by the I.L.O. from governments of member States and employers' and workers' organisations in respect of the proposals made at the 47th (1963), 48th (1964) and 49th (1965) Sessions of the Conference concerning the above-mentioned major programme areas.

Reports of the Committee on Freedom of Association

Eighty-fifth Report [1]

The Governing Body had before it the 85th Report of its Committee on Freedom of Association. At its sixth sitting it approved the recommendations contained therein and requested the Director-General, in the light of the concern expressed during its discussion with regard to Cases Nos. 282 and 401 (Burundi), to communicate the recommendations in paragraph 324 of the report to the Government of Burundi within the shortest possible time. In connection with these two cases it was noted that the Director-General had informed the Secretary-General of the United Nations of the position and would continue to keep him informed.

Eighty-sixth Report

The Governing Body decided to examine the 86th Report of its Committee on Freedom of Association at its 164th Session.

Reports of the Financial and Administrative Committee

The Governing Body took the following action on the reports of its Financial and Administrative Committee.

It authorised the Director-General to submit the proposed transfers within the 1965 budget to the Chairman of the Governing Body for his approval prior to the closing of the 1965 accounts in January 1966, subject to confirmation of such approval by the Governing Body at its 164th Session.

The Governing Body took a number of decisions relating to extra-budgetary accounts. It approved the proposed 1966 budgets for the accounts of the International Occupational Safety and Health Information Centre (C.I.S.), the International Social Security Association (I.S.S.A.) and the Inter-American Vocational Training Research and Documentation Centre (CINTERFOR), and decided that the C.I.S. and I.S.S.A. accounts should be maintained. It also decided that the CINTERFOR account should be maintained in 1966 and that negotiations should be continued with a view to obtaining the widest possible financial and material support for the Centre. With respect to the account for the International Institute for Labour Studies and the account for United Nations Special Fund costs, it decided that the former should be maintained for the time being and that the latter should also be maintained, subject to review by the Director-General in the light of experience gained with the programme planning system. On the other hand, it decided that, as from 1 January 1967, the account for the Inter-American Committee on Social Security (I.A.C.S.S.) and the account for United Nations Children's Fund costs should be discontinued.

The Governing Body decided, subject to a decision being taken by the General Assembly of the United Nations to continue the World Food Programme, to establish, with effect from 1 January 1966, two extra-budgetary posts of indeterminate

[1] For the text of this report see the Supplement to this issue.

duration, to be financed by funds received from the Programme and to be occupied respectively by the I.L.O. Liaison Officer with the Programme and his secretary.

The Governing Body expressed its warmest thanks to the Italian Government, whose generosity had made it possible to open the International Centre for Advanced Technical and Vocational Training (Turin) on 15 October 1965. It also expressed its gratitude to the authorities and organisations whose material and financial support had created favourable conditions for the preparation by the I.L.O. of the opening of the Centre and to all Italian personalities who had contributed to this achievement, especially Ambassador Arpesani and those working directly with him.

On the recommendation of its Building Subcommittee the Governing Body approved the principle of the construction of a new I.L.O. headquarters building in Geneva on the Grand Morillon property. It authorised the Director-General to negotiate the necessary agreements in this connection with the Property Foundation for International Organisations and requested him to submit those agreements and the financial proposals connected therewith to the Governing Body at its 164th (February-March 1966) Session, with a view to the making of recommendations to the 50th (1966) Session of the International Labour Conference.

The Governing Body also took certain decisions on personnel and pensions questions. It approved a number of amendments to the Staff Regulations. It approved the application of the Statute of the Administrative Tribunal to the Universal Postal Union. It authorised the Director-General, if the United Nations General Assembly at its 20th Session took decisions in respect of changes recommended in the International Civil Service Advisory Board report on review of salary scales of the Professional and higher categories of the International Civil Service, to apply parallel measures in the I.L.O. with effect from the date on which the United Nations decisions became effective.

Lastly, the Governing Body noted the information contained in the reports of the Financial and Administrative Committee.

Report of the Allocations Committee

After full discussion of the report of its Allocations Committee the Governing Body decided to refer the proposals in the report back to the Committee for further consideration at its meeting to be held in connection with the 165th (May 1966) Session of the Governing Body.

Report of the Committee on Standing Orders and the Application of Conventions and Recommendations

On the basis of the report of its Committee on Standing Orders and the Application of Conventions and Recommendations the Governing Body took the action described below.

Resolutions Procedure at Regional Conferences

The Governing Body took note of this section of the report.

Forms of Report (Article 22 of the Constitution) on the Hygiene (Commerce and Offices) Convention, 1964, and the Employment Policy Convention, 1964

The Governing Body approved the forms of report on the Hygiene (Commerce and Offices) Convention, 1964, and the Employment Policy Convention, 1964.

Preliminary Control of Resolutions Submitted under Article 17 of the Standing Orders of the Conference

The Governing Body decided that the proposals which had been submitted to the Committee on Standing Orders and the Application of Conventions and Recommendations on this subject should be referred to the Working Party on the Programme and Structure of the I.L.O.

Report of the International Organisations Committee

The Governing Body took the following action on the report of its International Organisations Committee.

Agreement with the Organisation of African Unity

The Governing Body authorised the Director-General to sign the proposed agreement with the Organisation of African Unity on behalf of the International Labour Organisation.[1]

Joint I.L.O.-I.A.E.A. Meeting of Experts on Radiological Protection in Mining and Milling of Radioactive Ores

The Governing Body took note of the report of the Joint I.L.O.-I.A.E.A. Meeting of Experts on Radiological Protection in Mining and Milling of Radioactive Ores and authorised the publication of the Code of Practice on this subject, the text of which was appended to the report.

Thirty-ninth Session of the Economic and Social Council

The Governing Body noted the action taken by the Economic and Social Council of the United Nations in respect of activities in the field of industrial development and reaffirmed the views expressed at its 160th Session[2], which had been conveyed to the General Assembly of the United Nations for consideration in connection with the recommendations of the Council. It requested the Director-General to continue to co-operate with the Secretary-General of the United Nations and the executive heads of the other specialised agencies and the International Atomic Energy Agency in strengthening the activities of the United Nations system directed to more effective industrial development programmes as an essential factor in ensuring the economic and social progress of developing countries.

Thirty-first Report of the Administrative Committee on Co-ordination

The Governing Body took note of the 31st Report of the Administrative Committee on Co-ordination as a whole.

Second Session of the United Nations Trade and Development Board

The Governing Body noted the action taken by the United Nations Trade and Development Board at its second session and requested the Director-General to co-operate with the Secretary-General of the United Nations Conference on Trade

[1] For the text of the Agreement see below pp. 152-154.

[2] See *Official Bulletin*, Vol. XLVIII, No. 1, Jan. 1965, p. 15.

and Development by providing information relevant to the preparation of his annual report on international trade and economic development, in accordance with the resolution adopted by the Board at its last session.

Other Matters

The Governing Body further took note of those parts of the reports which dealt with the following subjects: the I.M.C.O. Convention on Facilitation of International Maritime Traffic; the address of His Holiness Pope Paul VI at the General Assembly of the United Nations; the Report of the Secretary-General of the United Nations to the United Nations General Assembly; and various questions considered by the Economic and Social Council of the United Nations at its 39th Session.

Report of the Committee on Industrial Committees

The Governing Body took the following action on the report of its Committee on Industrial Committees.

Meetings of Industrial and Analogous Committees in 1967

Choice of Meetings.

The Governing Body decided, subject to appropriate financial provision being made, to include the following meetings, which are listed in order of preference, in the programme of meetings to be held in 1967:

1. Tripartite Technical Meeting for the Woodworking Industries.
2. Advisory Committee on Salaried Employees and Professional Workers (Sixth Session).
3. Second Tripartite Technical Meeting for Mines Other than Coal Mines.

Choice of Agenda Items.

The agenda items selected by the Governing Body for these meetings are indicated below.

Tripartite Technical Meeting for the Woodworking Industries.

I. Social problems in the woodworking industries: general review.

II. Technological changes in the woodworking industries and their social consequences.

III. Occupational safety, health and welfare in the woodworking industries.

Advisory Committee on Salaried Employees and Professional Workers (Sixth Session).

I. General Report, dealing particularly with the following questions:

(a) action taken in the various countries in the light of the conclusions adopted at previous sessions of the Committee;

(b) steps taken by the Office to follow up the studies and inquiries proposed by the Committee; and

(c) recent events and developments affecting non-manual workers.

II. The impact of social and economic developments on working and living conditions in the distributive trades.

III. The role of non-manual workers in economic and social development, and the need for their training.

Second Tripartite Technical Meeting for Mines Other than Coal Mines.

I. General Report, dealing particularly with—

(a) action taken in various countries in the light of the conclusions adopted at the first Tripartite Technical Meeting for Mines Other than Coal Mines;

(b) steps taken by the Office to follow up the studies and inquiries proposed by the first Tripartite Technical Meeting for Mines Other than Coal Mines; and

(c) recent events and developments in mines other than coal mines;

II. Employment and conditions of work in the mining industry, in the light of fluctuations in the international mineral trade.

III. Measures—particularly training—needed to meet safety and health requirements in mines other than coal mines.

It was understood that the General Report would include a review of problems of labour inspection.

Meeting of Experts on Conditions of Work in Urban Transport Services [1]

The Governing Body invited the Director-General—

(a) to communicate the report and conclusions of the Meeting of Experts on Conditions of Work in Urban Transport Services to the governments of member States, informing them that the Governing Body had expressed no opinion on the content of these texts and requesting them to bring the texts to the knowledge of the authorities and employers' and workers' organisations concerned; and

(b) to take all necessary steps in order that the Inland Transport Committee, at its Eighth Session, might be adequately informed of the work of the Meeting of Experts.

The Governing Body authorised the Director-General, within the work programme of the Office, to continue—in all fields of activity belonging to the International Labour Organisation—the studies on working and living conditions of urban transport personnel. It further authorised the Director-General to communicate the report and conclusions of the Meeting of Experts to the international organisations concerned, drawing their attention to the views expressed by the Meeting.

Iron and Steel Committee : Effect to Be Given to the Resolution (No. 57) [2] *concerning Tripartite Action regarding Vocational Training in the Iron and Steel Industry*

The Governing Body invited the Director-General to give serious consideration to the request made by the Iron and Steel Committee in its resolution No. 57, adopted at its Seventh Session (1963), in the light of similar proposals received from other Industrial Committees and of the recommendations of the Working Party on the Programme and Structure of the I.L.O. in the field of human resources.

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[1] For a brief note on the Meeting and the text of its conclusions see *Official Bulletin*, Vol. XLVIII, No. 3, July 1965, p. 242 and pp. 292-297.

[2] For the text of the resolution see ibid., Vol. XLVI, No. 4, Oct. 1963, pp. 555-556.

Other Matters

The Governing Body further took note of those parts of the report which dealt with the following subjects: periodical reports on the effect given by the Office to requests of Industrial Committees, and the activities of the United Nations system of organisations in the field of industrial development.

Report of the Committee on Operational Programmes

The Governing Body took the following action on the report of its Committee on Operational Programmes.

Agenda of the Next Meeting

The Governing Body decided that the agenda of the meeting of the Committee on Operational Programmes to be held in connection with the 164th Session should be as follows:

I. I.L.O. technical assistance programmes in 1965.

II. Participation of employers' and workers' organisations in I.L.O. technical co-operation activities.

III. Management development programme.

Other Matters

The Governing Body further took note of those parts of the report which dealt with I.L.O. co-operation in the Expanded Programme of Technical Assistance and with the possible inclusion of an item concerning technical co-operation in the agenda of the International Labour Conference.[1]

Examination of the Representation Submitted by the Association of Federal Servants of the State of São Paulo concerning the Application of the Labour Inspection Convention, 1947 (No. 81), in Brazil

Report by the Officers of the Governing Body

On the basis of a report by its Officers relating to the procedure for examination of a representation submitted to the Office on 15 June 1965 by the Association of Federal Servants of the State of São Paulo concerning the application of the Labour Inspection Convention, 1947 (No. 81), in Brazil, the Governing Body took the following action.

It decided to appoint, under article 2, paragraph 3, of the Standing Orders concerning the Procedure for the Discussion of Representations [2], a committee [3] composed of three of its members, chosen respectively from the Government, Employers' and Workers' groups, which would have the task of laying before it, before any decision was reached, proposals concerning the steps to be taken at each of the stages of the procedure. It empowered this committee to perform all the functions entrusted by the Standing Orders concerning the Procedure for the Discussion of

[1] See above, p. 6.

[2] Adopted by the Governing Body on 8 April 1932 and amended on 5 February 1938.

[3] For the composition of this committee see below, p. 27.

Representations to the Governing Body as a whole until the committee was in a position to submit to the Governing Body proposals as to the action, if any, to be taken on the representation, it being understood that the committee would report to the Governing Body in due course.

Composition and Agenda of Committees and of Various Meetings

Meeting of Experts on Discrimination in Employment [1]

At its 159th Session (June-July 1964) the Governing Body had approved the future programme of the I.L.O. in the field of discrimination [2], which provided, *inter alia*, for the holding of a Meeting of Experts on Discrimination in Employment. At its present session it approved the detailed proposals submitted to it by the Director-General in connection with this Meeting.

It was decided that the Meeting should comprise 16 experts, eight of whom would be designated by governments, four chosen in consultation with employers' circles and four in consultation with workers' circles, the government experts to be appointed following consultations with the Governments of Belgium, Brazil, India, the Ivory Coast, Kenya, the U.S.S.R., the United Kingdom and the United States.

The Governing Body authorised its Officers, in the event of experts from certain of these countries not being available, to approve on its behalf the selection of experts from other countries, and further agreed that the experts from employers' and workers' organisations should be designated after consultation with the Employers' and Workers' groups of the Governing Body respectively, account being taken of the countries from which government experts were to be selected.

Committee of Experts on the Application of Conventions and Recommendations

The Governing Body reappointed for a period of three years the following members of the Committee of Experts on the Application of Conventions and Recommendations:

Sir Adetokunbo Ademola (Nigeria).
Mr. C. Cardahi (Lebanon).
Mr. E. García Sayán (Peru).
Mr. A. Gubiński (Poland).
Mr. S. Kuriyama (Japan).
Mr. I. Ruiz Moreno (Argentina).

Agenda of the Third Session of the African Advisory Committee

The Governing Body had before it proposals concerning the third agenda item for the Third Session of the African Advisory Committee, which had been submitted by the Director-General in accordance with the authorisation given to him by the Governing Body at the 152nd (June 1962) Session.[3] It decided that consideration of this question should be deferred until the 164th Session, when the Director-General would submit revised proposals after consultation with those concerned.

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[1] For the date and place of this meeting see below, p. 26.

[2] See *Official Bulletin*, Vol. XLVII, No. 3, July 1964, p. 151.

[3] Ibid., Vol. XLV, No. 3, July 1962, p. 173.

Proposals concerning the Establishment of a Panel of Consultants on Safety in Mines

The Governing Body deferred consideration of the proposals submitted to it concerning the establishment of a Panel of Consultants on Safety in Mines until the 164th Session.

Panel of Consultants on the Problems of Women Workers

When the Panel of Consultants on the Problems of Women Workers was reconstituted by the Governing Body at its 161st Session (March 1965) [1], consultations had not yet been completed as regards Government consultants from two countries and one of the regular members of the Panel to be appointed after consultation with the Workers' group. Moreover, a vacancy was subsequently created by the death of Mrs. Wanyara Wamboi Muhanji (Kenya), one of the consultants appointed by the Governing Body at the 161st Session after consultation with the Workers' group. At its present session, therefore, the Governing Body appointed the following persons as members of the Panel, for a period expiring in March 1970:

Members nominated after consultation with governments :

Mrs. Seeta PARMANAND (India).

Mrs. Jiřina BREJCHOVA (Czechoslovakia), State Population Commission; member of the editorial staff of *Práce* (Prague).

Members nominated after consultation with the Workers' group of the Governing Body :

Mrs. Lucy MVUBELO (Republic of South Africa), Organising Secretary, Garment Workers' Union of African Women, Johannesburg.

Miss Judith NAMUDDU (Uganda), Uganda Trades Union Congress.

Meeting of Experts on the Outline and Content of the Encyclopaedia of Occupational Health and Safety [2]

At its 162nd Session (May-June 1965) the Governing Body had approved proposals relating to the preparation of an Encyclopaedia of Occupational Health and Safety [3], including a proposal that there should be a meeting of experts to advise on the plan for the Encyclopaedia. At its present session the Governing Body approved the following arrangements for the Meeting of Experts.

Agenda.

The agenda of the Meeting will consist of the following items:

I. Determination of the list of articles.

II. Internal arrangement of the articles.

III. Criteria for the preparation of the articles.

IV. Other questions.

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[1] See *Official Bulletin*, Vol. XLVIII, No. 2, Apr. 1965, pp. 155-158.

[2] For the place and date of this meeting see below, p. 26.

[3] See *Official Bulletin*, Vol. XLVIII, No. 3, July 1965, p. 234.

Composition.

Invitations to attend the Meeting will be addressed to experts from the following countries: Brazil, Canada, France, Federal Republic of Germany, India, Italy, Mexico, Poland, Senegal, Sweden, Switzerland, U.S.S.R., United Arab Republic, United Kingdom and United States.

Representation of Intergovernmental Organisations.

The following intergovernmental organisations will be invited to be represented at the Meeting:

World Health Organisation.
High Authority of the European Coal and Steel Community.
European Economic Community.
International Social Security Association.
European Nuclear Energy Agency.

Representation of Non-Governmental International Organisations.

The following non-governmental international organisations will be invited to send observers to the Meeting:

International Ergonomics Association.
Permanent Commission and International Association on Occupational Health.

Committee of Social Security Experts

At its 161st Session the Governing Body had decided that the renewed membership of the Committee of Social Security Experts should consist of 30 government experts on social security in general and ten government experts on actuarial questions and had determined the countries from which those experts should be drawn.[1] At its present session it appointed the following experts as members of the Committee for a period expiring on 31 December 1968:

Experts on social security in general:

Mr. O. ALANKO (Finland), Government Counsellor, Division of Insurance, Ministry of Social Affairs, Helsinki.

Mr. V. A. BABKIN (U.S.S.R.), Chief, Pensions and Allowances Department, Ministry of Social Security, Moscow.

Mr. R. M. BALL (United States), Commissioner of Social Security Administration, Department of Health, Education and Welfare, Washington.

Mr. A. BALMA (Tunisia), Director-General, National Social Security Fund, Tunis.

Mr. A. BARJOT (France), Member of the Council of State, Director-General of Social Security, Ministry of Labour, Paris.

Mr. G. J. BROCKLEHURST (New Zealand), Administrative Head of the Social Security Department, Chairman of the Social Security Commission, Wellington.

Mr. G. CARAPEZZA (Italy), Director-General of Pensions and Social Assistance, Ministry of Labour, Rome.

Mr. M. V. CARDOSO DE OLIVEIRA (Brazil), Head of the Legal Department, Superannuation and Pension Institute for Employees in Industry, Rio de Janeiro.

[1] See *Official Bulletin*, Vol. XLVIII, No. 2, Apr. 1965, p. 154.

Mr. G. DANIELSON (Sweden), Under-Secretary, Ministry of Health and Social Affairs, Stockholm.

Mr. D. C. DAS (India), Secretary to the Government of India for Social Security, New Delhi.

Mr. A. DELPERÉE (Belgium), Secretary-General, Ministry of Social Security, Brussels.

Mr. B. A. EMAN-PEPPLE (Nigeria), National Provident Fund, Federal Ministry of Labour, Lagos.

Mr. H. R. FRANCISCO (Philippines), First Deputy Administrator, Social Security System, Manila.

Mr. K. JANTZ (Federal Republic of Germany), Chief of Division in the Federal Ministry of Labour and Social Affairs, Bonn.

Mr. Abdel Halim Ismail EL-KADI (United Arab Republic), Chief Inspector of the Social Insurance Division, Department of Labour, Cairo.

Mr. I. KANEV (Israel), Chairman, Health Insurance Institution, Kupat Holim, Tel Aviv.

Mr. S. KUMAR (Malaysia), Commissioner for Labour, Ministry of Labour, Kuala Lumpur.

Mr. D. F. MARTÍNEZ OROZCO (Spain), Senior Head of Civil Administration, Ministry of Labour, Madrid.

Mr. R. R. MOLES (Argentina), Chief, Social Research Department, National Social Insurance Institute, Buenos Aires.

Mr. T. NACOUZI (Cyprus), Senior Social Insurance Officer, Ministry of Labour and Social Insurance, Nicosia.

Mr. A. PATTERSON (United Kingdom), Assistant Secretary, Ministry of Pensions and National Insurance, London.

Mr. J. POPOVIĆ (Yugoslavia), Deputy Secretary, Federal Labour Secretariat, Novi Beograd.

Mr. M. SUETAKA (Japan), Member of the Council of Social Security, Tokyo.

Mr. A. C. M. VAN DE VEN (Netherlands), Director-General for Social Security and Industrial Relations, Ministry of Social Affairs and Public Health, The Hague.

Mr. J. W. WILLARD (Canada), Deputy Minister of Welfare, Department of National Health and Welfare, Ottawa.

Mr. W. G. WOODHAM (Jamaica), Assistant Under-Secretary, Ministry of Labour and National Insurance, Kingston.

Experts on actuarial questions :

Mr. C. E. CLARKE (United Kingdom), Principal Actuary, Social Insurance Division, Government Actuary's Department, London.

Mr. A. COPPINI (Italy), Actuary, President, National Sickness Insurance Institute (I.N.A.M.), Rome.

Mr. A. HAZAS (Mexico), Actuarial Adviser, Technical Department, Mexican Social Security Institute, Mexico City.

Mr. E. KAISER (Switzerland), Actuarial Adviser to Swiss Social Insurance Schemes, Berne.

Mr. V. KALIVODA (Czechoslovakia), Head of the Economic Studies Division, National Social Security Board, Prague.

Mr. E. MIRANDA SALAS (Chile), Chief Actuary, Office of the Superintendent of Social Security, Santiago.

Mr. R. J. MYERS (United States), Chief Actuary, Social Security Administration, Department of Health, Education and Welfare, Washington.

Mr. V. R. NATESAN (India), Actuary, Employees' State Insurance Corporation, New Delhi.

Mr. F. NETTER (France), *Conseiller-Maître* in the Court of Audit, Former Deputy Director-General of Social Security, Ministry of Labour, Paris.

Mr. P. RAMHOLT (Norway), Chief Actuary, Ministry of Social Affairs, Oslo.

Experts nominated after consultation with the Employers' group :

Mrs. G. SEEUWS (France), Director, Federation of Metallurgical and Mining Industries, Paris.

Substitute: Mr. P. ARETS (Belgium), Adviser, Federation of Belgian Industries.

Mr. J. G. RIETKERK (Netherlands), Expert on Social Security Questions, Confederation of Netherlands Employers.

Substitute: Mr. R. BELLACCI (Italy), Chief of the Social Insurance Division, General Confederation of Italian Industry.

Mr. C. C. D. MILLER (United Kingdom), Head of the International Labour Department, Confederation of British Industry.

Substitute: Mr. W. DOETSCH (Federal Republic of Germany), Acting Director, Social Security Division of the German Confederation of Employers' Associations.

Mr. J. CAMPILLO SANZ (Mexico), Director of the Monterrey Foundries responsible for legal, economic and social questions.

Dr. A. TERRA (Uruguay), Doctor of Hygiene, Director of an important industrial undertaking and Member of the Central Family Allowances Board and of the Uruguayan Chamber of Industry.

Mr. R. P. DOHERTY (United States), President, Television-Radio Management Corporation.

Mr. M. NASR (Lebanon), Member of the Governing Body of the International Labour Office.

Mr. R. G. GOKHALE (India), Labour Adviser, Podar Chambers, Parsi Bazar Street, Bombay.

Experts nominated after consultation with the Workers' group :

Mr. C. GATINEL (France), French Democratic Federation of Labour (C.F.T.C.), Paris.

Mr. R. MELAS (Austria), Director-General, Federation of Austrian Social Insurance Institutes, Vienna.

Mr. David SOUMAH (Senegal), African Trade Union Confederation, Dakar.

Mr. C. R. DALE (United Kingdom), Secretary, Social Insurance Department, Trades Union Congress, London.

Mr. I. KANEV (Israel), Chairman, Health Insurance Institution, Kupat Holim, Tel Aviv.

Mr. Luis R. MAURICIO (Philippines), Assistant General Secretary, Trade Unions Congress of the Philippines, Manila.

Mr. Francisco J. MACÍN (Mexico), President, Supervisory Committee, Mexican Social Insurance Institute, Mexico.

Experts nominated by the International Social Security Association :

Dr. J. DEJARDIN (Belgium), Chief Medical Officer, Director-General of the National Sickness and Disablement Insurance Institute, Brussels.

Mr. C. MICHEL (France), Director, National Federation of Social Security Institutions, Paris.

Experts nominated by the Inter-American Committee for Social Security :

Dr. J. IRRIBAREN BORGES (Venezuela), Director-General, Venezuelan Social Insurance Institute, Caracas.

Dr. G. NOVELO (Mexico), Chief, Department of International Affairs, Mexican Social Insurance Institute, Mexico City.

The Governing Body authorised its Officers to approve on its behalf the appointment of the remaining experts. It also authorised the Director-General, should a vacancy occur among the regular experts appointed after consultation with the Employers' and Workers' groups of the Governing Body, to appoint a replacement from among the substitutes after consultation with the group concerned.

INTER-AMERICAN VOCATIONAL TRAINING RESEARCH AND DOCUMENTATION CENTRE (CINTERFOR)

Pro memoria : No paper was before the Governing Body on this item on its agenda.[1]

REPORT OF THE DIRECTOR-GENERAL

Obituary

The Governing Body asked the Director-General to convey its sympathy to the families of the late Mr. Einar Nielsen, Professor James T. Shotwell, Mr. Gabriel Saintigny, Professor Ernest Beaglehole and Mrs. Albert Thomas. It further asked the Director-General to convey its sympathy on the death of Mr. Nicolas Biever to Mr. Biever's family and to the Luxembourg Government.

Composition of the Organisation

The Governing Body noted that Singapore had become a Member of the Organisation [2] and that Albania had given notice of its intention to withdraw therefrom.

Composition of the Governing Body

The Governing Body took note of the following changes in its composition:

Workers' group.

In accordance with article 5, paragraph 5, of the Standing Orders of the Governing Body the Workers' group has appointed Mr. Bertil BOLIN (Swedish) as a Workers' regular member to fill the vacancy created by the death of Mr. E. Nielsen, and Mr. Dionigi COPPO (Italian) as a Workers' deputy member to fill the vacancy created by the resignation of Mr. B. Storti.

[1] Certain decisions relating to CINTERFOR were, however, taken by the Governing Body at its present session on the basis of a report of its Financial and Administrative Committee (see above, p. 12).

[2] See below, p. 35.

Progress of International Labour Legislation

Internal Administration

Publications

The Governing Body took note of these sections of the report.

Communication from the Government of the People's Republic of Albania Giving Notice of Its Intention to Withdraw from the International Labour Organisation

The Governing Body took note of the text of the letter addressed to the Director-General on 30 July 1965 by the Minister of Foreign Affairs of the People's Republic of Albania, giving notice of his Government's intention to withdraw from the International Labour Organisation, and of the text of the Director-General's reply, dated 7 August 1965.

Constitution of a Committee on Technical Meetings

The Governing Body decided to refer the Director-General's proposal relating to the establishment of a Committee on Technical Meetings to its Working Party on the Programme and Structure of the I.L.O. for further consideration.

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations

The Governing Body took note of the information submitted by the Director-General under this heading.

Establishment of a Joint Committee for the Public Service : Requests for Further Action

At its 159th Session (June-July 1964) the Governing Body had noted that, when the Director-General was in a position to draw conclusions from the studies suggested by the Meeting of Experts on Conditions of Work and Service of Public Servants (Geneva, 25 November-6 December 1963), he would submit to it proposals on the future work of the I.L.O. in this field, including the convening of an international joint committee on the public service or any other suitable specialised meeting.[1] Moreover, the International Labour Conference, in the resolution concerning the industrial activities of the International Labour Organisation which it adopted at its 49th (1965) Session, invited the Governing Body, when reviewing the programme and structure of the I.L.O., to request, as appropriate, the Director-General and/or the Working Party on the Programme and Structure of the Organisation to consider, *inter alia*, the desirability of establishing such a joint committee.[2] In consequence, and in the light of the information submitted to it at its present session, the Governing Body authorised the Director-General to study the question of setting up a joint committee to deal with the problems of the public service and to submit to the Governing Body at an early date further proposals on the matter.

[1] See *Official Bulletin*, Vol. XLVII, No. 3, July 1964, p. 140.

[2] Ibid., Vol. XLVIII, No. 3, July 1965, Suppl. I, pp. 22-23.

Action to Be Taken on the Resolutions Adopted by the International Labour Conference at Its 48th (1964) Session: Resolution concerning Minimum Living Standards and Their Adjustment to the Level of Economic Growth [1]

The Governing Body—

(a) took note of the Director-General's intentions in regard to the Office programme of research on the subjects covered by the third operative paragraph of the resolution concerning minimum living standards and their adjustment to the level of economic growth; and

(b) invited the Director-General—

(i) to consider including among his proposals for meetings in 1967 a proposal for a small meeting of experts, the majority of whom should be drawn from the developing countries and whose terms of reference might be to examine and report to the Governing Body on " Minimum Wage Fixing and Other Problems of Wage Policy, with Special Reference to Developing Countries ";

(ii) thereafter to consider including among his proposals for agenda items for an early session of the Conference a proposal for an item relating to minimum living standards and their adjustment to the level of economic growth.

Activities of the International Occupational Safety and Health Information Centre (C.I.S.) from 1 October 1964 to 30 September 1965

The Governing Body took note of the information submitted by the Director-General under this heading.

Arrangements for the Preparatory Technical Conference on the Maximum Permissible Weight to Be Carried by One Worker [2]

The Governing Body took note of the information submitted by the Director-General under this heading and, on the basis of oral announcements made during the session by the Government representatives concerned, of the intention of the Governments of Australia and the United States to send tripartite delegations to the Conference.

Tenth Progress Report on Action Taken as regards the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

The Governing Body took note of the information submitted by the Director-General under this heading.

Report of the Officers of the Governing Body: Request for Regional Consultative Status

On the recommendation of its Officers the Governing Body decided to grant regional consultative status in respect of the American region to the Latin American Confederation of Christian Trade Unionists.

States of Chief Industrial Importance

The Governing Body decided that it would not be expedient to review the list of States of chief industrial importance between the present session and the Governing Body elections to be held at the 50th (1966) Session of the International Labour Conference.

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[1] For the text of the resolution see *Official Bulletin*, Vol. XLVII, No. 3, July 1964, Suppl. I, pp. 67-68.

[2] For the agenda, composition and date of this Conference see *Official Bulletin*, Vol. XLVIII, No. 3, July 1965, pp. 225-226, and below, p. 26.

Programme of Meetings

Programme for 1965

The Governing Body confirmed the following programme of meetings for the remainder of 1965:

Date	Title of Meeting	Place
22 November-3 December	Permanent Agricultural Committee (Seventh Session)	Geneva
6-17 December	Working Group of Experts on the Revision of the International Standard Classification of Occupations (I.S.C.O.)	,,
6-17 December	Metal Trades Committee (Eighth Session)	,,

Programme for 1966

The Governing Body approved or confirmed the following programme of meetings for 1966:

Date	Title of Meeting	Place
25 January-4 February .	Preparatory Technical Conference on the Maximum Permissible Weight to Be Carried by One Worker	Geneva
7 February-4 March . .	164th Session of the Governing Body and its Committees	,,
14-26 March	Committee of Experts on the Application of Conventions and Recommendations (36th Session)	,,
18-26 April	Meeting of Experts on the Outline and Content of the Encyclopaedia of Occupational Health and Safety	,,
2-13 May	Committee on Work on Plantations (Fifth Session)	,,
20-28 May [1]	165th Session of the Governing Body and its Committees	,,
1-23 June	50th Session of the International Labour Conference	,,
Following the Conference	166th Session of the Governing Body	,,
12-23 September	Eighth Conference of American States Members of the I.L.O.	Ottawa
26 September-8 October .	Petroleum Committee (Seventh Session)	—
September-October (five days)	Tripartite Subcommittee on Seafarers' Welfare of the Joint Maritime Commission	—
Second half of the year (five days)	Meeting of Experts on Discrimination in Employment	Geneva
18-28 October	Eleventh International Conference of Labour Statisticians	,,
7-18 November [1]	167th Session of the Governing Body and its Committees	,,
21 November-3 December	Inland Transport Committee (Eighth Session)	,,
End of the year (ten days)	Asian Advisory Committee (13th Session)	An Asian country

[1] Provisional dates.

Appointment of Governing Body Representatives on Various Bodies

Preparatory Technical Conference on the Maximum Permissible Weight to Be Carried by One Worker (Geneva, 25 January-4 February 1966)

The Governing Body appointed the following delegation to represent it at the Preparatory Technical Conference on the Maximum Permissible Weight to Be Carried by One Worker:

Government group: Mr. Purpura (Italy).

Employers' group: Mr. Montt Balmaceda (Chilean).
Substitute: Mr. Kuntschen (Swiss).

Workers' group: Mr. Faupl (United States).
Substitute: Mr. Abid Ali (Indian).

Committee Responsible for Making Proposals to the Governing Body in connection with the Representation Submitted by the Association of Federal Servants of the State of São Paulo concerning the Application of the Labour Inspection Convention, 1947 (No. 81), in Brazil [1]

The Governing Body decided that the Committee responsible for making proposals to the Governing Body in connection with the representation submitted by the Association of Federal Servants of the State of São Paulo concerning the application of the Labour Inspection Convention, 1947 (No. 81), in Brazil should be composed of the following members:

Government group: Mr. Ago (Italy).
Employers' group: Mr. Kuntschen (Swiss).
Workers' group: Mr. Möri (Swiss).

Date and Place of the 164th Session of the Governing Body

The 164th Session of the Governing Body will be held in Geneva in accordance with the following schedule.

The Working Party on the Programme and Structure of the I.L.O. will meet from Tuesday, 8 to Saturday 12 February 1966, Monday, 7 February being reserved for group meetings of its members. Meetings of the standing Committees will be held from Monday, 14 to Friday, 25 February 1966. Group meetings will be held on the afternoon of Friday, 25 February and on Saturday, 26 February 1966, and the Governing Body itself will meet from Monday, 28 February to Friday, 4 March 1966.

Resolution concerning Southern Rhodesia

The Governing Body unanimously and by acclamation adopted the following resolution:

The Governing Body,

Disturbed at the situation created in Southern Rhodesia by the illegal declaration of independence,

Considering that the purpose of this declaration is to maintain the domination of a racialist minority over the immense majority of the population,

Considering that this situation constitutes a violation of the basic principles of the Charter of the United Nations and of the I.L.O. Constitution and of the obligations arising from the international labour Conventions applied to Rhodesia,

[1] See also above, pp. 17-18.

Noting that the Security Council is considering as a matter of urgency appropriate measures to put an end to this situation,

Conscious of the responsibility of the International Labour Organisation to promote respect for human dignity;

Requests the Director-General—

(a) to inform the Secretary-General of the United Nations that the International Labour Organisation will do everything in its power to contribute in its own sphere to such action as may be decided upon by the Security Council;

(b) to refrain from having any official or unofficial contacts, direct or indirect, with the illegal régime in Southern Rhodesia;

(c) to keep abreast of developments in the situation and to report to the Governing Body at its next session.

Other Questions

Absence of Mr. C. Riani, Workers' Deputy Member of the Governing Body

The Director-General was asked to give effect to the request made by the Chairman of the Workers' group that steps should be taken as a matter of urgency to impress upon the Brazilian Government the need to observe the provisions of article 40, paragraph 2, of the I.L.O. Constitution and make it possible for Mr. Riani to attend Governing Body sessions.

Tripartite Technical Meeting on Hotels, Restaurants and Similar Establishments

(Geneva, 4-15 October 1965)

The Tripartite Technical Meeting on Hotels, Restaurants and Similar Establishments convened by the International Labour Organisation was held at the International Labour Office in Geneva from 4 to 15 October 1965.

The following three items were on the agenda of the Meeting:

I. Review of the social and economic problems of employees in hotels, restaurants and similar establishments.

II. Methods of remuneration.

III. Organisation of work schedules and paid holidays.

Tripartite delegations were sent by 18 member States.

The Meeting set up two subcommittees to examine the two technical items, as well as a steering committee.

The Meeting adopted the reports and conclusions of the two subcommittees, together with ten resolutions.

In the " Documents " section of this issue will be found a note containing a summary of the general discussion and the texts adopted by the Meeting.[1]

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[1] See below, pp. 51-96.

Preparatory Technical Conference on Fishermen's Questions

(Geneva, 18-28 October 1965)

In accordance with a decision taken by the Governing Body of the International Labour Office at its 159th Session (June-July 1964), the Preparatory Technical Conference on Fishermen's Questions was held in Geneva from 18 to 28 October 1965.

The agenda of the Conference, as laid down by the Governing Body, included the questions of accommodation on board fishing vessels, vocational training of fishermen, and fishermen's certificates of competency.

Attended by some 95 Government, Employers' and Workers' delegates, advisers and observers from 18 countries, as well as representatives of the Governing Body and of international governmental and non-governmental organisations, the Conference established a Steering Committee and also two working parties to deal respectively with the questions of accommodation on board fishing vessels and of vocational training and certificates of competency.

The Conference adopted conclusions in the form of a proposed Recommendation on vocational training of fishermen, and two proposed Conventions concerning respectively accommodation on board fishing vessels and fishermen's certificates of competency. Proposals concerning the three proposed instruments will be drawn up in the light of observations made thereon by governments, and will be submitted to the 50th Session of the International Labour Conference in 1966 for consideration under the single-discussion procedure.

In the " Documents " section of this issue will be found a note on the Conference, including a summary of the general discussion, the reports of the working parties and the conclusions adopted.[1]

[1] See below, pp. 97-143.

Permanent Agricultural Committee

(Seventh Session, Geneva, 22 November-3 December 1965.)

In accordance with a decision by the Governing Body of the International Labour Office at its 161st Session (March 1965) the Seventh Session of the Permanent Agricultural Committee was held in Geneva from 22 November to 3 December 1965.

The agenda fixed by the Governing Body at the same session was as follows:

I. Technical review of the I.L.O. Rural Development Programme.

II. The role of agricultural organisations in promoting economic and social development in rural areas.

III. Vocational preparation and employment of rural youth.

The Committee is composed of 28 experts appointed by the Governing Body in their individual capacity but in consultation with the governments concerned in respect of 14 experts, with the Employers' Group of the Governing Body in respect of seven experts, and with the Workers' Group of the Governing Body also in respect of seven experts.

Three experts having been unable to attend, the meeting consisted of 25 experts from the following countries: Argentina, Belgium, Canada, Chile, China (Taiwan), Congo (Leopoldville), Federal Republic of Germany, Israel, Italy, Kenya, Malaysia (two experts), Netherlands, Nigeria, Poland, Senegal, Tunisia, Uganda, U.S.S.R., United Arab Republic, United Kingdom, United States, Uruguay, Venezuela, Viet-Nam.

In addition the following international organisations were represented: Food and Agriculture Organisation of the United Nations, World Health Organisation, European Confederation of Agriculture, International Confederation of Technical Agriculturists, International Co-operative Alliance, International Federation of Agricultural Producers, International Federation of Plantation, Agricultural and Allied Workers, International Organisation of Employers, World Federation of Trade Unions.

The Governing Body was represented by a tripartite delegation.

The Office had prepared working papers on the three items on the agenda, which served the Committee as a basis for discussion.

The Committee elected as Chairman Mr. J. O. I. LONGE (Nigeria), and as Vice-Chairman Mrs. Irena GROSZ (Poland).

After exhaustive discussions, which are summarised in a report to the Governing Body of the International Labour Office, the Committee unanimously adopted conclusions which will be submitted to the Governing Body at its session in February-March 1966 and which are reproduced in the " Documents " section of this issue.[1]

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[1] See below, pp. 144-151.

Working Group of Experts on the Revision of the International Standard Classification of Occupations (I.S.C.O.)

(Geneva, 6-17 December 1965)

In accordance with decisions taken by the Governing Body at its 162nd and 163rd Sessions (May-June 1965 and November 1965) a Working Group of Experts on the Revision of I.S.C.O., set up to advise the International Labour Office on the preparation of a revised classification, met in Geneva from 6 to 17 December 1965.

The meeting was attended by nine experts from various regions of the world. Representatives attended from the United Nations, the United Nations Educational, Scientific and Cultural Organisation, the World Health Organisation, the Organisation for Economic Co-operation and Development, the Intergovernmental Committee for European Migration, the Statistical Office of the European Communities and the Inter-American Statistical Institute.

Mr. Robert B. STEFFES (United States) was elected Chairman. The other members of the Working Group were Mr. C. G. BADEL (France), Mr. A. B. O. COLE (Nigeria), Mr. S. JONASSON (Sweden), Mr. P. I. LABOK (U.S.S.R.), Mr. Thein MAUNG (Burma), Mr. R. SCHMIDT (Federal Republic of Germany), Mr. D. C. STEEL (Australia) and Mr. F. I. TUCKWELL (United Kingdom).

The agenda of the meeting was as follows:

To advise the Office concerning revision of I.S.C.O.[1] in order to improve it and bring it up to date and in particular to set out the modifications of the occupational groups (major, minor and unit groups) which appear to be desirable, taking into account—

(a) the function of I.S.C.O. as a multi-purpose international standard;

(b) the need to facilitate, so far as possible, the historical continuity of data based on I.S.C.O. (1958) and the revised classification;

(c) the need to promote compilation of internationally comparable statistics of occupations in the 1970 round of population censuses.

In deciding the particular modifications of I.S.C.O. to be recommended, the Working Group should review—

(i) recent technological developments which have affected some occupations and introduced new ones;

(ii) recent experiences in both the developing and the highly industrialised countries concerning the collection and analysis of occupational data;

(iii) the practical uses made of occupational data in connection with manpower assessment and planning, migration programmes, etc.;

(iv) the suggestions and proposals for revision of I.S.C.O. submitted to the Office by the different countries.

[1] *International Standard Classification of Occupations* (Geneva, I.L.O., 1958).

Mr. A. ZELENKA, Chief of the Department of Research and Planning, welcomed the participants on behalf of the Director-General. He indicated that the main objective of the meeting was to advise the Office regarding the changes needed in the major, minor and unit groups structure of I.S.C.O. in order to improve its usefulness and to bring the classification up to date. In doing so, the Working Group needed to take into account recent technological changes and experience in both developing and industrialised countries while ensuring, so far as possible, the historical continuity of the classification. He also stressed the need to promote compilation of internationally comparable statistics of occupations in the 1970 round of national population censuses.

A brief summary of the discussions and conclusions arrived at is given below. The revised classification still has to be worked out in all details—in particular, the definitions of the different occupational groups have to be amended and revised wherever necessary—but the new structure recommended by the Working Group represents, in the opinion of the Group, a notable improvement on I.S.C.O. as published in 1958.

General Discussion

The general principles upon which I.S.C.O. (1958) had been based were endorsed. It was felt, however, that a more rigorous application of the basic principle of classification—namely type of work performed—was desirable. The Working Group agreed that it was not desirable to introduce distinctions which might be adopted in a socio-economic classification of individuals, such as income level, status (as employer, employee, family worker, etc.) and so forth, or those which were based on the branch of economic activity (industry) in which an occupation was carried out.

General approval was given to the elimination of two former major groups: Miners, Quarrymen and Related Workers; and Workers in Transport and Communication Occupations. The occupations concerned were transferred to other groups, some to clerical occupations and the greater part to Crafts, Production Process and Operating Occupations (including Labourers Not Elsewhere Classified).

The solutions adopted in I.S.C.O. (1958) regarding the classification of foremen, instructors and apprentices, " learners " and " trainees " were endorsed. However, it was recommended that during 1966, in revising the detailed occupational classes (five-digit codes) the Office should ensure that wherever necessary the category of foremen carrying out solely supervisory work should be specified. The Working Group approved creation of a separate unit group for sales supervisors. It also decided to establish a minor group of office supervising occupations.

It was noted that the occupations covered by a single minor or unit group of I.S.C.O. often corresponded with a wide range of educational levels and vocational training levels among the workers concerned. The Working Group considered that this difficulty in the way of use of I.S.C.O. for certain purposes could be only partially overcome by further subdivision of minor and unit groups. Moreover, unless severe restraint were exercised such a procedure would make I.S.C.O. impractical for statistical purposes.

Report of the Working Group

The report of the Working Group contains a summary of its discussions and recommendations concerning the draft proposals for revision of I.S.C.O. The draft proposals, contained in working documents prepared for the meeting by the Office, were based on some 90 replies to a questionnaire addressed in 1964 to governments and international organisations and on comments received from a number of interested individuals. The draft was revised in certain respects by the Working Group

although in large measure the Office proposals were considered to be satisfactory and met with approval.

One proposal, which had strong support, was to create a separate major group for artistic, cultural and leisure occupations. This is a category which is increasing in importance in economically advanced countries and has a special significance for purposes of economic and social analysis. The Working Group, however, finally did not adopt the proposal since it did not have time to work out all the implications of such an innovation in I.S.C.O. which, so far, had included these occupations in the first major group: Professional, Technical and Related Occupations.

Major groups 2: Administrative, Executive and Managerial Occupations, and 7/8/9: Crafts, Production Process and Operating Occupations (including Labourers Not Elsewhere Classified), no longer follow the arrangement of I.S.C.O. (1958). The subdivision of directors, managers and working proprietors in I.S.C.O. (1958) was made according to branch of industry and was an exception to the general principles of subdivision according to occupation. In the new draft there is provision for directors and managers, general, and there are three separate unit groups for departmental managers (Production, Research and Development, Administrative and Business Services, and Transport and Communication Services). Unit groups in major group 7/8/9 have been rearranged to follow, in a general sense, the flow of production. Thus the following broad classes may be identified: mineral-extracting occupations, material-processing occupations, product-making occupations, structural work occupations, equipment-operating occupations and, finally, labourers not elsewhere classified. The Working Group found that this arrangement had facilitated a more rigorous application of the basic criterion " type of work performed " while allowing flexibility to introduce other considerations when required to obtain the most practical and useful grouping of occupations.

As regards " technicians " or technical workers in engineering, scientific and related occupations, the Working Group endorsed the proposal to include, as a rule, technician occupations in a separate group or groups within the same minor group as the professional and scientific occupations with which their work is closely related. Thus, separate unit groups were provided or carried over from I.S.C.O. (1958) for technicians in architecture and engineering, physical sciences, life sciences and health. The Working Group recommended, however, that the Office, in the next phase of the work on revision of I.S.C.O., give attention to the need for further subdivision according to occupational specialisation of two unit groups, namely engineering technicians (except surveyors and draughtsmen); and health diagnosing and treating, and assisting occupations, not elsewhere classified.

The Working Group adopted provisionally minor group 0-4/0-5, Health Diagnosing and Treating, and Assisting Occupations, with 11 unit groups. It recommended that these be further examined by the Office in collaboration with the World Health Organisation.

Membership of the International Labour Organisation

Singapore

On 25 October 1965 the Director-General of the International Labour Office received the following communication:

Singapore, 20 October 1965.

Sir,

I have the honour to inform you that the Government of Singapore hereby formally accepts the obligations of the Constitution of the International Labour Organisation in accordance with paragraph 3 of article 1 thereof, and solemnly undertakes to abide by all the provisions of the Constitution.

The Government of Singapore will bear its share of the expenses of the International Labour Organisation in accordance with the provisions of the Constitution of the Organisation, and will make the necessary arrangements concerning its financial contribution with the Governing Body.

I hereby confirm that the Government of Singapore recognises that it continues to be bound by the obligations previously entered into on its behalf in respect of the following Conventions:

Minimum Age (Industry) Convention, 1919 (No. 5);
Minimum Age (Sea) Convention, 1920 (No. 7);
Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8);
Right of Association (Agriculture) Convention, 1921 (No. 11);
Workmen's Compensation (Agriculture) Convention, 1921 (No. 12);
Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15);
Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16);
Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19);
Seamen's Articles of Agreement Convention, 1926 (No. 22);
Forced Labour Convention, 1930 (No. 29);
Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32);
Underground Work (Women) Convention, 1935 (No. 45);
Recruiting of Indigenous Workers Convention, 1936 (No. 50);
Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64);
Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65);
Labour Inspection Convention, 1947 (No. 81);
Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86);
Employment Service Convention, 1948 (No. 88);
Labour Clauses (Public Contracts) Convention, 1949 (No. 94);
Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
Abolition of Forced Labour Convention, 1957 (No. 105).

Accept, Sir, the assurances of my highest consideration.

(Signed) E. W. BARKER.

This communication was acknowledged by the Director-General on 28 October 1965.

As appears from the information given above, Singapore, which is a Member of the United Nations, became a Member of the International Labour Organisation on 25 October 1965 by virtue of article 1, paragraph 3, of the Constitution of the International Labour Organisation.

Implementation of Instruments Adopted by the International Labour Conference [1]

Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1, 2 and 3), 1964 [2]

Ratifications or Acceptances

The following ratifications or acceptances of the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1, 2 and 3), 1964, have been communicated to the Director-General of the International Labour Office.

BELGIUM

The ratification by Belgium of the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1 and 3), 1964, was received by the Director-General of the International Labour Office on 19 November 1965.

The text of the instrument of ratification of Instrument of Amendment No. 1 is as follows:

(Translation)

We, BAUDOUIN,
King of the Belgians,
To all present and to come, greeting!

Having seen and examined the Constitution of the International Labour Organisation Instrument of Amendment (No. 1), 1964, adopted by the International Labour Conference at Geneva on 6 July 1964, in the course of its 48th Session, the text of which is as follows:

[Here follows the text of Instrument of Amendment No. 1.]

We, being in agreement with the said Instrument, hereby approve, ratify and confirm it, promising to cause it to be observed according to its form and tenor, without permitting it to be violated in any way whatsoever.

Done at Brussels on 30 June 1965.

(Signed) BAUDOUIN.
(Signed) P. H. SPAAK,
Minister of Foreign Affairs.

The text of the instrument of ratification of Instrument of Amendment No. 3 is in similar terms.

IVORY COAST

The ratification by Ivory Coast of the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1, 2 and 3), 1964, was received by

[1] Report III (Part III), which has been laid before every session of the Conference since 1950, contains a summary of the information supplied by governments in accordance with article 19 of the Constitution of the International Labour Organisation on the measures taken by member States to bring Conventions and Recommendations before the competent authorities and on relevant action by these authorities.

[2] For the text of these Instruments of Amendment see *Official Bulletin*, Vol. XLVII, No. 3, July 1964, Suppl. I, pp. 5-12.

the Director-General of the International Labour Office on 20 September 1965.

The text of the letter notifying ratification of these Instruments is as follows:

(Translation)

Abidjan, 17 September 1965.

Sir,

I have the honour to inform you that by Decree No. 65-269 of 18 August 1965 my Government ratified the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1, 2 and 3), adopted by the International Labour Conference at its 48th Session (Geneva, 1964), following authorisation under Act No. 65-258 of 4 August 1965.

I am pleased to inform you of the ratification by the Republic of the Ivory Coast of the above-mentioned amendments in accordance with article 36 of the Constitution of the International Labour Organisation.

I have the honour to be, etc.

(Signed) C. ALLIALI,
Minister in charge of Foreign Affairs.

KENYA

The acceptance by Kenya of the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1, 2 and 3), 1964, was received by the Director-General of the International Labour Office on 29 November 1965.

The text of the communication notifying acceptance of these Instruments is as follows:

Nairobi, 24 November 1965.

Instruments for the Amendment of the Constitution of the International Labour Organisation (Nos. 1, 2 and 3), 1964

I thank you for your letter No. ACB 1-1403-012 of 27th August, 1964, under which you communicated a certified true copy of the authentic texts of the three instruments for the amendment of the Constitution of the International Labour Organisation adopted by the International Labour Conference at its 48th Session.

Having considered these amendments, I have pleasure in communicating to you the acceptance of these amendments by the Government of the Republic of Kenya.

I should, therefore, be grateful if you would register the formal acceptance of these three instruments of amendments by the Government of the Republic of Kenya.

Accept, Your Excellency, the assurances of my highest consideration.

(Signed) J. MURUMBI,
Minister for External Affairs.

PHILIPPINES

The ratification by the Philippines of the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1, 2 and 3), 1964, was received by the Director-General of the International Labour Office on 19 November 1965.

The text of the instrument of ratification of these Instruments is as follows:

Diosdado MACAPAGAL
President of the Philippines

To all to whom these presents shall come, greetings:

Know ye, That whereas Amendments Nos. 1, 2 and 3 of the Constitution of the International Labour Organisation were adopted at the General Conference of the International Labour Organisation, Geneva, on July 6, 1964, as regards Amendment No. 1, and on July 9, 1964, as regards Amendments Nos. 2 and 3;

Whereas, the primary purpose of Amendment No. 1 is to promote the universal application of the Conventions adopted pursuant to the Constitution of the International Labour Organisation to all peoples including those who have not yet attained a full measure of self-government;

Whereas, the main aim of Amendment No. 2 is to empower the Conference of the Organisation to suspend from participation in the International Labour Conference any Member which has been found by the United Nations to be flagrantly and persistently pursuing by its legislation a declared policy of discrimination or *apartheid;*

Whereas, the fundamental intent of Amendment No. 3 is to empower the Conference to expel or suspend from membership any Member which has been expelled or suspended from membership of the United Nations;

Whereas, the Senate of the Philippines in Resolution No. 74 dated May 20, 1965, in accordance with article VII, section 10 (7) of the Constitution of the Philippines, expressed its concurrence in the ratification of Amendments Nos. 1, 2 and 3 to the Constitution of the International [Labour] Organisation;

Now therefore, be it known that I, Diosdado Macapagal, President of the Philippines, after having seen and considered the said Amendments, do hereby declare the ratification by the Republic of the Philippines of the same and every article and clause thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, Philippines, this 11th day of October, in the year of Our Lord, nineteen hundred and sixty-five, and of the Independence of the Philippines, the twentieth.

(Signed) Diosdado MACAPAGAL,
President.

(Signed) M. MENDEZ,
Secretary of Foreign Affairs.

SWITZERLAND

The ratification by Switzerland of the Constitution of the International Labour Organisation Instrument of Amendment (No. 1), 1964, was received by the Director-General of the International Labour Office on 18 October 1965.

The text of the instrument of ratification is as follows:

(Translation)

THE SWISS FEDERAL COUNCIL,

Having seen and examined the Constitution of the International Labour Organisation Instrument of Amendment (No. 1), adopted, subject to ratification, by the General Conference of the International Labour Organisation at Geneva on 6 July 1964, which was approved by the Federal Chambers on 20 September 1965,

Declares that the said Amendment is hereby ratified and undertakes, in the name of the Swiss Confederation, to observe it conscientiously at all times, to the full extent of its powers.

In faith whereof, this ratification has been signed by the President and the Chancellor of the Swiss Confederation and the federal seal affixed hereunto.

Done at Berne on the seventh day of October, nineteen hundred and sixty-five (7 October 1965).

For the Swiss Federal Council:

(Signed) TSCHUDI,
President of the Confederation.

(Signed) Ch. OSER,
Chancellor of the Confederation.

Ratifications and Denunciations of International Labour Conventions and Declarations concerning the Application of Conventions to Non-Metropolitan Territories

[Note: *The publication of information concerning the ratification and application of international labour Conventions does not imply any expression of view by the International Labour Office on the legal status of the State having communicated a ratification or declaration, or on its authority over the territories in respect of which such ratification or declaration is made ; in certain cases these may present problems on which the I.L.O. is not competent to express an opinion.*]

BRAZIL

Ratification of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

The ratification by Brazil of Convention No. 111 was registered by the Director-General of the International Labour Office on 26 November 1965.

The text of the instrument of ratification of this Convention is as follows:

(Translation)

I, Humberto de Alencar CASTELLO BRANCO,

President of the Republic of the United States of Brazil,

Hereby inform all those who see the present instrument of ratification that, at the 42nd Session of the General Conference of the International Labour Organisation, a Convention (No. 111) was adopted on 25 June 1958 concerning discrimination in respect of employment and occupation;

And, the National Congress having approved the foregoing instrument, I hereby ratify it, declare it to be fully effective and undertake that it shall be inviolably observed;

In faith whereof I have signed these presents and affixed thereto the seal of the Republic and have caused them to be countersigned by the Minister of State for Foreign Affairs.

Given in the Palace of the President in Brasilia on the twenty-ninth day of September, nineteen hundred and sixty-five in the one hundred and forty-fourth year of Independence and the seventy-seventh year of the Republic.

(Signed) H. CASTELLO BRANCO.

(Countersigned) A. B. L. CASTELLO BRANCO.

CHAD

Ratification of the Labour Inspection Convention, 1947 (No. 81).

The ratification by Chad of Convention No. 81 was registered by the Director-General of the International Labour Office on 30 November 1965.

The text of the communication from the President of the Republic which constitutes the instrument of ratification of this Convention is as follows:

(Translation)

Fort-Lamy, 23 November 1965.

Sir,

I have the honour to communicate the instrument of ratification by the Government of the Republic of Chad of Convention No. 81 and Recommendation No. 82.

The Republic of Chad undertakes to carry out faithfully all the provisions of these instruments.

I have the honour to be, etc.

(Signed) F. TOMBALBAYE,
President of the Republic.

Ordinance No. 33/PR/TJS ratifying Convention No. 81 concerning Labour Inspection in Industry and Commerce and Recommendation No. 82 concerning Labour Inspection in Mining and Transport Undertakings adopted in Geneva on 11 July 1947 by the General Conference of the International Labour Organisation at its Thirtieth Session

THE PRESIDENT OF THE REPUBLIC,

Pursuant to the Constitution of the International Labour Organisation and specifically article 19 thereof;

Pursuant to the Constitution of the Republic of Chad and specifically article 34 thereof;

On the recommendation of the Minister of Labour, Youth and Sport;

Having consulted the Council of Ministers on 16 September 1965;

Ordains :

Section 1

Convention No. 81 concerning labour inspection in industry and commerce and Recommendation No. 82 concerning labour inspection in mining and transport undertakings are hereby ratified. This Convention and Recommendation, the texts of which are appended to the present Ordinance, shall be fully and faithfully observed.

Section 2

The Minister of Labour, Youth and Sport and the Minister of Justice shall be charged with implementing the present Ordinance, which shall be notified to the International Labour Office, published in the Official Gazette and communicated wherever necessary.

Fort-Lamy, 25 October 1965.

(Signed) F. TOMBALBAYE,
President of the Republic.

(Signed) Ali KEKE,
Minister of Labour, Youth and Sport.

(Signed) Mahamat BAROUD,
Minister of Justice.

(Signed) Jacques BAROUM,
Minister of Foreign Affairs.

CYPRUS

Ratification of the Unemployment Convention, 1919 (No. 2) ; the Right of Association (Agriculture) Convention, 1921 (No. 11) ; the Unemployment Provision Convention, 1934 (No. 44) ; the Night Work (Women) Convention (Revised), 1948 (No. 89) ; and the Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90).

The ratification by Cyprus of Conventions Nos. 2, 11, 44, 89 and 90 was registered by the Director-General of the International Labour Office on 8 October 1965.

The communication from the Minister of Labour and Social Insurance which constitutes the instrument of ratification of Convention No. 2 is as follows:

Nicosia, 2 October 1965.

Sir,

I have the honour to inform you that the Government of the Republic of Cyprus, having considered the

International Labour Convention No. 2 concerning unemployment

and having completed all procedures for ratification of International Conventions in accordance with our Constitution and Municipal Law hereby confirm and ratify the same and undertake, in accordance with article 19, paragraph 5 *(d)*, of the Constitution of the International Labour Organisation, faithfully to perform and carry out all the stipulations therein contained.

In witnesss whereof, I have signed these presents at Nicosia, Cyprus on the 2nd day of October, 1965.

Yours faithfully,

(Signed) Tassos PAPADOPOULOS,
Minister of Labour and Social Insurance.

The communications which constitute the instruments of ratification of Conventions Nos. 11, 44, 89 and 90 are in similar terms.

KENYA

Ratification of the Night Work (Women) Convention (Revised), 1948 (No. 89), and the Migration for Employment Convention (Revised), 1949 (No. 97).[1]

The ratification by Kenya of Conventions Nos. 89 and 97 [1] was registered by the Director-General of the International Labour Office on 30 November 1965.

The text of the instrument of ratification of these Conventions is as follows:

Whereas the Night Work (Women) Convention (Revised), 1948 (No. 89), was adopted by the International Labour Conference at its Thirty-first Session held in San Francisco on 9th July, 1948, and whereas the Migration for Employment Convention (Revised), 1949 (No. 97), was adopted by the International Labour Conference at its Thirty-second Session held at Geneva on 1st day of July,

[1] Excluding Annexes I, II and III.

1949, the Government of the Republic of Kenya, having considered the aforesaid Conventions, excluding the three annexes to Convention No. 97—Migration for Employment (Revised), 1949, hereby confirm and ratify the same, excluding the said three annexes to Convention No. 97 and undertake in accordance with article 19, paragraph 5 *(d)*, of the Constitution of the International Labour Organisation to perform and carry out all the stipulations therein.

Signed by me this 24th day of November, 1965.

(Signed) Joseph MURUMBI,
Minister for External Affairs.

NETHERLANDS

Ratification of the Sickness Insurance (Industry) Convention, 1927 (No. 24), and the Sickness Insurance (Agriculture) Convention, 1927 (No. 25).

The ratification by the Netherlands of Conventions Nos. 24 and 25 was registered by the Director-General of the International Labour Office on 15 November 1965. The text of the instrument of ratification of Convention No. 24 is as follows:

(Translation)

We, JULIANA,

By the grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.,

To all who may see these presents, greeting!

Having seen and examined the Convention concerning sickness insurance for workers in industry and commerce and domestic servants, adopted in Geneva on 15 June 1927 by the General Conference of the International Labour Organisation at its Tenth Session and amended by the Final Articles Revision Convention, 1946, and the Final Articles Revision Convention, 1961, the text of which is as follows:

[Here follows the text of the Convention.]

Approve by these presents for the Kingdom in Europe, in all of the provisions therein contained, the Convention reproduced above, declare that it is accepted, ratified and confirmed and promise that it shall be inviolably observed.

In faith whereof We have delivered these presents, signed by Our hand, and have caused Our royal seal to be affixed thereto.

Given at Soestdijk on the twenty-sixth day of October in the year of grace nineteen hundred and sixty-five.

(Signed) JULIANA.
(Countersigned) J. M. A. H. LUNS.

The text of the instrument of ratification of Convention No. 25 is in similar terms.

SINGAPORE

Ratification of the Minimum Age (Industry) Convention, 1919 (No. 5); the Minimum Age (Sea) Convention, 1920 (No. 7); the Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8); the Right of Association (Agriculture) Convention, 1921 (No. 11); the Workmen's Compensation (Agriculture) Convention, 1921 (No. 12); the Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15); the Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16); the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19); the Seamen's Articles of Agreement Convention, 1926 (No. 22); the Forced Labour Convention, 1930 (No. 29); the Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32); the Underground Work (Women) Convention, 1935 (No. 45); the Recruiting of Indigenous Workers Convention, 1936 (No. 50); the Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64); the Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65); the Labour Inspection Convention, 1947 (No. 81); the Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86); the Employment Service Convention, 1948 (No. 88); the Labour Clauses

(Public Contracts) Convention, 1949 (No. 94); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); and the Abolition of Forced Labour Convention, 1957 (No. 105).

At the time of its admission into the International Labour Organisation on 25 October 1965 [1] the Government of Singapore recognised that it continued to be bound by the obligations previously entered into on its behalf in respect of Conventions Nos. 5, 7, 8, 11, 12, 15, 16, 19, 22, 29, 32, 45, 50, 64, 65, 81, 86, 88, 94, 98 and 105.

The ratification of these Conventions on behalf of Singapore was therefore registered by the Director-General of the International Labour Office on 25 October 1965.

TUNISIA

Ratification of the Equality of Treatment (Social Security) Convention, 1962 (No. 118).

The ratification by Tunisia of Convention No. 118 was registered by the Director-General of the International Labour Office on 20 September 1965.

The text of the instrument of ratification of this Convention is as follows:

(Translation)

We, Habib BOURGUIBA,
President of the Republic of Tunisia,

having seen and examined the International Labour Convention concerning equality of treatment of nationals and non-nationals in social security (No. 118), adopted at Geneva on 28 June 1962, which is worded as follows:

[Here follows the text of the Convention.]

Declare that by Act No. 64-30, promulgated on 2 July 1964, the Republic of Tunisia ratified the above Convention in accordance with the Constitution, in respect of the social security branches listed below [2]:

(a) medical care;

(b) sickness benefit;

(c) maternity benefit;

(d) employment injury benefit;

(e) family benefit.

We confirm that our legislation for those branches is in complete harmony with the standards laid down under the Convention, and we undertake to observe the Convention conscientiously.

In faith whereof, we issue these presents, duly signed, with the seal of the Republic affixed.

Done at Carthage, 1 July 1965.

(Signed) BOURGUIBA.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Declarations concerning the Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42); the Labour Inspection Convention, 1947 (No. 81); the Labour Clauses (Public Contracts) Convention, 1949 (No. 94); the Migration for Employment Convention (Revised), 1949 (No. 97); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); and the Radiation Protection Convention, 1960 (No. 115).

The Director-General of the International Labour Office registered, on the dates indicated below, the following declarations, communicated under article 35 of the Constitution of the International Labour Organisation, concerning the application

[1] See above, p. 35.

[2] Corresponding to branches *(a)*, *(b)*, *(c)*, *(g)* and *(i)* as listed in the Convention.

to certain non-metropolitan territories of the international labour Conventions mentioned below:

Convention No. 42.

Decision reserved: Dominica—24 September 1965.

Convention No. 81.

Applicable without modification (excluding Part II): Solomon Islands [1]—24 September 1965.

Convention No. 94.

Applicable without modification: St. Christopher-Nevis-Anguilla [2]—1 December 1965.

Convention No. 97.

Applicable with the following modifications (and excluding Annexes I, II and III): Bechuanaland [3]—24 September 1965: *Articles 2 and 7.* The Government of Bechuanaland cannot undertake itself to provide free migration services. *Article 4.* While the Convention is applied to all emigrant manual workers, it is only applied to immigrants employed as manual workers who enter into contracts for periods exceeding six months. *Article 5.* No medical services are provided for members of emigrants' families who accompany them.

Convention No. 98.

Applicable without modification: Fiji [4]—24 September 1965.

Convention No. 115.

Applicable without modification: Hong Kong—1 December 1965.
Decision reserved: Bechuanaland—24 September 1965; St. Christopher-Nevis-Anguilla—1 December 1965.

VIET-NAM

Ratification of the Night Work (Women) Convention (Revised), 1948 (No. 89), and Denunciation of the Night Work (Women) Convention, 1919 (No. 4).

The Director-General of the International Labour Office registered, on 26 October 1965, the ratification by Viet-Nam of Convention No. 89 and the denunciation by this State of Convention No. 4.

The communication from the Secretary of State for Labour, which constitutes the instrument of ratification of Convention No. 89 and the instrument of denunciation of Convention No. 4, is as follows:

(Translation)

Saigon, 21 October 1965.

Sir,

I have the honour to inform you that by Legislative Decree No. 024/65 dated 13 October 1965 the Government of the Republic of Viet-Nam has decided to denounce the Night Work (Women) Convention, 1919 (No. 4), and to ratify the Night Work (Women) Convention (Revised), 1948 (No. 89).

Please find appended a copy of that Legislative Decree and a translation, with a view to registration by the International Labour Office, giving effect to the above-mentioned decisions.

Yours, etc.

(Signed) NGUYÊN-Xuân-Phong,
Secretary of State for Labour.

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[1] This declaration supersedes a declaration of application with modifications of 18 December 1963.
[2] This declaration supersedes a declaration of decision reserved of 22 March 1958.
[3] This declaration supersedes a declaration of decision reserved of 23 February 1959.
[4] This declaration supersedes a declaration of decision reserved of 29 December 1958.

Legislative Decree No. 024/65 dated 13 October 1965
Denouncing Convention No. 4 and Ratifying Convention No. 89

THE PRESIDENT OF THE COMMITTEE OF NATIONAL GUIDANCE,

Having examined the Constitutional Charter of 19 June 1965; having examined Decision No. 3-QLVNCH/QD dated 14 June 1965 of the Armed Forces Congress establishing the Committee of National Guidance and fixing its composition;

Having examined Decree No. 001-a/CT/LDQG/SL of 19 June 1965 fixing the composition of the Executive Central Committee;

Having examined Ordinance No. 01-UBLDQG of 24 June 1965 proclaiming a state of war throughout the territory of the Republic of Viet-Nam;

Having examined Ordinance No. 14 of 18 May 1953 ratifying nine international labour Conventions, including Convention No. 4, concerning employment of women during the night;

Having examined the decision taken by the Government Council at the meeting of 7 September 1965;

Following the discussion and vote by the Committee of National Guidance;

Decrees as follows:

Section 1

International labour Convention No. 4 concerning employment of women during the night, adopted by the International Labour Conference at its First Session at Washington on 28 November 1919, ratification of which was announced in section 1, paragraph 1, of Ordinance No. 14 of 18 May 1953, is hereby denounced.

Section 2

International labour Convention No. 89 concerning night work of women employed in industry, adopted by the International Labour Conference at its 31st Session at San Francisco on 17 June 1948, is hereby ratified and promulgated.

Section 3

The Secretary of State for Labour is instructed to inform the Director-General of the International Labour Office of the decisions announced in sections 1 and 2 above.

Section 4

The President of the Executive Central Committee and the Ministers and Secretaries of State shall be responsible, within their respective spheres of competence, for the application of this Legislative Decree.

This Legislative Decree shall be published in the Official Gazette of the Republic of Viet-Nam.

Saigon, 13 October 1965.

(Signed) NGUYÊN-Văn-Thiêu,
Divisional General.

Ratification of the Instrument for the Amendment of the Agreement concerning the Conditions of Employment of Rhine Boatmen, 1950-54, Adopted by the Special Tripartite Conference concerning Rhine Boatmen at Its Third Session, Geneva, 24 May 1963 [1]

FRANCE

The Director-General of the International Labour Office registered on 13 September 1965 the ratification by France of the Instrument for the Amendment of the Agreement concerning the Conditions of Employment of Rhine Boatmen, 1950-54, adopted on 24 May 1963.

The text of the instrument of ratification is as follows:

(Translation)

Charles de GAULLE,
President of the French Republic,
President of the Community,
To all those who may see these presents, greeting!

Whereas an instrument to amend the Agreement concerning the Conditions of Employment of Rhine Boatmen, 1950-54, which was adopted by the Special Tripartite Conference concerning Rhine Boatmen at its Third Session at Geneva on 24 May 1963, was signed for France at Geneva on 17 December 1964, the said Instrument of Amendment having the following wording:

[Here follows the text of the Instrument of Amendment.]

Having seen and examined the said Instrument of Amendment, we have approved it in each of its parts in virtue of the provisions contained therein and in accordance with article 52 of the Constitution;

We declare the said Instrument of Amendment to be accepted, ratified and confirmed, and we undertake to ensure its inviolable observance.

In faith whereof we have signed these presents and have caused the seal of the Republic to be affixed hereto.

Done at Paris, 18 August 1965.

(Signed) C. DE GAULLE,
President of the Republic.

(Signed) G. POMPIDOU,
Prime Minister.

(Signed) M. COUVE DE MURVILLE,
Minister of Foreign Affairs.

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[1] For the text of this Instrument of Amendment see *Official Bulletin*, Vol. XLVI, No. 3, July 1963, pp. 462-465.

Office Publications and Documents

International Labour Review

The following, in addition to the regular section " Current Information " and the Bibliography, are the contents of recent issues of the *International Labour Review.*

November 1965 :

The influence of international labour Conventions on Polish legislation, by Jan Rosner.
The scope for manpower analysis in planning production in certain African countries, by K. A. Blakey.
Employment of women in the Czechoslovak Socialist Republic, by Milena Srnská.
Retraining in the United States: problems and progress, by Ida Russakoff Hoos.

December 1965 :

Emigration of engineers from Argentina: a case of Latin American " brain drain ", by Enrique Oteiza.
Co-operatives in Asia: recent developments and trends, by J. C. Ryan.
Some questions concerning education and training in the developing countries, by Richard Blandy.
Experience of apprentice training in the United Arab Republic, by M. Al-Arabi.
Notes on the clothing industry in Hong Kong.

January 1966 :

Special manpower mobilisation schemes and youth programmes for development purposes:

Manpower mobilisation for economic development in Tunisia.
The Young Pioneers Movement in the Central African Republic.
Back to the land: the campaign against unemployment in Dahomey.
Civic service and community works in Mali.
Economic and social work for young people during defence service: the Israeli formula.

Legislative Series

The September-October issue of the *Legislative Series* contains texts promulgated in 1964 dealing with the following subjects:

Labour legislation :

Bechuanaland Protectorate 1 (1964): Trade unions.
Belgium 3 (1964): Conciliation and arbitration.
Canada 3 (1964): Discrimination in employment (Quebec).
Chile 1 (1964): Labour Code (Regulations).
Denmark 1 (1964): Industrial medicine.
Gabon 1 (1964): Dismissal.
Malawi 1 (1964): Apprenticeship.
Netherlands 1 (1964): Labour Act.
Norway 1 (1964): Annual leave.
Peru 1 (1964): Trade union dues.
Portugal 1 (1964): Seafarers.
Syrian Arab Republic 3 (1964): Agricultural workers (trade unions).
Tanzania 2 (1964): Workers' committees.

Social security legislation :

Yugoslavia 2 (1964): Pension insurance.

This issue also contains the usual list of recent labour legislation.

Documents of the International Labour Conference (50th Session)

In preparation for the 50th Session of the International Labour Conference (June 1966) the Office has published the following reports.

Summary of Reports on Unratified Conventions and on Recommendations [1]

This volume summarises the reports submitted by governments under article 19 of the Constitution of the I.L.O. concerning the following instruments: Labour Inspection Convention, 1947 (No. 81); Labour Inspection Recommendation, 1947 (No. 81); and Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82).

Questions concerning Fishermen [2]

The Preparatory Technical Conference on Fishermen's Questions, held in Geneva from 18 to 28 October 1965, has drafted conclusions on each of the following three items on its agenda: *(a)* accommodation on board fishing vessels; *(b)* vocational training of fishermen; and *(c)* fishermen's certificates of competency.

The report contains a summary record of the proceedings of the Conference and three appendices containing the texts of the conclusions adopted, the reports of the working parties and a summary of the proceedings of the ninth, tenth and eleventh plenary sittings, in the course of which the conclusions were adopted.

At the end of the report is a questionnaire requesting the opinions of governments on the texts of the conclusions adopted by the Conference. On the basis of these replies the International Labour Office will prepare a second report, to be presented to the Conference at its 50th (1966) Session, with a view to the possible adoption of one or more appropriate instruments.

Examination of Grievances and Communications within the Undertaking [3]

The report consists of two chapters: the first reproduces the replies from governments to the questionnaire contained in the preliminary report [4]; the second contains Proposed Conclusions formulated in the light of replies, together with appropriate comments, with a view to a first discussion at the 50th Session of the International Labour Conference.

Minutes of the Governing Body
160th Session [5]

This volume contains a record of the discussions of the Governing Body, the documents relating to the various items on the agenda, and the decisions taken at its 160th Session (17-20 November 1964).

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[1] *Summary of Reports on Unratified Conventions and on Recommendations (Article 19 of the Constitution)*, Report III (Part II), International Labour Conference, 50th Session, Geneva, 1966 (Geneva, I.L.O., 1966). 131 pp. Price: $1.50; 10s. 6d.

[2] *Questions concerning Fishermen :* (a) *Accommodation on Board Fishing Vessels ;* (b) *Vocational Training of Fishermen :* (c) *Fishermen's Certificates of Competency*, Report VI (1), idem, Geneva, 1966 (Geneva, I.L.O., 1965) (offset). 79 pp. Price: 50 cents; 3s. 6d.

[3] *Examination of Grievances and Communications within he Undertaking*, Report VII (2), idem, Geneva, 1966 (Geneva, I.L.O., 1966). iii+156 pp. Price: $1.75; 12s.

[4] See *Official Bulletin*, Vol. XLVIII, No. 3, July 1965, p. 261.

[5] *Minutes of the 160th Session of the Governing Body* (Geneva, 17-20 November 1964) (Geneva, I.L.O., 1965). viii+162 pp. Annual subscription: $6; 42s.

Workers' Education Manuals

Labour Faces the New Age [1]

Following its six predecessors—which dealt respectively with co-operation, social security, freedom of association, collective bargaining, accident prevention, and wages—the latest of the I.L.O.'s workers' education manuals is devoted to the I.L.O. itself.

Part I, dealing with the Industrial Revolution and the Scientific Revolution, discusses some of the dynamic forces that have shaped and are shaping the modern world. This is followed in Part II by a close look at the structure of the Organisation and its day-to-day working. Finally, Part III presents a variety of case histories representative of how the I.L.O. works in the field. The text is enlivened by a large number of illustrations, and three appendices contain topics for discussion, the text of the Declaration of Philadelphia and further reading lists.

I.L.O. Codes of Practice

Safety and Health in Agricultural Work [2]

The present code of practice, adopted unanimously by the Meeting of Experts on Safety and Health in Agriculture (Geneva, 20 April-2 May 1964), comprises 24 chapters on the following subjects: general provisions; farm buildings; pits, cellars and silos; fire protection; machinery; engines; land clearance and soil and crop preparation; machines for harvesting and storing produce; woodworking and metal-working machines; hoisting and transport equipment; pressure vessels; hand tools, implements and ladders; vehicles; animals; dangerous substances; electricity; handling goods; personal protective equipment; hygiene; medical aid; accommodation and feeding; farm safety and health organisation; reporting and investigation of occupational accidents and diseases; and miscellaneous provisions.

This code of practice, while not intended to replace national laws or regulations or accepted standards relating to occupational safety and health in agriculture, might be of interest to all those with responsibilities in this field, such as the competent government authorities, the manufacturers of equipment used in agriculture, the professional organisations concerned with accident prevention, employers and workers. Care has been taken as to the utility of the document to countries in course of development.

Labour and Automation

Bulletin No. 2: A Tabulation of Case Studies on Technological Change [3]

The present bulletin presents in tabular form an analysis of 160 case studies carried out in 14 countries and covering undertakings in 29 industries. These are analysed according to content in six major categories of subject-matter (kinds of technological change, economic effects, effects on employment, occupational effects, adjustment of personnel, wage effects) and a number of sub-categories. It is thus possible to identify, by country, which case studies contain information about a

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[1] Workers' Education Manuals: *Labour Faces the New Age* (Geneva, I.L.O., 1965). v+227 pp. Price: 75 cents; 5s. 3d.

[2] I.L.O. Codes of Practice: *Safety and Health in Agricultural Work* (Geneva, I.L.O., 1965). viii+132 pp. Price: $1.75; 12s.

[3] *Labour and Automation*, Bulletin No. 2: "A Tabulation of Case Studies on Technological Change" (Geneva, I.L.O., 1965). iii+87 pp. Price: $1; 7s.

particular industry and subject as well as the different subjects which are covered by a particular study.

Introduction to Management Series

In the course of its technical assistance work in the fields of productivity and management development the I.L.O. has found a need to supplement its *Introduction to Work Study* by a " small-scale map " of the whole field of management as a preparation for study of the many specialised books available on the techniques of management. It has therefore planned a series (" Introduction to Management ") intended to provide a simple, basic guide to management as a whole.

The Enterprise and Factors Affecting Its Operation [1]

The present volume, the first in the series, is designed to assist the reader to understand clearly at the outset what the essential components and activities of an enterprise are and how closely they are linked together. To broaden the picture, the volume also outlines the main economic, political, technological and social factors which affect the operation of any enterprise in greater or lesser degree. It contains chapters on the anatomy of an enterprise, its operational activities, its financial frame, personnel, and the factors and characteristics affecting operation, appendices showing comparisons of operational activities in different groups of industries and the attributes of an enterprise and the effects produced by them, and finally a bibliography.

Mimeographed Documents [2]

Reports on Various Meetings

Tripartite Technical Meeting on Hotels, Restaurants and Similar Establishments (Geneva, 4-15 October 1965).[3]

Report I: Review of the Social and Economic Problems of Employees in Hotels, Restaurants and Similar Establishments (first item on the agenda). 224 pp.

This report gives a survey of problems of international interest concerning labour-management relations, recruitment, vocational training, employment of seasonal, temporary and part-time workers, foreign workers, women and young persons, older workers, hygiene, housing and social security for employees.

Report II: Methods of Remuneration (second item on the agenda). 117 pp.

After a brief discussion of the various methods of remuneration, this report examines the subject of minimum wages and benefits in kind. It also deals with the periodicity of payment, time of payment, bonuses, long-service bonuses, profit sharing and payment of wages in the event of incapacity for work.

Report III: Organisation of Work Schedules and Paid Holidays (third item on the agenda). 129 pp.

This report deals with the various problems within the hotel industry that affect methods of organising work schedules, with particular reference to hours of work, breaks, night work, shift work and use of relief employees. It also discusses both short holidays and annual holidays. Several international labour standards applying to the employees concerned are reproduced *in extenso*.

I.L.O. Technical Assistance Mission Reports

Cameroon :

Les conditions de développement du mouvement coopératif camerounais (Conditions for the development of the co-operative movement in Cameroon) (OIT/TAP/Cameroun/R.7).

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[1] Introduction to Management Series: *The Enterprise and Factors Affecting Its Operation* (Geneva, I.L.O., 1965). x+193 pp. Price: $2.50; 17s.

[2] Limited quantities of these documents are available; copies are available from the I.L.O., Geneva.

[3] For further details of the Meeting see pp. 29 and 51-96.

Ceylon :

Consumer co-operative retail stores (ILO/TAP/Ceylon/R.25).
Rural employment problems (ILO/OTA/Ceylon/R.26).

Congo (Leopoldville) :

La sécurité sociale (Social security) (OIT/ONUC/Congo (Léo)/R.8).

Dahomey :

La situation et l'aide à l'artisanat et aux petites industries (The situation in the handicrafts and small-scale industries and assistance to these industries) (OIT/TAP/Dahomey/R.7).

Gambia :

Second report on co-operative banking (ILO/TAP/Gambia/R.3).

Guinea :

Les conditions de développement du mouvement coopératif (mission d'enquête) (Conditions for the development of the co-operative movement (study mission)) (OIT/TAP/Guinée/R.3).

Iran :

Manpower planning (ILO/TAP/Iran/R.13).

Iraq :

Workers' education in Iraq (ILO/OTA/Iraq/R.9).

Israel :

Vocational training in hotel management and cost accounting (ILO/TAP/Israel/R.19).

Jamaica :

The development of vocational training (ILO/TAP/Jamaica/R.3).

Malta :

The training of supervisors (ILO/TAP/Malta/R.2).

Morocco :

La création d'un centre de perfectionnement de cadres dirigeants (Establishment of an advanced management training centre) (OIT/TAP/Maroc/R.13).
La mécanisation et l'automation au sein de la Caisse nationale de sécurité sociale (Mechanisation and automation in the National Social Security Fund) (OIT/TAP/Maroc/R.14).

Sierra Leone :

The preparatory mission for the development of programmes of vocational training at the Young Women's Christian Association Vocational Training Institute, Freetown (ILO/TF/Sierra Leone/R.4).

Southern Rhodesia :

The establishment of an unemployment insurance scheme (ILO/TAP/Southern Rhodesia/R.1).

Trinidad and Tobago :

Co-operative development (ILO/TAP/Trinidad/R.4).

DOCUMENTS

Tripartite Technical Meeting on Hotels, Restaurants and Similar Establishments

(Geneva, 4-15 October 1965)

Note on the General Discussion, Reports of the Subcommittees, Conclusions and Resolutions Adopted

The Tripartite Technical Meeting on Hotels, Restaurants and Similar Establishments convened by the International Labour Organisation was held at the International Labour Office, Geneva, from 4 to 15 October 1965.

The agenda of the Meeting, which had been fixed by the Governing Body of the International Labour Office at its 157th Session (November 1963), was as follows:

I. Review of the social and economic problems of employees in hotels, restaurants and similar establishments.

II. Methods of remuneration.

III. Organisation of work schedules and paid holidays.

The International Labour Office had prepared a report on each of the above items.[1]

In accordance with a decision of the Governing Body the Chairman of the Meeting should have been Mr. Enrique Bravo Caro, Minister Plenipotentiary, Deputy Permanent Representative of Mexico to the European Office of the United Nations and the international organisations in Geneva, representative of the Government of Mexico on the Governing Body of the International Labour Office. As Mr. Bravo Caro was unable to come to Geneva, the Officers of the Governing Body designated in place of him Mr. Edwin LETTS, Ambassador, Permanent Representative of Peru to the European Office of the United Nations and the international organisations in Geneva, representative of the Government of Peru on the Governing Body of the International Labour Office.

The Meeting elected two vice-chairmen: Mr. S. A. ALAMUTU (Employers' delegate, Nigeria) and Mr. H. CEUPPENS (Workers' delegate, Belgium).

Of the 20 countries invited by the Governing Body [2] 18 were represented by tripartite delegations: Belgium, Brazil, France, Federal Republic of Germany, India, Italy, Japan, Kenya, Lebanon, Mexico, Nigeria, Switzerland, Trinidad and Tobago, U.S.S.R., United Kingdom, United States, Venezuela and Yugoslavia. The United Arab Republic was represented by a Government delegate. Senegal was invited but did not send delegates.

[1] See " Office Publications and Documents ", p. 49.

[2] Composition as decided by the Governing Body at its 160th Session (Nov. 1964).

Denmark and Sweden were represented at the Meeting by Workers' observers, and Ireland by an Employers' observer.

The Governing Body was represented by a delegation composed as follows:

Goverment group : Mr. E. LETTS (Peru).

Employers' group : Mr. J. O'BRIEN (Irish).

Workers' group : Mr. G. PONGAULT (Congolese (Brazzaville)).

Representatives of the European Economic Community and the League of Arab States also attended the Meeting.

In addition, observers from the following ten international non-governmental organisations attended the Meeting:

International Confederation of Free Trade Unions[1], International Federation of Christian Trade Unions[1], International Christian Federation of Food, Drink, Tobacco and Hotelworkers, International Hotel Association, International Organisation of Employers[1], International Union of Food and Allied Workers' Associations, International Union of National Associations of Hotel, Restaurant and Café Keepers, International Union of Official Travel Organisations, World Association of Cooks' Societies, and World Federation of Trade Unions.[1]

The Meeting was divided into two subcommittees for the examination of the two technical items on the agenda, namely a Subcommittee on Methods of Remuneration and a Subcommittee on Organisation of Work Schedules and Paid Holidays. In addition, the Meeting set up a steering committee.

The Meeting held nine plenary sittings, five of which were devoted mainly to a general discussion of the problems submitted to it.

At its eighth and ninth plenary sittings the Meeting examined the reports, conclusions and resolutions submitted to it.

A summary of the discussions in plenary sitting will be found below together with the text of the reports, conclusions and resolutions adopted by the Meeting.

SUMMARY OF DISCUSSIONS IN PLENARY SITTING

OPENING SPEECHES

Speeches of welcome were delivered at the opening sitting by Mr. H. A. MAJID, Assistant Director-General of the International Labour Office and Secretary-General of the Meeting, Mr. Edwin LETTS, Chairman of the Meeting, and Mr. A. HASLER, Government delegate, Switzerland.

The Secretary-General pointed out that it was the first time that an international tripartite meeting had come together to consider the social problems facing employers and workers in hotels, restaurants and similar establishments. In accordance with the basic principles of the Declaration of Philadelphia incorporated in its Constitution, the I.L.O. was required to further the application of programmes and measures aimed at raising standards of living. Such programmes related, *inter alia*, to efforts to ensure a just share of the fruits of progress for all, to questions of remuneration, to the right of collective bargaining and to the provision of adequate food and housing. A number of Conventions and Recommendations adopted by the International Labour Conference already applied to workers in the hotel industry. The Social Policy (Basic Aims and Standards) Convention, 1962, was applicable to all workers. Similarly, the Conventions concerning freedom of association and protection of the right to organise and bargain collectively had established the framework in which trade unions could develop their action for improved conditions of work. There were also standards and principles concerning methods of fixing minimum wages, protection of health and safety, hygiene in commerce and offices, and social security. Nevertheless, hotels,

[1] Organisation with consultative status.

restaurants and similar establishments had to cope with numerous specific problems, which was why the I.L.O. had decided to convene the present Meeting.

The Meeting was called upon to study two technical questions: methods of remuneration, and organisation of work schedules and paid holidays. In its discussions the Meeting would wish to have regard both to the needs of consumers and customers—and consequently of undertakings—and to the aspirations of the workers concerned. The two items were to be discussed at a time when the hotel industry was expanding rapidly in most countries, and in particular the economically developing countries, while in many countries there was a serious shortage of staff, particularly of skilled personnel. Such a shortage was undoubtedly due to several factors but it would not seem to be unconnected with the living and working conditions of the workers concerned. It was, therefore, natural to hope that improvements in conditions of life and work in a rapidly developing world would be applied to all the workers. In that connection it had to be borne in mind that the large number of small establishments, the geographical distribution of establishments, the character of work and the general traditions constituted so many factors which had, in a number of countries, adversely affected the efficiency of employers' and workers' organisations. The basis of sound collective bargaining and labour-management relations in the industry were, therefore, often lacking, and it was not surprising that conditions of work had all too frequently lagged behind those existing in other industries, thus rendering recruitment difficult. The task of the Meeting was to advise the Governing Body on the practices it considered best in regard to the matters before it. The Meeting should seek to arrive at conclusions designed to promote healthy labour-management relations and to further the purposes of social improvement within the framework of special circumstances in the industry and in individual countries.

The purpose of the first item on the agenda was to permit a broad exchange of views on the position of the industry as a whole and in particular its social problems, with a view to suggesting further action by governments, the industry or the I.L.O.

A great diversity existed within the hotel industry in each country, as well as between highly developed and developing countries. Although this problem of diversity was common to practically all the activities of the I.L.O., it had nearly always proved possible to formulate essential principles which were valid in all cases, even though some diversity in the method of application might have to be provided for. It was to be hoped that, when the conclusions to be adopted by the Meeting had been communicated to governments, they would result in practical application in the various countries.

The Chairman, recalling that 1965 had been designated " International Co-operation Year " by the United Nations, stressed the important part played by the hotel and restaurant industry in international co-operation. The movement of persons from one country to another had never been so extensive as at present. In that sense the industry was an important element in international collaboration. Moreover, the International Co-operation Year was a significant stage in the Development Decade. Economic development did not depend merely on the development of industry as such; hotels also contributed to a substantial extent because the officials, technicians and businessmen who travelled had to be accommodated and served. Such a consideration was especially important for the developing countries, as evidenced by the requests for technical and economic assistance received by the United Nations, as well as by the I.L.O. In a large number of developing countries natural conditions existed which could be developed by the tourist industry in an appropriate way, in such a manner as to improve the balance of payments, thereby permitting greater resources to be devoted to the purchase of the necessary equipment, thus making it possible to raise productive capacity and improve the standard of living of the population. It was, therefore, necessary that hotels should be properly equipped to furnish good service and that staff should possess the necessary competence, with the consequent need for training programmes. However, the efficiency of services depended not only on technical competence but also on good relations between employers and workers and good working conditions. In its discussion of those problems the Meeting should not forget that the hotel industry was changing steadily into a form of social service. Popular tourism had become a most valuable factor in making it possible for increasing numbers of workers to spend their holidays outside their industrial surroundings; the supply of feeding services to industrial workers, to schoolchildren and to hospital patients constituted a further example. By giving due consideration to such developments the Meeting would situate its work within the general programme

and aims of the I.L.O. The importance of the problems before the Meeting was illustrated by the number of workers concerned. Although statistics were often incomplete or limited to certain countries, they gave a figure of more than 8 million workers. If one added the countries which had not been taken into consideration and the small establishments which were frequently not covered by statistics, the total figure would be substantially larger.

The Government delegate from Switzerland, on behalf of his Government and of the hotel employers' and workers' organisations of his country, welcomed participants, extended an invitation to an excursion and expressed his wishes for the success of the Meeting.

General Discussion

General Observations

Many delegates provided general information on the situation in their respective countries and on economic trends as well as on social legislation and the extent to which it is applied in the case of hotel, restaurant and similar workers, and on special legislation adopted in respect of such persons. In this connection several delegates referred to the great disparity in the present-day situation between the highly developed countries and many developing countries.

Importance and Development of Hotels, Restaurants and Similar Establishments

Most delegates stressed the importance of hotels, restaurants and similar establishments within the general economic and social situation in their respective countries, backing up this information with facts and figures concerning the tourist trade, the number of establishments and the suitability of their equipment in the light of modern requirements, as well as with regard to the large number of persons employed in the industry. Several delegates, among them the delegates of Brazil, France, India, Italy, Japan, Mexico, Switzerland, Trinidad and Tobago, the U.S.S.R., the United States, Venezuela and Yugoslavia, specially stressed how important it is particularly in the developing countries for foreign currency to be acquired through the tourist trade in return for a relatively modest outlay. In some countries the hotel industry already plays an important economic role. In Brazil and Switzerland, for example, it comes second in importance among those countries' economic activities, and third in France and fourth in Japan. In certain countries such special events as the Olympic Games have played a particular role in the expansion and development of the industry. In other countries, such as Brazil, India, Lebanon, Mexico, Venezuela and Yugoslavia, the tourist trade is expected to expand considerably, with similar development of hotels, etc., in view of the natural advantages and favourable climatic conditions in those countries. At present, as pointed out by a Swiss Employers' delegate, the total earnings of the hotel industry throughout the world may be estimated at over $9,000 million.

As pointed out by a United States Government delegate, among others, the factors affecting the development of tourism and consequently the hotel industry include technological progress, rising living standards, improvement in conditions of employment with particular reference to increased leisure facilities and general provision of paid holidays, and the vast number of persons travelling for official or private reasons, which means that the countries of the world are becoming increasingly interdependent.

Other delegates referred to the expansion of social tourism, including motorised forms, and the resultant problems for the hotel industry. An Italian Government delegate stressed the value of promoting all-season tourism in order to cope with the difficulties due to fluctuation in employment which may be considerable between the peak and off-seasons.

Special reference was made to development problems peculiar to particular sectors of the industry, such as thermal resorts in Italy or new types of undertakings in the U.S.S.R. which provide meals for home consumption or canteens operating on a self-service basis.

Legislation

Several delegates stated that in their respective countries legislation provides for minimum wages and covers subjects of general scope such as freedom of association, non-discrimination

and equality of treatment, or hours of work, weekly rest periods and holidays with pay. Some delegates mentioned detailed national legal provisions covering hotel and restaurant staff—as in Belgium for instance—or stated that the questions peculiar to the trade were normally covered by collective agreements.

Freedom of Association and Trade Union Rights

The observer from the World Federation of Trade Unions stressed the need for trade union rights to be put into universal effect and for the rights recognised by international labour Conventions and Recommendations to be enjoyed in full, particularly the right to bargain at the national, local and works levels, the elimination of any intervention such as might restrict workers' freedom to join the trade unions of their choice and the right to engage in trade union activities both inside and outside the place of work. A number of other delegates, who stressed the importance of sound labour-management relations and in particular of collective bargaining, expressed similar wishes, and a resolution (No. 4) was adopted on the subject.[1]

Discrimination and Equality of Treatment

A number of delegates expressed the hope that I.L.O. action would in general help to eliminate all forms of discrimination whether based on sex, age, ethnic origin, religion or nationality. Other speakers stated that seasonal and foreign workers should not suffer from any discrimination and should enjoy conditions comparable to those of their fellow workers. It was also stressed that women and young workers should be protected against any form of exploitation. In particular, several delegates believed that it was essential to combat aspects of discrimination which frequently constituted an impediment to women workers' occupational careers, with particular reference to access to higher posts. A large number of delegates emphasised the need to apply the principle of equal pay for men and women for equal work. Cases of discrimination in this connection were mentioned in particular by the Workers' delegates of Japan and Italy, and by the observers from the International Union of Food and Allied Workers' Associations and the World Federation of Trade Unions. In this connection an Italian Employers' delegate insisted on the concept of " work of equal value " and the interpretation to be given to this concept in practice, in the light of the type of work performed and the conditions for men and women workers in respect of hours of work and night rest periods, for instance.

A resolution (No. 5) was adopted on this question.[2]

Remuneration

Most of the speakers who took part in the general discussion dealt with different aspects of the question of methods of remuneration. This was one of the two technical items on the agenda of the Meeting and was examined in detail by a subcommittee.

Many delegates condemned tipping as a system of remuneration. Tips were described as " outmoded " by an Italian Workers' delegate, " absurd " by an observer from the World Federation of Trade Unions, since the client had no contractual relationship with the worker, and " humiliating " by a Yugoslav Workers' delegate.

Many delegates spoke in favour of a guaranteed minimum wage, referring to systems already established in their countries or stating that the present shortcomings in minimum wages or minimum standards of living in their respective countries should be remedied. Several solutions were mentioned: in the first place, and very obviously, the adoption of minimum wage legislation, to be supplemented by collective bargaining, as indicated by the Government delegates of Nigeria and the United States; in the second place, reference of this question to trade union wage supervision committees, as suggested by a U.S.S.R. Workers' delegate, or to regional committees subject to approval by a national tripartite committee, as mentioned by a Mexican Employers' delegate; in the third place by the constitution of joint wage councils, as suggested by a Government delegate from Kenya;

[1] See below, p. 92.

[2] See below, pp. 92-93.

and in the fourth place, wage fixing in the light of job evaluation, which was proposed by a Government delegate from Trinidad and Tobago.

Other delegates went further, considering it desirable at least as an ultimate aim to introduce the principle of fixed normal wages as elsewhere in industry, total remuneration then being determined in the light of quality and volume of work, as suggested by a U.S.S.R. Government delegate, or based on occupational skills, as mentioned by the observer from the World Federation of Trade Unions.

Several delegates also mentioned overtime payment and various benefits in kind, both of which problems were studied in detail by the competent subcommittee.

Manpower Problems

The manpower shortage, particularly as regards skilled and specialised personnel, was mentioned by a large number of delegates. Even countries with an extensive tradition in the hotel industry are seriously affected by the insufficient number of local staff available, as pointed out by a Swiss Government delegate. Switzerland has to make considerable use of foreign workers, and in 1964 they represented over 50 per cent. of the total number of employees in the hotel industry.

This lack of skilled workers was mentioned in particular by Government, Employers' or Workers' delegates from such countries as France, Italy, Yugoslavia and Japan, in the last of which, in the words of a Workers' delegate, the labour shortage has led to an increase in part-time or temporary employment.

A Nigerian Government delegate said that the problem is of particular gravity for many developing countries in which the tourist trade is a key industry.

This situation can be put down to various causes, including the failure of the industry to attract workers and the conditions of work there, as mentioned, for example, by a French Workers' delegate and the observer from the World Federation of Trade Unions, or general full employment, as stated by a United Kingdom Employers' delegate, or the rapid expansion of the hotel industry, according to Government delegates from Italy and Japan.

Vocational Training and International Co-operation

A large number of delegates discussed vocational training as an essential means of overcoming the shortage of skilled and specialised staff and of meeting the steady increase in the manpower requirements of the tourist and hotel industries. Several delegates referred to the cause and effect relationship between levels of training and conditions of work. In the view of an Italian Workers' delegate the question of vocational training is of such importance that it would be advisable to convene a special meeting to deal primarily with that question and with the question of employment. In any case, it was vital that the Vocational Training Recommendation, 1962 (No. 117), should be applied everywhere through governments and employers with the collaboration of the trade unions.

Information on the present situation in several countries and on action either taken already or proposed for the future was given by several delegates. Government and Employers' delegates from the U.S.S.R. provided information on their country's system of free schools and scholarships, the facilities for accelerated training and the special courses for management personnel; Government and Employers' delegates from Italy described the system of official five-year manpower forecasts in their country and reported on the Government's intention to introduce legislation on vocational training since it had become essential to establish more specialised schools covering the various sectors of the hotel industry. Interesting information on hotel schools or trainee-run hotels, frequently described as insufficient to cope with either present or potential requirements, was provided by a number of other Government, Employers' or Workers' delegates, in particular from Brazil, Japan, Kenya, Lebanon, Mexico, Nigeria, Trinidad and Tobago, and Yugoslavia. Particular reference was made to intensive training courses for cooks and other staff, organised in Mexico by the trade unions, and the Mexican School of Tourism providing instruction in accountancy, law, human relations and languages. A United Kingdom Employers' delegate spoke on the efforts made by the employers in his country to provide appropriate means of training for young persons: a hotel school had been established at Glasgow which provided

training up to higher management levels; it was planned to establish 150 other schools providing full and half-time courses; and a special chair had already been endowed at university level, another being planned for the near future. In Scotland, in particular, seasonal hotels were used with success as schools during the winter months. However, schools could not provide training for all the necessary skilled staff, and training during employment would remain essential. The importance of vocational training was emphasised by a French Workers' delegate; since the hotel industry was a national facility for welcoming visitors and brought in foreign currency without counterpart payment, it should therefore have a sufficient number of competent staff. The observer from the World Federation of Trade Unions believed that the trade unions should be enabled to participate in the organisation of apprenticeship and the administration of schools and vocational courses.

Resolutions—in particular resolution No. 8 in the part concerning apprenticeship, and the resolution (No. 12) concerning vocational training in hotels, restaurants and similar establishments—were adopted by the Meeting.[1]

Several delegates stressed the extent to which international co-operation in this field was already contributing, or could contribute, towards alleviating the difficulties encountered by the tourist industry in a number of developing countries. A United States Government delegate suggested that in this International Co-operation Year the Meeting should situate its activities entirely within the framework of such co-operation. An Indian Government delegate believed that special attention should be devoted to the possibilities offered by international economic and technical co-operation with a view to promotion of the hotel industry in the developing countries. Another important aspect of the question was emphasised by the observer from the International Union of Food and Allied Workers' Associations, who pointed out that, when the necessary expansion of international co-operation in this field is carried out, I.L.O. experts should be fully conscious of the social and human problems involved. The Workers' representative of the Governing Body of the I.L.O., who emphasised the need to establish hotel schools in the countries concerned, believed that such schools could be usefully organised on a regional basis for a particular group of countries, with a fair distribution within each region; in the meantime, the International Centre for Advanced Technical and Vocational Training in Turin could seek to conclude agreements with hotel schools in certain countries in order to enable the trainees interested in this subject to advance their vocational training. A Government delegate from Trinidad and Tobago pointed out that for training to become a reality it was essential to have qualified teachers and to arouse the interest of employers and workers; these essential conditions were not met in a number of developing countries. In the Caribbean area in particular, I.L.O. assistance would be extremely valuable; it might be envisaged within the framework of regional agreements in order to ensure maximum efficiency. A Government delegate from Kenya said that his Government, which realised the need to accelerate training programmes for hotel staff, intended to set up a school for this purpose; I.L.O. assistance would be of inestimable value for this project. An Employers' delegate from Kenya referred to the desirability of including an expert on the hotel industry in the management training project approved by the I.L.O. for 1966. A Nigerian Government delegate mentioned the hotel training programme launched in his country in 1960 with I.L.O. assistance and followed up since 1961 by accelerated courses for waiters, cooks and accountants, run by I.L.O. instructors who also train their Nigerian counterparts who are to replace them. An I.L.O. expert had now completed a plan for a permanent hotel school which would also be open to persons from other African countries. In the same connection, a Brazilian Employers' delegate described the National Commercial Apprenticeship Centre established in 1946 and the specialised schools created since then. An excellent Swiss hotel expert had been provided by the I.L.O. Government, Employers' and Workers' delegates from Yugoslavia referred to the assistance provided by the I.L.O. when the federal training centre for instructors in the hotel trade was established in Yugoslavia and referred to the valuable assistance which the I.L.O. could supply for the establishment of schools and training centres for supervisors and instructors, the exchange of experts and the provision of study fellowships in more industrialised countries. The last of these forms of assistance was also mentioned by a Government delegate from Trinidad and Tobago and a Mexican Employers' delegate. The observer from the International

[1] See below, pp. 94 and 95-96.

Union of Official Travel Organisations stated that her organisation was collaborating with the United Nations through its association with the Economic Commission for Asia and the Far East in the field of international co-operation and would be happy to extend such collaboration to the I.L.O.; although the Union's programme was on a limited scale, it included provision for exchange of trainees, symposia and seminars, fellowships and correspondence courses.

Seasonal and Migrant Workers

The problems arising in connection with seasonal and migrant workers were mentioned by several speakers. These problems were dealt with for the most part in resolutions Nos. 6 and 7 adopted by the Meeting.[1]

In such countries as Switzerland the shortage of national staff has resulted in employment, sometimes on a very wide scale, of foreign workers, who frequently have negligible qualifications; a Swiss Government delegate stated that this situation has resulted in serious difficulties with regard to absorption and assimilation of such workers. This question is closely related to the questions of recruitment and training of skilled staff and the conditions and prospects of employment in the various countries. With more particular reference to migrant workers and exchange of workers, an Italian Government delegate referred to the agreements signed by his country with the member States of the European Economic Community and with Latin American countries. An observer from the International Christian Federation of Food, Drink, Tobacco and Hotelworkers suggested the creation of an international labour permit and the drafting of a model employment contract for seasonal workers, both of which points might be put to a subsequent I.L.O. meeting. An Italian Workers' delegate noted that seasonal fluctuation in employment is a key problem. He therefore suggested such measures as promoting tourism at all times of the year, attempting to narrow the gap between peak periods and off periods through changes in investment policy, and staggering holidays with pay, perhaps through international agreements. He believed that some of the difficulties experienced by seasonal workers could also be overcome within the framework of collective bargaining. The observer from the World Federation of Trade Unions stated that, from the social and economic viewpoint, the workers concerned should enjoy the same rights as permanent workers and that they should also be entitled to repayment of the cost of travel when moving to their place of work and compensation for the time spent travelling both to and from that place. The observer from the International Union of Food and Allied Workers' Associations took a similar stand, stating that seasonal and foreign workers should not suffer from any discrimination and should enjoy conditions comparable to those of other workers, including job security and all social benefits.

Older Workers

Some delegates, in particular a Japanese Workers' delegate, stated that the staff shortage affecting the tourist and hotel industries in many countries had led to a rise in part-time or temporary employment, and in particular the re-employment of older persons under conditions which were often decidedly disadvantageous, especially as regards remuneration. A Japanese Government delegate noted that legislation had been adopted in his country to protect older workers, providing for vocational training, extension of unemployment insurance benefit and special vocational guidance courses. He suggested that a list of jobs for such workers should be drawn up in order to provide guidance in their engagement, for example as cloakroom attendants, assistant cooks and sweepers.

Organisation of Work Schedules and Holidays with Pay

This question was one of the technical items on the agenda of the Meeting. It was therefore examined by a Subcommittee, whose conclusions are reproduced below.[2] However, several delegates spoke in the course of the general discussion on the principal aspects of the

[1] See below, pp. 93-94.

[2] See Below, pp. 81-86.

question, giving information on the situation in their respective countries or making suggestions with a view to improvement. A Workers' delegate from the U.S.S.R. said that a weekly rest period of 42 hours was a statutory obligation, as were also annual holidays with pay, the entitlement for young persons amounting to 30 days. Women were granted 112 days' paid maternity leave, which could be extended, with half-hour nursing breaks every three hours. An Italian Employers' delegate stated that the compulsory night-time rest period was longer for women than for men in his country. In Yugoslavia hours of work in the hotel industry were at present 48 per week, as reported by a Government delegate, but would be reduced to 42 hours by 1970. A Japanese Employers' delegate stated that a trade union claim for reduction of the working week to 42 hours was at present being studied, and a Japanese Workers' delegate referred to the differences with regard to hours of work and holidays existing between large and small establishments. Referring to holidays with pay, a Belgian Workers' delegate mentioned the double-pay system enabling workers to spend their holidays away from home.

The observer from the World Federation of Trade Unions protested against hours of work which sometimes exceeded 72 per week; the maximum weekly hours should never exceed 48, as laid down in the Reduction of Hours of Work Recommendation, 1962. A Sunday rest period should be guaranteed at least once or twice every month. Women workers should be guaranteed two days' rest a week and at least two Sundays every month. Breaks and rest periods should in no case last less than one hour. The observer from the International Christian Federation of Food, Drink, Tobacco and Hotelworkers also referred to the need for one or two free Sundays every month, as well as annual holidays with pay, to be required by law, or otherwise by collective agreement. It was anti-social and contrary to human dignity for workers to be unable to earn a living wage except through working overtime. Workers' physical health and capacity for employment had to be scrupulously protected.

Hygiene in Premises

Remarks and suggestions were made on the various aspects of this question, and in particular by the observer from the International Union of Food and Allied Workers' Associations. The Meeting adopted a resolution (No. 9) on this subject.[1]

Social Security

Several speakers, including an Employers' delegate from Brazil, a Workers' delegate from Mexico, Employers' and Workers' delegates from the U.S.S.R. and a Government delegate from Yugoslavia, gave information on application of the principles of social security to hotel workers in their respective countries. A Mexican Employers' delegate stated that workers in his country earning the minimum wage are entitled to social security benefit without paying contributions. The problems of social security were also examined by the two technical subcommittees with regard to both permanent and temporary workers, and resolution No. 10 relates to this question.[2]

Future Action by the I.L.O.

A large number of delegates suggested that the I.L.O. should either undertake or intensify technical co-operation activities with regard to the training of workers in hotels, restaurants and similar establishments, and the relevant social problems. There were numerous proposals that the I.L.O. should convene further meetings or undertake studies respecting the specific problems affecting the workers in this industry, particularly in the developing countries, or respecting the reasons for labour turnover, recruitment and conditions of employment of seasonal and migrant workers, and vocational training and advancement. A resolution (No. 11) was adopted on this subject.[2]

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[1] See below, pp. 94-95.

[2] See below, p. 95.

Reply by the Assistant Secretary-General

At the end of the Meeting Mr. A. A. Evans, Assistant Secretary-General, gave a survey of its work and stressed the following points.

Nineteen member States which had been invited to the Meeting had sent 103 delegates, accompanied by 27 advisers. Observers from workers' organisations in two countries and an employers' organisation in another country had also participated in the work of the Meeting. If the representatives of the Governing Body and the observers from international organisations were added, the total participating in the Meeting amounted to 162 persons.

The first tripartite meeting held at a world level on the subject of hotels, restaurants and similar establishments had enabled participants to exchange ideas and experience on the social problems arising in this field in their countries and to discuss those problems which they considered the most crucial. One feature of the Meeting had been the possibility for Employers' and Workers' delegates to examine their respective preoccupations, while Government delegates had been able to note shortcomings in their national legislation with regard to the conditions of hotel workers.

Particular importance had been attached to the need either to promote or to develop the tourist industry, which was a substantial source of foreign exchange, as pointed out by a number of delegates, particularly from the developing countries. The significance of this question was highlighted by the figures quoted during discussion: in 1964 some 105 million tourists had spent nearly $10,000 million outside their own countries. A resolution drawn up by the Meeting dealt with ways of stimulating the development of the tourist industry, particularly within the framework of international co-operation. In that connection the over-all development of the industry came within the competence of the United Nations. It was desirable for national development programmes and requests for assistance addressed to the United Nations, or to specialised agencies, as the case might be, to give due priority to the promotion of the tourist industry. In the view of the I.L.O., employers' and workers' organisations should be associated in national-level planning. An appropriate Recommendation had been adopted by the International Labour Conference in 1960, and similar suggestions had been made during the present Meeting as regards the tourist industry. However, in addition to actual hotels, it was essential to have a sufficient number of trained staff. Whereas requests concerned with the general development of the hotel industry should be addressed to the United Nations, requests concerning vocational training and further training came within the I.L.O.'s scope. Co-ordination of the various requests made by any particular government within the framework of its international co-operation programme had to be ensured, therefore, and appropriate contacts between the employers and the workers, on the one hand, and the competent government authorities, on the other hand, were essential. If it received government requests that did not go beyond the scope of the funds earmarked for the purpose, the I.L.O. did everything it could to provide due assistance. In certain cases, if similar requests were put forward by several governments in the same region, it was possible to establish regional projects, pooling the available resources. The International Centre for Advanced Technical and Vocational Training in Turin would probably be able, at a later date, to consider requests such as those made during the Meeting.

When hotels were being built it should be ensured that the staff would enjoy the conditions of work corresponding to modern standards: in that connection the Hygiene (Commerce and Offices) Convention and Recommendation, 1964, provided many valuable criteria.

Even skilled workers were liable to leave the hotel industry if their conditions, and particularly their remuneration, were unsatisfactory. The excellent work performed by the two technical subcommittees was of great value in this connection. Generally speaking, in order that the industry might advance, it was desirable to provide the workers with attractive prospects for normal careers. Thanks to the spirit of co-operation and mutual understanding, the Meeting had been able to work out proposals which might stimulate action at the national level. However, the practical success of such conclusions would depend to no small extent in the various countries on labour-management relations both at the national level and within each establishment.

Reference had been made during discussion to the difficulties arising through the seasonal character of employment, which was typical in many establishments. It had been suggested that the over-all duration of holiday periods should be extended. Although that problem did not come within the direct scope of social legislation and really called for co-operation

between undertakings, trade unions and the school authorities, the I.L.O. would seize every reasonable opportunity to further any action undertaken towards that end. It had already been suggested by the United Nations Conference on International Travel and Tourism in 1963 that co-ordination plans should be drawn up with regard to that problem at the national level and subsequently at the regional and international levels. An I.L.O. Meeting of Experts on Welfare Facilities for Industrial Workers in 1964 had stressed the need for efforts to be made with a view to staggering workers' holidays.

With regard to the work already done by the I.L.O., the International Labour Code constituted a valuable guide in the field of conditions of employment and work and labour-management relations. The Assistant Secretary-General hoped that delegates would make use of that Code and endeavour to apply its standards and provisions to their own sectors. He also gave information on the system of application of Conventions and annual reports on ratified instruments and on the procedure for dealing with allegations of violation of freedom of association. Similar considerations might apply to the Meeting's conclusions calling for action either by governments or by employers and workers. Where they did not yet exist, national joint councils or tripartite authorities could usefully be established in accordance with the procedure laid down in the document concerning the purposes and functions of industrial and analogous committees with a view to studying the general problems affecting the hotel industry and action to be taken in individual countries on the basis of the Meeting's conclusions.

The I.L.O. would do its best to follow up the requests for studies and subsequent meetings in the light of the I.L.O.'s general programme of activities, the priorities fixed and the resources available.

Closing Speeches

Speeches were delivered by Mr. Semichev, Government delegate, U.S.S.R., Chairman of the Government group, by the Employers' and Workers' Vice-Chairmen, by Mr. Eze, Nigerian Workers' delegate, by the Secretary-General, and by the Chairman.

All of the speakers expressed their satisfaction with the work done. The Chairman of the Government group stressed the positive results achieved by the Meeting. The Workers' Vice-Chairman hoped that the Meeting would mark the beginning of further and equally fruitful exchanges of opinion in the same spirit of mutual understanding and collaboration. The clear and unequivocal statements concerning abolition of tipping as a form of wage and the introduction of a guaranteed wage would undoubtedly have not only social but also moral effects. The Nigerian Workers' delegate emphasised the importance of the reference in several resolutions to the urgent need for ratification of certain international labour Conventions. The Secretary-General expressed his conviction that once they were known and applied the conclusions adopted would help to improve the conditions of employment of the workers concerned. The Chairman evaluated the work done by the Meeting, stressing its importance for the developing countries.

REPORTS AND CONCLUSIONS ADOPTED

Report of the Subcommittee on Methods of Remuneration [1]

Composition and Officers of the Subcommittee and of the Working Party

1. The Subcommittee on Methods of Remuneration was composed of a Government titular member, an Employers' titular member and a Workers' titular member from each of the member countries represented at the Meeting.

2. The Subcommittee appointed the following officers:

Chairman and Reporter: Mr. J. Defraiteur (Government member, Belgium).

Vice-Chairmen: Mr. V. Elwes (Employers' member, United Kingdom); Mr. H. Stadelmaier (Workers' member, Federal Republic of Germany).

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[1] Adopted unanimously.

3. The Subcommittee held seven sittings.

4. At its fourth sitting the Subcommittee, in accordance with article 20 of the Standing Orders for Industrial and Analogous Committees, appointed a working party to draw up draft conclusions. This working party consisted, besides the Chairman of the Subcommittee, of the following members:

Government members :

Titular members :

United States: Miss DAVID.
U.S.S.R.: Mr. SEMICHEV.
Venezuela: Mr. HERNANDEZ.

Deputy members :

Italy: Mr. GRITA.
United Kingdom: Mr. BOYD.
Yugoslavia: Mr. TOMIĆ.

Employers' members :

Titular members :

Mr. ELWES (United Kingdom).
Mr. HOLLISTER (Kenya).
Mr. PERSHAD (India).

Deputy members :

Mr. EGGER (Switzerland).
Mr. QUARLES (United States).
Mr. RIVAS MERCADO (Mexico).

Workers' members :

Titular members :

Mr. CEUPPENS (Belgium).
Mr. EZE (Nigeria).
Mr. STADELMAIER (Federal Republic of Germany).

Deputy members :

Mr. HABRE (Lebanon).
Mr. JACQUET (France).
Mr. MUGO (Kenya).

Terms of Reference of the Subcommittee

5. The Subcommittee was asked to consider the second item on the agenda of the Meeting, namely " Methods of remuneration ". It had before it a report prepared by the Office.[1] In accepting this report as a basis for discussion, members from each of the three groups expressed their appreciation of the quality of the report and the value of the information it contained.

6. At the invitation of the Chairman the representative of the Secretary-General outlined the procedure to be followed in the discussions. He referred to the structure of the report dealing with methods of remuneration and emphasised the interest attaching to an objective examination, at the international level by the experts present, of a question so important as the one under consideration.

7. The debates of the Subcommittee were based on the list of points suggested for discussion which were contained in the report established by the Office. The Subcommittee was

[1] See above, p. 49.

in agreement on the majority of the points under discussion. They are not mentioned in this report as they are embodied in the conclusions.

Methods of Remuneration

Tipping.

8. The Workers' members began the discussion by an examination of the problems related to tipping, thus showing the importance which they attached to this subject.

9. A very clear distinction was made by the Subcommittee between, on the one hand, tips as remuneration, the practice of which ought to be abolished, and, on the other, tips as a gift; the latter alone should be described by the term " tip ".

10. The attention of members of the Subcommittee was drawn to the fact that in some countries and in certain languages, the customer, who often does not know the system of remuneration for the employees, is sometimes unable to distinguish between tips as a gift, tips forming part of remuneration, service charges and the " service percentage ".

11. It was emphasised that, if the attempts made in the past to abolish the practice of tipping had failed, there had been an evolution in attitudes and in customary practices, and that steps should be taken to end the custom of offering tips, even as a gift, however firmly established it might be.

12. Tipping could satisfy the pride of the giver, but it humiliated the receiver. It might enable the customer to obtain some advantages over the other customers, sometimes even at the expense of the employer. The practice of tipping was such as to restrict the remuneration of the employees so that normal social benefits could not be accorded to them. Further, tips might partially escape taxation. Certain Workers' members went as far as to qualify tipping as a " social evil ".

13. An Employers' member was of the view that tipping constituted an incentive and that it made the employee share in the risks of the occupation.

14. A Government member considered that only a voluntary act on the part of the customers could put an end to the practice of tipping. On the other hand an Employers' member was of the opinion that if it was desired to suppress the custom of tipping it might be considered permissible for the employer to punish the worker who accepted tips.

Service Percentage.[1]

15. It was pointed out that the system of remuneration based on service percentage would not satisfy the Workers' members unless a guaranteed minimum remuneration was provided for the different categories of workers concerned. In cases where part of the service percentage assigned to a particular worker was less than the guaranteed minimum corresponding to that category of worker, the worker should receive from the employer and at the expense of the latter, in addition to his share, a sum equal to the difference between the said minimum and his share.

16. It was specified and admitted that these guaranteed minima had nothing in common with certain small fixed amounts which were sometimes guaranteed to the workers.

17. It was equally specified and admitted that a national minimum such as the guaranteed interoccupational minimum wage could be only the minimum for the lowest-paid category of workers.

18. The Workers' members insisted that each worker should have the assurance that his daily work would be paid for normally. They suggested that some measures should be taken with a view to remunerating workers in hotels, restaurants and similar establishments in the same way as workers with similar qualifications employed in other branches of activity.

[1] For the purpose of the present text the term " service percentage " has the same meaning as " service charge ", which is also in frequent use.

19. The Employers' members recognised that a guaranteed minimum income was desirable for the worker. They considered, however, that the decisions taken in each country with a view to developing or encouraging a system of service percentage, and the method to be applied in attaining this objective, should take account of the particular conditions in each country.

20. It was pointed out that the system whereby all charges were included in the bill was not an obstacle to the method of distributing whatever service percentage might be established. In this case, it was recognised that workers or their delegates should be sufficiently informed of the distribution of the amounts paid by the customers. It was mentioned that the incorporation of the service percentage was likely to raise prices in hotels, restaurants and similar establishments.

Fixed Remuneration.

21. Several members considered that fixed remuneration was likely to protect the worker against himself in that he would avoid the excessive fatigue resulting from an inclination to put in additional effort designed to increase his remuneration in cases where the latter was determined by the service charge. Fixed remuneration was also likely to draw into the occupation more young persons, who were often discouraged by the instability of the remuneration in hotels, restaurants and similar establishments.

22. It was recognised that the fixed wages should include the minima established for the occupational category, preferably by collective agreements or as otherwise agreed by the employers and workers concerned, if not by law.

23. With regard to the list of the categories of staff to which fixed remuneration should already be applied, the Employers' members emphasised that it should take account of current practice in each country and that consequently it should not be too rigid.

24. In all the cases envisaged, whatever the method of remuneration in force, the Subcommittee considered that it was desirable to inform the customers clearly about the method of paying the employees and, where appropriate, on the distribution of the amounts paid.

Methods of Regulating Remuneration

25. The Employers' and Workers' members considered that it was better to reach mutual understanding in regard to all matters concerning remuneration mainly through bargaining leading to collective agreements. The Workers' members and some Government members remarked, however, that in certain cases the law should intervene, for instance to fix minimum remuneration.

Equality of Remuneration for Men and Women Workers

26. The Workers' members insisted particularly on the fact that the principle of equal remuneration for men and women workers for work of equal value had not been applied even in some countries which had ratified the Equal Remuneration Convention, 1951 (No. 100). It was admitted, however, that those concerned were aware of the difficulties which arose in applying the Convention.

27. Some members recalled that a procedure existed whereby the I.L.O. could be notified in cases of violation of the national provisions corresponding to those of Convention No. 100 in force in countries which had ratified it.

Intervals of Wage Payment

28. It was recognised that in certain countries and in certain cases some improvements should be made in the normal intervals at which remuneration was paid, especially where it concerned the distribution of the service percentage.

Purchase of Jobs

29. The Subcommittee was unanimous in condemning the sale of jobs. Certain Employers' members made a reservation with regard to " concessions ", such as those granted to a barman, who was thus enabled to exploit the bar and even engage and pay his employees. The Workers' members pointed out that in such circumstances he lost the status of an employed person.

Payments in Kind

30. Several members observed that a payment in kind consisting of the supply of food and of lodging could give rise, where the old methods were followed, to disputes between employers and workers. Furthermore, in certain countries, some situations unfavourable to the workers might exist and might lead to their being excluded partially or entirely from some of the benefits of social security. In order to remedy this, certain members insisted on the need to examine these problems in detail in joint committees. Other members stated that in their countries both legislation and practice gave full satisfaction to the two parties with regard to the granting of payment in kind in the form of food and lodging.

31. A discussion on the provision and maintenance of uniforms and of work clothing showed that there were differences between one country, where the subject was regulated by legislation in all its details, and other countries, where there existed neither legislation nor regulations in this respect. Several members considered it appropriate that the employer should furnish and maintain the uniforms and the prescribed work clothing. However, faced with the difficulty of defining these uniforms and clothing, the Subcommittee adopted a compromise. Some Workers' members stated that in certain countries the employer was responsible even for the clothing of persons employed in the kitchen, by virtue of legal provisions concerning hygiene and protection of the worker. The Employers' members said that this concerned legislation in force in a particular country and that it could not thus be made the basis for a general recommendation.

32. The Subcommittee considered it premature to formulate recommendations with regard to laundering the personal clothing of employees in the wash-house of the establishment at the expense of the employer—facilities at present offered in very exceptional cases only. However, it was suggested that at least live-in employees should be permitted to wash and press their clothing in the establishment outside their hours of work.

Remuneration for Overtime

33. The Workers' members considered that the methods of remuneration for overtime should, by the increased allowances to be provided, act as a deterrent to overtime, whether at the request of the employer or in accordance with the wishes of the worker. Overtime constituted a source of fatigue which was likely to compromise the health and morale of the worker.

34. The Employers' members were of the opinion that in hotels and restaurants overtime is inherent in the very nature of the work. However, they recognised that the number of hours of overtime should be reduced and that they should be paid for at increased rates or compensated for by time off.

35. Opinions were divided on the question of determining the basis on which the remuneration for overtime worked by persons subject to service percentage should be considered. The Workers' members felt that the supplementary remuneration should be borne by the employer. The Employers' members could not support this view and no solution to this problem was proposed.

Distribution of the Service Percentage

36. The members of the Subcommittee unanimously agreed that the determination of the persons sharing in the service percentage should be settled on a fair basis.

37. In accordance with certain laws the employer was the owner of the service percentage; according to others he was only the trustee. The members were of the opinion that the employer should distribute the service percentage among the employees concerned, but the

views expressed were not unanimous in regard to the determination of the categories of participants.

38. While admitting the principle of the service percentage, the Subcommittee did not formulate any proposal with regard to the methods of accounting for or registering the service percentage.

Bonuses and Miscellaneous

39. Several members emphasised the fact that bonuses given by the employer to the worker constituted an incentive which was appreciated by the worker and encouraged him to remain loyal to the establishment. Bonuses ensured that the worker, whose capital was his labour, shared in the successful operation of the undertaking. This system permitted the worker to participate in the profits of the undertaking without, however, making him lose the status of a worker.

40. With regard to the indemnities for termination of contract the Workers' members noted that they should be provided for by legislation and that it would be desirable to refer to them in collective agreements. It was indicated, however, that since this question was being dealt with at the national level it was not necessary to include it in the conclusions.

41. Regarding incapacity for work, several Workers' members felt that the remuneration in case of sickness should be maintained for at least six weeks. In cases of incapacity for work resulting from accidents the remuneration should be assured for a period exceeding six weeks. These measures seemed all the more necessary in view of the fact that workers employed in hotels, restaurants and similar establishments did not benefit, in a great number of countries, from the advantages resulting from the application of social security systems.

42. While recognising the practical obstacles making it difficult for labour inspectors to visit a great number of small establishments, the Workers' members expressed the strong desire that inspection services should be developed so as to cover more and more persons employed in hotels, restaurants and similar establishments, with the particular aim of supervising the implementation of the regulations relating to remuneration.

Presentation and Adoption of the Conclusions

43. At its fifth sitting the Subcommittee requested the working group to prepare draft conclusions taking into account the various proposals and suggestions made in the course of the discussion.

44. The working group submitted a set of draft conclusions to the Subcommittee at its sixth sitting.

45. The Subcommittee proceeded to examine the conclusions paragraph by paragraph.

46. With regard to tipping, the Government member from Venezuela made a reservation with regard to the fact that paragraph 12 dealt only with tips given as free gifts. He said that in certain countries the service percentage replaced the tip, while in others it was not customary to pay it to workers; he would have liked account to be taken of this in paragraph 13.

47. The same Government member made a reservation concerning the use in the last sentence of paragraph 14 of the expression " to which persons the percentage is distributed ", considering that the service percentage was obviously intended to be paid to workers. The Chairman recalled that the working group, after a long discussion, had used the expression " persons, being persons who work, who alone are allowed to participate " to cover at the same time the workers and the members of the family of the owner or operator, or the owner or operator himself, who shared in these percentages.

48. With regard to paragraph 30 the Employers' member from Japan made a reservation because in his country overtime was paid for by a fixed increased rate of time-and-a-quarter in accordance with the Labour Standards Law.

49. The Employers' member from Italy considered that the text of paragraph 38 should refer to remuneration stipulated in the terms of contract, which alone in his view could be reviewed. As a result he made a reservation on the subject.

50. The Government member from the U.S.S.R. thought that paragraphs 42 and 43 could be combined by crossing out the text of paragraph 42 and maintaining the text of paragraph 43 to which the words " of governments, employers and workers in each country " should be added after the words " all efforts ". As paragraphs 42 and 43 were retained, the Government member from the U.S.S.R. requested that his statement should figure in the report.

51. As regards paragraph 45, which dealt with the remuneration of young workers, some reservations were expressed by the Government members from the Federal Republic of Germany, France and Switzerland. They indicated that in their respective countries young workers could be paid at a lower rate.

52. After an exchange of views on paragraph 46, which read as follows: " It is desirable in order to encourage participation by the workers in the proper functioning of the establishment that *ex gratia* payments be given by the employer to the worker ", the Subcommittee unanimously decided to suppress it, considering it better to provide for the granting of *ex gratia* payments at the national level and without obligation. The Workers' member from the Federal Republic of Germany, however, stated that the agreement of the Workers' members on this suppression did not in any way signify that the workers had renounced *ex gratia* payments in the various countries, especially where this practice had been established through collective agreements.

53. The Employers' member from France made some reservations with regard to clause *(a)* of paragraph 47 (paragraph 46 in the annexed text of the conclusions). The granting of indemnities in the case of the final closing down of an establishment which appeared in clause *(b)* of the same paragraph gave rise to a long discussion. An amendment designed to suppress this section, which was submitted by the Employers' member from the Federal Republic of Germany and supported by other Employers' members, was put to the vote and rejected by five votes to 33, with three abstentions.

Adoption of the Draft Conclusions

54. After taking note of the above reservations, the Subcommittee, having taken account of the amendments made in the different paragraphs, unanimously adopted the draft conclusions annexed to the report.

Adoption of the Report

55. The Subcommittee unanimously adopted this report, at its seventh sitting, on 14 October 1965.

Geneva, 14 October 1965.

(Signed) J. DEFRAITEUR,
Chairman and Reporter.

Examination by the Meeting of the Report and of the Draft Conclusions concerning Methods of Remuneration in Hotels, Restaurants and Similar Establishments

At its ninth plenary sitting the Meeting had before it the foregoing report and also draft conclusions concerning methods of remuneration in hotels, restaurants and similar establishments.

In presenting the report and the draft conclusions for approval and adoption Mr. DEFRAITEUR (Government delegate, Belgium; Chairman and Reporter of the Subcommittee on Methods of Remuneration) emphasised the fact that the conclusions reflected the unanimous agreement of the Subcommittee. Dealing as they did with a very important subject,

they should have a marked influence on the development of conditions of work in hotels, restaurants and similar establishments. He remarked upon the excellent spirit of co-operation which had existed in the Subcommittee and led it to draw up constructive conclusions. He recalled in particular that the most debated subject during the discussions had been the replacement of the tipping system of remuneration by a system of fixed wages or possibly, as a transitional measure, a system of service percentage. The Subcommittee had also given special attention to the questions of remuneration for overtime and of payments in kind.

Mr. BOYD (Government delegate, United Kingdom) expressed great satisfaction with the compromise solutions arrived at through the work of the Subcommittee, and recommended the adoption of the report and draft conclusions.

Mr. ADAMS (Government delegate, Trinidad and Tobago) supported the recommendation that the report and draft conclusions be adopted, and said he hoped that the co-operative spirit which had prevailed during the Meeting would continue in the application of the Subcommittee's conclusions in the different countries.

Mr. ELWES (Employers' delegate, United Kingdom; Vice-Chairman of the Subcommittee on Methods of Remuneration) said how much the Employers, even if they had not been able to get all their opinions accepted, had appreciated the spirit of understanding in which their views had been freely discussed. It had thus been possible to reach interesting conclusions; on a number of points, indeed, agreement had been complete and unanimous, and the spirit of mutual understanding revealed during the debates was expressed in the outcome. He recommended the adoption of the report and draft conclusions.

Mr. HOLLISTER (Employers' delegate, Kenya) praised the work of the Subcommittee which, he said, was especially interesting for representatives of developing countries. He supported the proposal that the report and draft conclusions be adopted.

Mr. SHANKARA (Workers' delegate, India) expressed the opinion that the draft conclusions arrived at by the Subcommittee, which he hoped would be adopted, would be of great value to all workers concerned.

Mr. STADELMAIER (Workers' delegate, Federal Republic of Germany; Vice-Chairman of the Subcommittee on Methods of Remuneration) strongly supported the adoption of the report and draft conclusions and remarked upon the importance which the latter had for workers, particularly the provisions of paragraphs 12 and 13; the moment seemed to have arrived for definitively doing away with the system of tips as wages and for achieving a system of fixed wages.

Mr. PORTMANN (Workers' delegate, Switzerland; Chairman of the Workers' group) supported unreservedly the adoption of the report and draft conclusions of the Subcommittee.

Mr. SULLIVAN (Workers' delegate, United States) hoped that the conclusions which the Subcommittee had arrived at, of which he supported the adoption, would serve as a guide to all concerned in all countries.

The Meeting unanimously approved the report of the Subcommittee and also unanimously adopted the conclusions (No. 1) concerning methods of remuneration in hotels, restaurants and similar establishments, the text of which is reproduced below.

Conclusions (No. 1) concerning Methods of Remuneration in Hotels, Restaurants and Similar Establishments [1]

The Tripartite Technical Meeting of the International Labour Organisation on Hotels, Restaurants and Similar Establishments,

Convened by the Governing Body of the International Labour Office,

Having met in Geneva from 4 to 15 October 1965,

Having examined the various aspects of conditions relating to remuneration in hotels, restaurants and similar establishments,

Noting the principles and standards on conditions of work established by the international instruments adopted by the International Labour Conference and, in particular, those

[1] Adopted unanimously.

contained in the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), and the Minimum Wage-Fixing Machinery Recommendation, 1928 (No. 30), the Equal Remuneration Convention, 1951 (No. 100), and the Equal Remuneration Recommendation, 1951 (No. 90), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111),

Taking into account the special features of hotels, restaurants and similar establishments and the variety in national, regional and local conditions in various countries;

Adopts this fifteenth day of October 1965 the following conclusions:

1. The principles and methods referred to in the present conclusions are proposed with a view to guiding those concerned with the preparation of legislation, the adoption of regulations, the issue of arbitration awards or the negotiation of collective agreements, as the case may be.

General Principles

2. Taking due account of national conditions, it is desirable to regulate remuneration either by means of collective agreements or other such types of arrangement between the employers and workers concerned, or by means of legislation, or by other procedures recognised by the competent authorities after consultation with the employers' and workers' organisations, or by a combination of some of these methods. It is, however, preferable to regulate remuneration through collective agreements.

3. Consideration should be given to the difficulties likely to arise with regard to the method of collective negotiation in countries where employers' or workers' organisations, or organisations of both employers and workers, do not exist or are not very representative.

4. Attention has been drawn to the fact that certain countries have not ratified the Equal Remuneration Convention, 1951 (No. 100), the application of which is of particular importance in hotels, restaurants and similar establishments where many women are employed.

5. The member States which have not yet done so should be invited to ratify this Convention. In the countries where it has not been ratified it is desirable that the principles of this Convention, as well as the principles relating to social benefits, should be applied by the employers, even in the absence of legislation in this respect.

6. A level of remuneration sufficiently high to permit the worker to maintain his human dignity should be guaranteed to each worker.

7. In order to meet the needs of workers, the intervals at which payment of remuneration is made should not exceed one month in the case of workers whose remuneration is calculated by the month or by the year, or 16 days in other cases. After a minimum of two weeks' work, and if the employee so requests, an advance should be made in proportion to the amount of work completed.

8. In the absence of legislative or collectively agreed provisions, the periods referred to in the preceding paragraph should be determined at the time of engagement and should be scrupulously respected.

9. Notwithstanding the different systems of remuneration still prevailing in hotels, restaurants and similar establishments, the remuneration of workers ought not to depend to any great extent on factors unrelated to the legal relationship between the employer and the worker.

10. The various systems should ensure to the workers a stable and regular remuneration.

11. Measures should be taken by the employers and workers with a view to the modification of any system of remuneration which will not assure—

(a) the level of remuneration mentioned in paragraph 6;

(b) remuneration guaranteed either under the provisions of a collective agreement, or by contract, or by law, and assured by the employer;

(c) stable and regular remuneration which corresponds with the occupational category of the worker.

Tipping

12. The term " tip " shall mean an amount in cash given voluntarily and directly to the worker by the customer in addition to the amount which the customer has to pay.

13. Measures should be taken with a view to abolishing any system of treating tipping as remuneration. These should include adequate measures, by collective agreement, legislation or other procedure recognised by the competent authorities, to replace the system of treating tips as remuneration by a system of service percentage or by a system of fixed wages.

Service Percentage

14. The service percentage referred to in the preceding paragraph may be either added to the price or included in the total. When the percentage is included in the price the workers should know the amount of this percentage. The customers should be informed in all cases, by appropriate means, to which persons the percentage is distributed.

15. The system of service percentage should provide the worker with a guaranteed minimum remuneration.

16. The guaranteed minimum remuneration represents the amount that the employer guarantees the worker whenever his service percentage does not amount to the minimum.

17. This guaranteed minimum remuneration should be in conformity with paragraph 6 and should be determined for the different categories of workers in hotels, restaurants and similar establishments in accordance with one of the procedures for determining remuneration outlined in paragraph 2.

Fixed Remuneration

18. It is desirable that, progressively, the workers in hotels, restaurants and similar establishments should, as in other branches of activity, receive a fixed remuneration.

19. Minimum fixed remunerations for different categories of workers amounting to at least the levels of the remunerations referred to in paragraph 17 should be determined in accordance with one of the methods of regulation described in paragraph 2 above.

Payment in Kind

20. The value of food provided, when it is in addition to payment in cash as well as when it is included therein, should be determined by collective agreement, by contract of employment or by law.

21. If the worker is to take his food at the establishment, the amount to be paid by him to the employer should be determined at the time of his engagement.

22. If the employer is to deduct the value of the food, this value should be indicated to the worker at the time of his engagement.

23. The value agreed upon for food should be taken into account for social security or fiscal purposes and should be made known to the workers by appropriate means.

24. The value of lodgings provided, when in addition to remuneration in cash as well as when included therein, should be determined by collective agreement, by contract of employment or by law.

25. If the worker is to be lodged, any sum to be paid by him to the employer should be determined at the time of his engagement.

26. If the employer is to deduct from the remuneration the value of lodgings which he provides, the amount should be made known to the worker at the time of his engagement.

27. The value agreed upon for lodgings should be taken into account for social security or fiscal purposes and should be made known to the employees by appropriate means.

28. The allocation of the responsibility for providing and maintaining employees' work clothing should be determined by collective agreement, by contract of employment or by law.

29. The provision and maintenance of specially required clothing should be borne by the employer.

Remuneration of Overtime

30. Where the daily or weekly hours of work fixed by collective agreement or by law are exceeded, progressive increases in the rates of remuneration should apply to the overtime worked. The amount of the increased rates to be applied to hours of overtime and the taking of them into account for possible compensation by free time should be fixed by collective agreement or by law.

31. In order to avoid causing excessive fatigue and injury to the health of workers, the increased rates of remuneration should be such that the effect is to diminish the need for additional hours.

Distribution of the Percentage Service Charge

32. The proportion of the percentage service charge which is given to each person, being a person who works, participating therein should be determined by collective agreement, by contract of employment or by law and be made known to him by appropriate means.

33. The persons, being persons who work, who alone are allowed to participate in the distribution of the percentage service charge should be designated by collective agreement, by contract of employment or by law.

34. The criteria which should be taken into account for the distribution of the service charge to the persons concerned, being persons who work, should be determined by collective agreement, by contract of employment or by law.

35. Measures should be taken to ensure that the amounts accruing from the service charge, as well as their distribution, be accounted for in an appropriate manner to ensure supervision.

36. The checking of the distribution of the percentage service charge should be determined either by bipartite means, by the participation of a person within the profession chosen by the interested workers, by the participation of a person outside the profession and accepted by the workers and the employer, by a competent authority, or by a combination of the above methods.

Miscellaneous

37. The purchase of jobs should be prohibited.

38. Remuneration should be made the subject of re-examination at regular intervals.

39. The participation of representatives of the workers and their organisations at the revision of remuneration should be provided for according to terms to be defined by collective agreement or other means.

40. It would be appropriate to provide for procedures of conciliation, arbitration or other methods of settlement, according to the conditions and customs of each country, for cases where disputes may arise between the employer and the workers in regard to establishment of rates of remuneration.

41. The establishment or existence of minimum standards should not exclude the possibility of ensuring to the workers conditions of work more favourable than those fixed by these standards.

42. It is of great importance that in each country the government, employers and workers should try to improve conditions of work in hotels, restaurants and similar establishments.

Every effort should be made to strengthen the employers' and workers' organisations, thereby encouraging joint consultation.

43. Collective agreements between workers and employers are important factors in the improvement of the conditions of work of persons employed in hotels, restaurants and similar establishments. All efforts should be made to encourage this practice.

44. All policies followed in the field of remuneration should take into account all the economic and social factors having an effect upon the operation of hotels, restaurants and similar establishments, as well as the general economic situation in the country. They should lead to a substantial and continual improvement in the standards of living of the workers in the industry and to their fair share in prosperity.

45. Although recognising that in some countries legislation provides for a lower remuneration for young workers than for adult workers, it is proper to envisage for young workers who have acquired the necessary craft or professional qualifications remuneration equal to that paid for adults.

46. It is desirable in order to improve the security of the worker from the social point of view—

(a) to provide for continued payment of remuneration in case of sickness;

(b) to provide for indemnities in the case of the final closing down of an establishment.

47. In cases where legal regulations exist in respect of remuneration, the competent authority should ensure that an appropriate labour inspection service exists, whether it be a general labour inspection service or a special service set up for this purpose.

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Report of the Subcommittee on Organisation of Work Schedules and Paid Holidays [1]

Composition and Officers of the Subcommittee and of Its Working Party

1. The Subcommittee on Organisation of Work Schedules and Paid Holidays was composed of one Government member, one Employers' member and one Workers' member from each of the delegations represented at the Meeting.

2. The Subcommittee appointed its officers as follows:

Chairman and Reporter : Mr. J. R. LLOYD DAVIES (Government member, United Kingdom).

Vice-Chairmen : Mr. E. CROFT (Employers' member, United Kingdom); Mr. J. TOWNSEND (Workers' member, United States).

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3. The Subcommittee held six sittings.

4. At the fourth sitting the Subcommittee appointed a working party to draw up draft conclusions. This working party, which sat under the chairmanship of Mr. LLOYD DAVIES, was composed as follows:

Government members :

Titular members :

Belgium: Mr. DE BUCK.
Nigeria: Mr. COLE.
U.S.S.R.: Mr. POZHARSKY.

[1] Adopted unanimously.

Deputy members :

Federal Republic of Germany: Mr. BITTER.
United States: Mrs. CLIFTON.
France: Mr. DURAND.

Employers' members :

Titular members :

Mr. CROFT (United Kingdom).
Mr. MAYERHOFER (Federal Republic of Germany).
Mr. WIRTH (Italy).

Deputy members :

Mr. GEORGE (Nigeria).
Mr. GRISON (United States).
Mr. MOUKARZEL (Lebanon).

Workers' members :

Titular members :

Mr. PASTELEURS (Belgium).
Mr. RACINE (France).
Mr. TOWNSEND (United States).

Deputy members :

Mr. DOWLING (Trinidad and Tobago).
Mr. EITENEUER (Federal Republic of Germany).
Mr. PAICHE (France).

Terms of Reference of the Subcommittee

5. The Subcommittee was called upon to examine the third item on the agenda of the Meeting, namely " Organisation of work schedules and paid holidays ". The Subcommittee had before it a report which had been prepared by the Office on the subject.[1]

6. At the invitation of the Chairman, the representative of the Secretary-General introduced the report, stressing the scope and complexity of the problems before the Subcommittee for examination. He described the procedure to be followed and expressed his conviction that the Subcommittee, by agreeing to adopt conclusions based on a free exchange of views in which all the members would have participated, would be able to contribute towards improving the organisation of work schedules and paid holidays in hotels, restaurants and similar establishments.

General Discussion

7. The Meeting based its debate on the 37 proposed points for discussion set forth on pages 88 to 91 of the Office's report. It was decided to have a general discussion before proceeding to an examination of the points of detail.

8. The general discussion dealt with the essential elements to be taken into account when setting up work schedules, the methods of reconciling these various elements, and the necessity of taking certain particular aspects of the problem into consideration.

9. The Workers' members stated that it was extremely important that the personnel of hotels, restaurants and similar establishments should be protected by the same standards and should enjoy the same social benefits as workers in other industries. They referred in particular to the Reduction of Hours of Work Recommendation, 1962 (No. 116), which did not provide for any exceptions in respect of workers employed in hotels, restaurants and similar establishments. They emphatically maintained that the laying down of a number of principles regarding the protection of workers employed in hotels, restaurants and similar

[1] See above, p. 49.

establishments should be the main objective of the Meeting. They considered that, among the various questions to be examined, the key problem was the recognition that hours of work in these establishments included not only the time actually worked but all the time during which a worker had to be present and ready to work and was not free to use the time for himself. It was necessary to take this into account in any provisions on hours of work in this industry defining normal hours of work, the maximum number of hours of work, and overtime. Work in the industry should in no case be considered as intermittent work. The changed nature of tourism had, moreover, had repercussions on the hotel industry. Customers were less and less likely to remain in one place, and this made the conditions of work of the personnel more difficult. Employers tended to reduce staff, with the result that slack hours occurred more rarely. Qualified personnel left the trade for other more favoured sectors. While recognising that the comfort of the customers had to be assured, the Workers' members insisted that hours of work must be kept within reasonable limits, comparable to those laid down for other sectors, in order to protect the health of the workers and to enable them to take part in social and family life and to enjoy the benefits of recreation and educational facilities. Although the earnings of a worker remunerated by tips depended upon the number of hours being worked, that was no reason for permitting the hours of work system in hotels, restaurants and similar establishments to be different from that applying in other establishments. The problem of hours of work in this industry was in a large measure one of organisation, and the employers should solve it by introducing shift work, by employing relief staff or by making use of common labour pools. Whatever the organisation, the hours of work should in no case exceed 48 a week, and the aim should be to reduce them in accordance with Recommendation No. 116. Because principles valid for all were being defined, the same conditions of work should apply for all establishments, small and large. This should also be the case for seasonal workers, who were particularly exposed to abuses.

10. The Employers' members expressed the view that work in this industry entailed many hours of presence, and was therefore intermittent work. They agreed that all hours should be paid for, but nevertheless considered that the hours must inevitably be longer. They were willing to accept the definition of hours of work formulated in the instruments of the International Labour Organisation, according to which hours of work meant the time during which a worker was at the disposal of the employer, but they wished to lay stress upon the problems which the organisation of work schedules presented to the small establishments which in fact made up the greatest part of the industry. Furthermore, they pointed out that it should not be forgotten that the employers and workers were not the only determining factors in the industry, but that there were also the customers who wanted to be properly served at all times.

11. The U.S.S.R. Government member stated that in his country the concept of intermittent work was not recognised for the purposes of labour legislation. The International Labour Organisation, which had the task of establishing progressive standards, should not recognise this concept so far as its standard-setting activities were concerned.

12. The Belgian and Swiss Government members informed the Subcommittee that, according to the legislation in their respective countries, hours of work consisted of all the time during which a worker was at the disposal of the employer.

13. The Nigerian Government member drew attention to the problems of the developing countries, where the industry being discussed was in its early stages. These countries, he said, could not put into practice the recommendations which were being advocated and which, furthermore, could have repercussions in other economic sectors of activity.

14. The Subcommittee then proceeded to an examination of the specific points dealt with below.

Hours of Work

Normal Hours of Work.

15. The Workers' members considered that the standards for the industry of hotels, restaurants and similar establishments should be brought into line with those of other sectors, and that this should be done not progressively but immediately and even given

priority. In this connection they once again referred to Recommendation No. 116, which provides that, in carrying out the measures for progressively reducing hours of work, priority should be given to industries and occupations which involve a particular physical and mental strain, or health risks for the workers concerned, particularly where the manpower employed consists mainly of women and young persons.

16. The Employers' members still maintained that, for the reasons already put forward during the general discussion, hours of work in this industry were inevitably longer, and that furthermore Recommendation No. 116, in speaking of the reduction in hours of work, uses not only the word " progressive " but also recognises the different conditions in each sector. Moreover, the rate of progress depended upon the differences between hours of work in this industry and other sectors, according to each country. The adoption of standards ill-suited to the hotel industry ran the risk of increasing general expenses, and this in turn, because of a slowing down of business, would be to the detriment of all concerned.

17. The U.S.S.R. Government member considered that the levelling of conditions of work was essential, since there was nothing to justify conditions in hotels, restaurants and similar establishments being inferior to those in other industries. He also expressed the opinion that the word " progressive ", if maintained, could be or could become an escape clause.

18. Referring to staffing problems in the industry, the Workers' members stressed the increasing difficulty of recruiting personnel because of the bad conditions of work. Therefore, it was necessary to level the conditions of work as rapidly as possible so that workers would not go to other sectors, and also in order to attract young persons into the trade.

19. In reply to this observation the Employers' members pointed out that the problem was not everywhere the same. In some countries, with the development of tourism, it had not been difficult to get staff, and the work-force had even increased. However, it was desirable always to take particularly into account the fact that small establishments, often of a patriarchal nature rendering individual service, were predominant in the industry. Because of this, it was not possible to adapt working hours in the hotel industry to those of industry in general.

20. The Swiss Government member drew attention to the fact that the labour market problem in Switzerland was causing considerable concern. For some years Switzerland had had an insufficiency of manpower and, to meet its needs, thousands of foreign workers had been hired. In 1964 there were approximately 700,000 foreign workers, representing about 30 per cent. of the active population. In hotels, restaurants and similar establishments the proportion was even over 50 per cent. The Swiss people were very disturbed about this development. Such a large number of foreign workers could not be brought in and permanently assimilated. Therefore, the Government had found itself obliged to take measures to restrict the danger of foreign " overcrowding ". In these circumstances it had not been possible to reduce hours of work immediately and substantially, as had been done in certain other countries. Measures in that direction would have to be taken in stages. To do otherwise would be harmful to the hotel industry, for it would find itself no longer able to continue to provide its services in the way desired and so widely appreciated.

21. The Chairman having spoken in support of the levelling of conditions of work, the members of the Subcommittee agreed that standards in the hotel industry should be brought into line, and that without delay rather than progressively.

22. In reply to an observation made by the Nigerian Government member with regard to the difficulties which developing countries encountered in recruiting qualified personnel the Workers' members explained that, for them, the main question was not a matter of contemplating different standards for developed and developing countries, but of arriving at uniform standards for all branches of industry within any given country and, in addition, of establishing goals applicable to all countries.

23. Regarding normal hours of work, the Workers' members said that they were categorically opposed to the calculation of normal hours of work as an average over periods exceeding one week.

24. The French and Belgian Government members also expressed the opinion that this method of calculation was undesirable in the hotel industry.

25. The Employers' members on the other hand considered that this method of calculation was desirable in order to give flexibility, and that the length of the periods over which hours might be averaged could be determined by collective bargaining, according to national and local circumstances.

26. The members of the Subcommittee were unanimous in agreeing that women and young persons should be protected by special restrictions on hours of work.

Overtime.

27. The Workers' members said that it was wrong and unfortunate to insist that working hours in hotels, restaurants and similar establishments should be longer. There were many ways of remedying that state of affairs, by organising, for example, work in shifts or by employing relief staff, even if the opening and closing times of establishments had to be modified. However, whatever solution was applied, all hours worked in excess of the normal hours of work should be deemed to be overtime and paid for at a higher rate or rates, in accordance with Recommendation No. 116. Where it was the custom to compensate overtime work by the granting of free time, this free time had to be increased in the same proportion as the increase in wages for overtime, and this matter should not be left to the employer but should be the subject of an agreement between employers and workers or the workers' representatives. Restrictions on, or the elimination of, overtime could result in giving work to workers who were looking for employment. The recourse to overtime work should not be left to the choice of those concerned, because this left the door open to abuses not only by employers but also by workers who were attracted by the extra wages. A procedure for authorising overtime work should be determined through consultation or according to the usual methods in each country.

28. The Employers' members said that they were not opposed to paying an increased rate for overtime work. They wished, however, to explain that the practice of overtime work must be admitted in principle, because it was not always possible to organise the work in shifts or to make use of relief staff.

Rest Periods

Rest Breaks.

29. Despite the different practices regarding rest breaks, which vary from country to country and even within the same country, the Workers' members considered that the Meeting should formulate a number of principles on the subject as minimum standards. In their opinion the total length of rest breaks in the course of a normal working day should amount to at least one hour. In order that short breaks could be considered as rest periods they should amount to at least one-quarter of an hour.

30. The Employers' members, in agreeing with the principle that rest breaks should be fixed, considered nevertheless that the Subcommittee could not specify their length precisely, on account of the different national practices and the nature of these rest periods.

Daily Rest.

31. In the opinion of the Workers' members the minimum length of the night rest should be fixed at at least 12 hours. They also insisted that more favourable standards should be provided for in respect of women and young workers, and they referred to the provisions of existing international instruments on this matter.

32. The Employers' members, whilst approving the principle that a minimum period should be fixed, did not consider that the length of this period should be determined by the Subcommittee. With regard to special protection for women and young workers, they were not at all against the principle but warned the Meeting that special provisions could some-

times turn against those who were subject to them. If the special advantages granted to a category of workers made their work more costly, employers might be tempted to employ, at the same wage, labour which was not entitled to these special privileges.

Weekly Rest.

33. In the opinion of the Workers' members the weekly rest period should be at least one-and-a-half days. Efforts should be made to obtain, rapidly, the five-day week. These provisions should not, however, have the effect of suppressing or diminishing the daily rest which precedes the weekly rest period. Women and young workers should in all cases have a weekly rest of two days, and irrespective of whether or not women had family responsibilities. In the matter of benefits in kind during the weekly rest period, they stated that the personnel of hotels, restaurants and similar establishments preferred to have a free choice between these benefits and an equivalent cash compensation.

34. The Employers' members considered that, in principle, the weekly rest period should be fixed but that it depended upon the limits of hours of work. Regarding the maintenance of the whole of the daily rest which preceded the weekly rest period, they agreed with the principle but pointed out how difficult it would be to ensure it in practice, particularly when the work was done by shifts, since the weekly rest according to a generally accepted concept was calculated from midnight to midnight. With regard to the weekly rest of women and young workers they supported the principle of more favourable provisions.

Annual Holidays

Annual Holidays with Pay.

35. The Workers' members stated that the minimum annual holiday should amount to three weeks. An annual holiday of four weeks should be considered as the aim to be attained. With regard to temporary workers, whose conditions of work should be the same as those of other workers, they should be entitled to an annual holiday proportionate to the time they had worked, calculated on the basis of the total length of annual holiday due for 12 months' service. In order that workers in hotels, restaurants and similar establishments might have the means to benefit really and fully from their vacation, the Workers' members insisted that a supplementary holiday payment should be granted to them, and they referred to this kind of practice in some countries, particularly Belgium. This supplement would, furthermore, contribute to the development of the industry itself. The Employers' members pointed out that they could not subscribe to this practice unless it was or became the normal industrial standard in the country concerned. Finally, the Workers' members also considered that the annual holiday should increase according to length of service in the establishment and in the industry.

36. The Employers' members suggested that the length of annual holiday in the hotel industry should be in line with the general standards of the country concerned. With regard to temporary workers, they agreed that these workers should have a holiday proportionate to the time they have worked, but they considered that this right should be subject to a minimum period of service, which might be fixed at three months. With regard to an increase in the holiday according to length of service, the Employers' members considered that only length of service in the establishment should be taken into consideration.

37. The Swiss Government member remarked that in his opinion, in addition to length of service, the annual holiday should increase according to the age of the worker. In this way the holiday would be related to both the loyalty and the age of the worker.

38. The Employers' members did not oppose age as a criterion but pointed out that such a criterion might turn against the workers themselves in that it might lead to older workers finding it difficult to get employment.

39. The members of the Subcommittee agreed that the question of benefits in kind during the annual holiday should be regulated in the same way as for the weekly rest period.

Public Holidays.

40. The Workers' members suggested that the personnel of hotels, restaurants and similar establishments should be granted paid public holidays in the same way as other workers, and that they should be entitled to an increased rate of pay whenever required to work on such days.

41. The Employers' members said that they agreed with the principle. The pay, they considered, should be fixed according to the practice in each country.

Other Leave.

42. The Workers' members stated that, in addition to paid annual holidays and public holidays, workers should be granted special paid leave for family reasons, in cases of marriage, anniversary, birth or death in the family and also for the carrying out of civic or military duties.

43. The Employers' members considered that the term " family circumstances " could lead to abuses, and that the granting of special leave should be left to the discretion of the employer, according to national practice.

44. It was the unanimous opinion of the members of the Subcommittee that benefits in kind for days of special leave should be maintained and regulated as in the case of the weekly rest period and paid annual holidays.

Organisation of Work Schedules

45. With regard to the organisation of work schedules the Workers' members expressed the opinion that it was not possible for the Subcommittee to enter into the details of any one particular scheme because of the great variety of methods in practice. For this reason the Subcommittee should limit itself to formulating a number of principles to be taken into account. When work schedules were established, the points to be observed were the normal hours of work in force, the restrictions on overtime work, the necessity to eliminate overtime work by women and young workers, the minimum periods of rest and holidays and the spread-over of the working day in general. Also, care should be taken to see that the workload was fairly divided. They were convinced that these results could be obtained by introducing shift work and by employing relief staff in the larger establishments. Establishments which were not in a position to use such methods could set up common reserves of labour to which they could resort according to a rational plan. Where work was organised in shifts, the change-over of shifts and the alternating of teams should be in accordance with regular schemes and rotation cycles determined in advance in consultation with the workers concerned. The family situation of each worker should also be taken into account when working out these plans.

46. The Employers' members agreed that the organisation of work schedules should be rational and thought out in a way which would enable hours of work to be reduced. They nevertheless emphasised that it was necessary not to lose sight of the position of the small establishments which were more often unable to make use of the various systems suggested. They also pointed out that the employment of relief staff presupposed an experienced and qualified relief staff, and this was not easy to obtain.

Methods of Implementation and Supervision

47. A lively, informative and conclusive discussion, in which several members participated, took place on the subject of methods of implementation and supervision.

48. The Workers' members particularly stressed the importance of efficient labour inspection, especially in this industry of which a characteristic was the number of small establishments and where the unions were often weak. They referred to the Labour Inspection Convention, 1947, which they would like to see applied more extensively. They emphasised the usefulness of co-operation between the inspection services and the unions, which could help the inspectorate in many respects.

49. The Employers' members, whilst supporting this view, pointed out the problems which arose in respect of small establishments.

50. The Indian and Nigerian Government members and the Kenyan Employers' member described the problems arising in their respective countries, where the tasks of the inspectorate were very great and the means for inspection insufficient.

51. The Chairman, as United Kingdom Goverment member, and the United States and Swiss Government members described the experiences of their respective countries and the lessons to be learnt from their national practices.

52. The U.S.S.R. Government member described the Soviet system. Besides an official inspection carried out by state bodies, there was a " social " inspection service which, while carried out by the workers themselves, was authorised by regulations in force to intervene in the management of an enterprise and its activity.

53. The members of the Subcommittee unanimously concluded that to enable the inspection service to fulfil its tasks efficiently it was essential not only that there should be good co-ordination between the different services where there were several of them and co-operation with the unions and the employers, but also that the workers should be informed of their rights, of the powers of the inspectorate and of the persons responsible.

Consultation between Employers and Workers

54. The Workers' members pointed out that consultation between employers and workers on all matters relating to the organisation of work schedules and holidays was not only useful but should be obligatory at the level of the establishment as well as at the level of the industry.

55. The Employers' members, whilst not agreeing that these consultations should necessarily be obligatory, nevertheless considered that they were most useful at the level of the establishment.

Examination of the Draft Conclusions

56. At its fourth sitting the Subcommittee had requested its working party to prepare draft conclusions taking into account the statements and suggestions made during the discussions.

57. The working party submitted draft conclusions to the Subcommittee at its fifth sitting. These draft conclusions, drawn up on the basis of the decisions of the Subcommittee, included the outcome of laborious negotiations between the Workers' members and the Employers' members on certain points which had remained in abeyance. These points were the calculation of normal hours of work as an average over periods of more than one week, the length of the weekly rest period and of the annual holidays and holiday pay. The decisions which the working party made on these points, due to an excellent spirit of co-operation and good will, were reproduced in paragraphs 10, 26, 27, 31 and 34 of the draft conclusions.

58. The Subcommittee examined the draft conclusions paragraph by paragraph.

59. The Japanese and French Employers' members reserved their position with regard to paragraph 7.

60. Referring to paragraph 11, the Italian Employers' member stated that he interpreted it as recommending that in no case should the remuneration of women and young workers be greater than the remuneration of adult male workers for the same quantity of work.

61. With regard to paragraph 19, in accordance with which rest breaks were to count as normal hours of work, it was understood by agreement between the Employers' members and the Workers' members that during these breaks the personnel remained at the disposal of the employer.

62. The Kenyan Employers' member stated that he was unable to associate himself with the idea of four weeks of annual holiday as an aim to be attained.

63. On the suggestion of the Nigerian Government member, supported by the Indian, Kenyan and United States Government members and by the Nigerian and other Employers' members, the Subcommittee agreed that the clauses of the conclusions dealing with measures to be taken to reduce hours of work should be interpreted in the light of Paragraph 7 of Recommendation No. 116, which provided that these measures should take into account—

(a) the level of economic development attained and the extent to which the country is in a position to bring about a reduction in hours of work without reducing total production or productivity endangering its economic growth, the development of new industries or its competitive position in international trade, and without creating inflationary pressures which could ultimately reduce the real income of the workers;

(b) the progress achieved and which it is possible to achieve in raising productivity by the application of modern technology, automation and management techniques;

(c) the need in the case of countries still in the process of development for improving the standards of living of their peoples.

Adoption of the Draft Conclusions

64. Having noted the reservations and explanations referred to above, the Subcommittee unanimously adopted the draft conclusions annexed to the report.

65. The principles and methods referred to in the conclusions are proposed with a view to guiding those concerned with the preparation of legislation, the adoption of regulations, the issue of arbitration awards or the negotiation of collective agreements, as the case may be.

Adoption of the Report

66. The Subcommittee unanimously adopted the present report, as amended by it, at its sixth sitting on 14 October 1965.

Geneva, 14 October 1965.

(Signed) J. R. LLOYD DAVIES,
Chairman and Reporter.

Examination by the Meeting of the Report and of the Draft Conclusions concerning the Organisation of Work Schedules and Paid Holidays in Hotels, Restaurants and Similar Establishments

At its ninth plenary sitting the Meeting had before it the foregoing report and also draft conclusions concerning the organisation of work schedules and paid holidays in hotels, restaurants and similar establishments.

Mr. LLOYD DAVIES (Government delegate, United Kingdom; Chairman and Reporter of the Subcommittee on Organisation of Work Schedules and Paid Holidays) pointed out that the draft conclusions represented a wide measure of agreement on desirable conditions of work; they marked a decisive step towards the regulation of standards in this important industry in full development. In remarking that the success of the work of the Subcommittee had been very largely due to the spirit of co-operation which had prevailed in the discussions, he proposed the approval by the Meeting of the report and adoption of the draft conclusions drawn up by the Subcommittee.

Mr. LIBBERT (Government delegate, Federal Republic of Germany) said that some of the draft conclusions adopted by the Subcommittee would be difficult to apply within the framework of the present legislation in the Federal Republic of Germany. Therefore, whilst supporting the report as a whole, he wished to make certain reservations regarding paragraphs 22, 24, 26 and 27 of the draft conclusions.

Mr. BLOTEKAMP (Employers' delegate, Federal Republic of Germany) associated himself with the reservations made by the Government delegate of the Federal Republic of Germany.

Mr. CROFT (Employers' delegate, United Kingdom; Vice-Chairman of the Subcommittee on Organisation of Work Schedules and Paid Holidays), speaking in support of the approval of the report and adoption of the draft conclusions, said that the conclusions would enable the conditions which existed in the tourist industry to be further improved. He added, in particular, that it was most important that the hotel and catering trades should have sufficient trained staff.

Mr. TOWNSEND (Workers' delegate, United States; Vice-Chairman of the Subcommittee on Organisation of Work and Paid Holidays) declared that the agreement which had been achieved in the Subcommittee opened the door to the future, and he therefore warmly recommended the approval of the report and the adoption of the draft conclusions.

Mr. GEORGE (Employers' delegate, Nigeria) speaking both as representative of the Nigerian employers and as a member of the working party which had drawn up the text before the Meeting, also recommended that the Meeting approve the report and adopt the draft conclusions of the Subcommittee.

Mr. PORTMANN (Workers' delegate, Switzerland; Chairman of the Workers' group) emphasised the great importance of the document before the Meeting. It could have an extensive and favourable impact on the recruiting of qualified personnel which, at present, tended too often to go into other sectors of industry. He warmly supported approval of the report and adoption of the draft conclusions.

Mr. RAYNAERT (Workers' delegate, Belgium) recalled the cordial climate and the understanding which had obtained throughout the debates of the Subcommittee. He too recommended the approval of the report and the adoption of the draft conclusions.

The Meeting unanimously approved the report of the Subcommittee and adopted the conclusions (No. 2) concerning the organisation of work schedules and paid holidays in hotels, restaurants and similar establishments, the text of which is reproduced in the following pages, subject to the reservations indicated above and the reservations mentioned in paragraphs 59 to 63 of the report of the Subcommittee.

Conclusions (No. 2) concerning the Organisation of Work Schedules and Paid Holidays in Hotels, Restaurants and Similar Establishments [1]

The Tripartite Technical Meeting of the International Labour Organisation on Hotels, Restaurants and Similar Establishments,

Convened by the Governing Body of the International Labour Office and,

Having met in Geneva from 4 to 15 October 1965,

Having examined the different methods and practices in organising work schedules and paid holidays in hotels, restaurants and similar establishments,

Having noted the principles and standards concerning hours of work and paid holidays laid down in the international instruments adopted by the International Labour Conference, in particular those set forth in the Hours of Work (Commerce and Offices) Convention, 1930, the Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946, the Night Work (Women) Convention (Revised), 1948, the Weekly Rest (Commerce and Offices) Convention, 1957, the Hours of Work (Hotels, etc.) Recommendation, 1930, the Night Work of Young Persons (Non-Industrial Occupations) Recommendation, 1946, the Holidays with Pay Recommendation, 1954, the Weekly Rest (Commerce and Offices) Recommendation, 1957, and the Reduction of Hours of Work Recommendation, 1962,

Considering the special features of work in hotels, restaurants and similar establishments and also the various economic and social conditions in the different countries;

Adopts this fifteenth day of October 1965 the following conclusions:

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[1] Adopted unanimously subject to the reservations made regarding paragraphs 22, 24, 26, 27 and 31.

General Considerations

1. Work schedules in hotels, restaurants and similar establishments have certain features peculiar to them because of the great diversity in the organisation of the work depending upon the kind of establishment and services provided, the categories of staff employed, and also the diverse customs and different economic conditions of countries. Nevertheless, these work schedules resemble those in other industries, particularly in industries which provide a continuous service.

2. Although the methods of organising work schedules and paid holidays must take into account the particular conditions under which work in this industry is carried out, they should aim at assuring that the personnel of hotels, restaurants and similar establishments have conditions of work comparable to those for workers in other sectors of activity.

3. These methods may be prescribed by legislation or by regulations, by collective agreements or awards, by the decisions of bipartite or tripartite bodies, or by a combination of these different methods, whichever seems to be the most suitable to the different national, regional or local conditions.

Hours of Work.

4. A characteristic of work in hotels, restaurants and similar establishments is the varying rhythm in the course of each period of work. However, this work is not and should not be considered as intermittent work. The less heavy work periods, when, however, the staff does not remain inactive, are in fact largely compensated for by the periods of intense activity. The Meeting therefore considers that " hours of work " in the industry of hotels, restaurants and similar establishments should be understood to mean all the time during which a worker is at the disposal of the employer and is not free to use this time for himself.

5. All regulations concerning hours of work in hotels, restaurants and similar establishments should aim at reconciling the periods during which the personnel has to be available to serve clients with reasonable hours of work and the necessity to satisfy the rest needs of the personnel.

6. Wherever there are as yet no provisions governing hours of work of personnel employed in hotels, restaurants and similar establishments, measures should be taken to lay down such provisions fixing standards equivalent to those in force for other sectors of economic activity, by the means best suited to the different national conditions.

7. In all cases where the hours of work for the different categories of personnel in hotels, restaurants and similar establishments are still greater than 48 hours a week, it is desirable that immediate steps be taken to reduce them to that level.

8. When hours of work are being reduced below 48 hours a week in other sectors of activity, similar measures should be envisaged and applied for the personnel of hotels, restaurants and similar establishments, in accordance with the Reduction of Hours of Work Recommendation, 1962 (No. 116), which has indicated the 40-hour week as a social standard to attain, so that the conditions of work of these workers may not be less favourable than those which apply for other workers, bearing in mind the features peculiar to hotels, restaurants and similar establishments, referred to in paragraph 1 above.

9. The reduction of hours of work in accordance with paragraphs 7 and 8 above should in no case involve a loss in wages for the workers concerned.

10. If, in view of the particular conditions in which work in the industry of hotels, restaurants and similar establishments is carried out, the normal hours of work are calculated as an average over periods of more than one week, particular care should be taken by the competent authority or body to see that the length and frequency of such periods are laid down and that a maximum limit is fixed for the hours both per day and per week.

11. Women and young workers must be protected by special reduced work schedules. These reduced work schedules shall carry the same hourly or other basic rates of pay as were applicable before the work schedules were reduced.

12. The time spent by young workers at approved training courses should be counted as part of their normal hours of work.

Overtime Work.

13. Because work in hotels, restaurants and similar establishments is mostly carried out in a standing position or in walking about, it involves considerable fatigue. For this reason overtime work should be reduced to a minimum, taking into account the limits fixed in accordance with paragraph 14 below.

14. The overtime work which the personnel might be called upon to do in special or unforeseen circumstances should be limited. In order to protect the health and well-being of the workers it is desirable that the restrictions be in respect of the number of overtime hours per week or other periods fixed in accordance with paragraph 10 above, and by fixing the absolute maximum number of hours to be worked a day.

15. Hours in excess of the normal hours of work should be paid for at a higher rate or rates than those which apply for the normal hours of work, and/or compensated for by the granting of a corresponding amount of free time increased in the same proportion as the increase in wages for overtime work.

16. It is essential that a procedure for authorising overtime work be laid down through consultation between the employer and the workers or, wherever applicable, their unions, or through the usual consultative machinery or through any other means suited to national conditions and customs.

17. Women and young workers need special protection and, therefore, should be freed from any obligation to perform overtime work.

Rest Periods

Rest Breaks.

18. In order to enable the staff of hotels, restaurants and similar establishments to relax physically and psychologically during working hours, they should be granted rest breaks at regular intervals.

19. The number and the length of these breaks to be included in the normal hours of work should be determined in taking into account the system of work organisation in each establishment and the peak periods of customers or other periods of intense activity, but in no case should any such break be less than one-quarter of an hour.

20. In addition to the breaks for relaxation, the staff of hotels, restaurants and similar establishments should be granted other breaks to enable a worker to take his meals under normal conditions.

21. The number and the length of the meal breaks should be determined in accordance with the customs and traditions of each country or area, and according to whether the meal is taken in the establishment itself or elsewhere.

22. The total length of the daily breaks during a normal working day should amount to at least one hour.

23. With regard to daily breaks in hotels, restaurants and similar establishments it is extremely desirable that, whatever the purpose of the break, there should be special provisions in respect of women and young workers.

Daily Rest.

24. As in the case of other workers, the staff of hotels, restaurants and similar establishments should be granted, between two working days, a daily uninterrupted rest period. The beginning, the length and the end of this rest depend mainly upon the starting and finishing times of the working day, the spread-over of the working day and on the method of organising the work. The rest period should not normally be less than 12 consecutive hours.

25. When setting up work schedules, account should be taken of the international standards already adopted prohibiting night work of women and young workers. With respect to young workers, these standards are contained in the provisions of the Night Work of Young Persons (Non-Industrial Occupations) Convention and Recommendation, 1946 With regard to women, it would be highly desirable that their work schedules be based on the provisions of the Night Work (Women) Convention (Revised), 1948.

Weekly Rest.

26. It is desirable that the weekly rest of workers in hotels, restaurants and similar establishments should not be less than that of workers in other industries. Toward this end, whatever may be the kind of service and the work organisation of an establishment, the staff of hotels, restaurants and similar establishments should be granted, in the course of each period of seven days, a weekly rest of one full day preceded by a reduced working day, preferably one half-day. National provisions and collective agreements should aim at procuring progressively for workers employed in this industry a weekly rest of two days, consecutive where possible.

27. The weekly rest period of women and young workers should be longer than that of adult male workers, and the aim should therefore be to extend it immediately to at least one-and-a-half days, and as rapidly as possible to two days, consecutive wherever possible.

28. In no case should the weekly rest entitlement have the effect of eliminating or lessening the daily rest period which occurs between the weekly rest period and the preceding working day.

29. Where benefits in kind are provided by the employer and are a normal part of a worker's remuneration, the worker concerned should be entitled, in respect of his weekly rest period, to cash compensation equivalent to not less than the value of these benefits in kind as established by collective agreements, by regulations of public authorities or otherwise.

Paid Holidays

Annual Paid Holidays.

30. As a part of their conditions of work, all categories of the personnel of hotels, restaurants and similar establishments should be entitled to paid annual holidays in the same way as are workers in other branches of activity.

31. Taking into account existing practices in the different countries, where the annual holiday ranges between two and four weeks, the length of the basic paid annual holiday should in no case be less than two working weeks for 12 months' continuous service. Where the present minimum length of annual holiday is two weeks, steps should be taken with a view to increasing it progressively to at least three weeks. Where the length of annual holiday is already of three weeks, the aim should be to extend it progressively to four weeks.

32. A worker whose employment ceases before the end of the full period of service for the annual holiday referred to in paragraph 31 above should be entitled to a holiday proportionate to the time he has worked and calculated on the basis of the total length of holiday due to him for 12 months' service, provided that he has worked for a minimum period to be fixed according to the conditions and customs in each country.

33. The basic annual holiday should increase in accordance with the length of service in the establishment, the age of the worker or by reason of other factors according to criteria to be determined in each country. Provided that other circumstances permit it, it is desirable that the length of service in the industry be also taken into consideration.

34. For the period of their annual holidays, workers employed in hotels, restaurants and similar establishments should be paid their normal remuneration, increased by a supplementary payment which may not be less than an amount fixed by collective agreements, by legislation or otherwise, and in accordance with benefits in kind. Consideration should be given to the practice in some countries of paying an additional amount, as a bonus or an allowance, in order to enable the workers to benefit fully from their holiday.

Public Holidays.

35. Despite the special nature of the service provided in hotels, restaurants and similar establishments, which is in several respects a continuous service and often increases in intensity on public holidays in particular, the personnel of these establishments, like other workers, should be entitled to official, religious and customary holidays without loss of wages for the free days. Where a worker is nevertheless required to work on such days, he should be entitled to a rate of pay higher than the rate for normal hours of work on a working day. Such work should only be performed in special circumstances. The number of public holidays granted to workers in hotels, restaurants and similar establishments should in no case be less than the number fixed by the legislation or other methods of regulation for other workers.

Other Leave.

36. Workers employed in hotels, restaurants and similar establishments, like workers employed in other branches and sectors of activity, should be entitled to the special paid leave which, as a generally recognised practice, is granted for particular occasions such as family or personal events, and in particular in cases of marriage, birth, anniversary or death in the family, for the exercise of civic rights and duties, or for the carrying out of short-term military obligations. Where benefits in kind are provided by the employer and are a normal part of a worker's remuneration, the worker concerned should be entitled, in respect of days of special leave, to cash compensation equivalent to not less than the value of these benefits in kind as established by collective agreements, by regulations of public authorities or otherwise.

Organisation of Work Schedules

37. The organisation of work schedules in the industry of hotels, restaurants and similar establishments, bearing in mind the nature of the services provided, should aim at assuring that the personnel of these establishments have conditions of work similar to those applying in other branches of economic activity.

38. To attain this objective, measures should be taken to eliminate overtime work and to allow for good rest periods spread over, in the wisest and most appropriate way, the day, the week and the year, so that the workers concerned may not only recuperate the physical and nervous energy which they expend at work, but may also take part in family and social life in the same way as workers in other sectors and branches of economic activity.

39. As well as observing the standards in force in respect of normal hours of work, it is particularly desirable to consider the daily maximum working hours and also the spread-over of the working day including the rest breaks.

40. Special attention should be given to the problem of night work. It is desirable to reduce night work to a strict minimum for all the personnel of hotels, restaurants and similar establishments. In organising work schedules, every effort should be made to eliminate night work of women and young workers.

41. The results sought for in organising work schedules, particularly in large and medium establishments, might be obtained, if not otherwise possible, by introducing shifts, overlapping if necessary, in order to cope with the peak hours, or by employing sufficient relief personnel wherever labour reserves make this possible.

42. In small establishments the same results might be obtained by a rational utilisation of the personnel available, either through the rotation of the personnel of several establishments or by setting up a common pool of relief staff.

43. The rotation of shifts should be worked out to ensure a fair and equitable distribution of the workload, by a rotation cycle or by alternate shifts established in advance.

44. When setting up the rotation schedules in accordance with the methods suited to each particular establishment and in consultation with the workers concerned, due account should be taken of the personal circumstances and family situation of each worker.

Methods of Implementation and Supervision

45. The effective application of the measures for a proper organisation of work schedules and holidays depends essentially upon an efficient inspection system. Therefore, for the protection of workers in hotels, restaurants and similar establishments, it is extremely important to ensure adequate inspection services, as provided for in the Labour Inspection Convention, 1947. Workers should be informed, by appropriate means, of the powers of the inspectorate and the persons responsible for the inspection.

46. In the interest of a strict application of the provisions in force, whether legislative or negotiated provisions, a close co-operation between the inspection services, unions and employers is highly desirable.

47. In order to facilitate the work of the inspection services, the main features of hours of work and holidays should be brought to the notice of the persons concerned by the posting of notices in a conspicuous place in the establishment or other suitable places. The notices should set forth, *inter alia*—

(a) the time at which work begins and ends;

(b) where work is carried out by shifts, the time at which each shift begins and ends;

(c) the rest breaks which are not included in the normal hours of work;

(d) the working days of the week.

Wherever workers of different nationalities are in the industry it is desirable that the notices be made available to them in their own language.

48. In addition, the employers should be required to enter in special registers the hours of work, wages and overtime of each worker, the length of annual holiday to which each worker is entitled, the dates of his actual holiday and the remuneration he receives for the holiday. The employer shall, when required to do so by a worker, supply to that worker the particulars relating to his employment which have been entered in the registers.

Consultation between Employers and Workers

49. Every effort should be made to encourage collective negotiation and joint consultation. It is essential that regular consultation on all matters of common interest with regard to conditions of work in the industry should take place between representative employers' and workers' organisations or, where such organisations do not exist, between the employers and workers concerned.

50. In any particular establishment the workers or their representatives should be consulted when the work schedules are being decided upon or are being revised.

* * *

RESOLUTIONS ADOPTED

Discussion and Adoption of the Draft Resolutions

During the eighth plenary sitting the Meeting had before it ten draft resolutions. The Chairman, in his capacity as Chairman of the Steering Committee, provided the Meeting with information regarding their origin. The Steering Committee had decided to present to the Meeting for consideration and adoption all the draft resolutions, subject to the drafting changes and amendments of substance made in them by the Committee.

1. *Draft Resolution concerning the Development of Tourism and Related Industries*

The Steering Committee had had before it two draft resolutions bearing on the development of tourism, one submitted by the Workers' members and the other by the Government delegates of India and Venezuela.

The Steering Committee had decided to merge these two draft resolutions and had referred the task to a small drafting committee consisting of one member from each group. The text submitted by the Workers' members had been taken as the basis for this task because it covered the most ground; in addition to the points contained in the combined text, the initial draft had dealt also with certain aspects of training, which were incorporated in another resolution on this subject which was submitted to the Meeting later. The text submitted by the Government delegates of India and Venezuela had been concerned mainly with technical assistance in the field of the hotel industry and the development of the tourist industry. The drafting committee had not only merged these texts but had also added certain other considerations and in particular paragraph 5 of Part B of the draft resolution.

There was general agreement on the purpose of these resolutions and on the combined text elaborated by the drafting committee.

Mr. PURUSHOTTAM (Government delegate, India) explained that the draft resolution recognised the role which the hotel industry and tourism could play in improving economic and social conditions in a number of countries. It also recognised the fact that in certain countries there were natural advantages which, if properly exploited, might lead to the economic and social development of those countries. He particularly mentioned that the resolution invited the Director-General to associate the I.L.O., wherever appropriate, in the technical assistance programmes undertaken by the United Nations in the field of the hotel industry and tourism development. The resolution also suggested that the experts of the I.L.O., the United Nations and specialised agencies should pay particular attention to the social problems of the industry. It invited governments to pay due attention to the needs of the tourist industry in allocating resources in their development programmes, and to associate the employers' and workers' organisations, at all levels, in drawing up and implementing these programmes; it also stressed the need for collaboration between the industrialised and the developing countries for the promotion of tourism.

Mr. CEUPPENS (Workers' delegate, Belgium; Vice-Chairman of the Meeting), speaking on behalf of the Workers' members, expressed satisfaction with the combined text and proposed its adoption.

The draft resolution was adopted unanimously.

The text of the resolution (No. 3) is reproduced below.

2. *Draft Resolution concerning Freedom of Association and Trade Union Rights*

The original text of this draft resolution was submitted by the Workers' members. Minor changes were introduced at the request mainly of the Employers' members because the original version, in one of the paragraphs of the preamble, indicated that certain trade union rights continued to be violated in hotels, restaurants and similar establishments.

Mr. SAWADA (Government delegate, Japan) pointed out that subparagraphs *(a)* and *(b)* of the operative paragraph of the draft resolution dealt with the question of the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), a question with which the International Labour Conference had already been concerned in one of its recent resolutions. For this reason, the Japanese delegation reserved its position on this part of the draft resolution.

Mr. CEUPPENS (Workers' delegate, Belgium; Vice-Chairman of the Meeting), having referred to the fact that the draft resolution had been slightly amended, in agreement with the other groups, so as to introduce terms having the same meaning in different parts of the world and in different languages, said that it seemed opportune to remind governments which had not yet ratified Conventions Nos. 87 and 98 to consider the matter, and to stress the importance of applying these Conventions to the personnel of hotels, restaurants and cafés at the level of the establishment.

Subject to the observations made by the Japanese Government delegation the draft resolution was adopted unanimously.

The text of the resolution (No. 4) is reproduced below.

3. *Draft Resolution concerning Discrimination*

The original text of this draft resolution was submitted by the Workers' group. This text referred to discrimination between men and women in the matter of remuneration, and the Employers' members had pointed out that it was not appropriate to present to the Steering Committee texts relating to remuneration because that subject was an item on the agenda of the Meeting referred to one of the technical subcommittees. On these grounds there was general agreement to delete the passages relating to equal pay for work of equal value, on the understanding that the matter would be referred to the Subcommittee on Methods of Remuneration, which dealt with the question in paragraphs 4 and 5 of its conclusions (No. 1). The remaining text was only very slightly altered, in particular by adding in the preamble a reference to age as one of the grounds for discrimination.

Mr. CEUPPENS (Workers' delegate, Belgium; Vice-Chairman of the Meeting) expressed satisfaction with the fact that the second part of the initial text of the resolution had been sent to the Subcommittee on Methods of Remuneration, which had taken it into account in its conclusions. He emphasised that the problem of discrimination was so important that it was inconceivable that an international meeting should fail to insist on the necessity of applying the Convention which dealt with the matter.

The draft resolution was adopted unanimously.

The text of the resolution (No. 5) is reproduced below.

4. *Draft Resolution concerning Seasonal and Migrant Workers*

The original text of the proposed resolution was submitted by the Workers' members. The Employers' members had had some doubts about the proposed text but, as a result of close and friendly co-operation between certain Employers' and Workers' members of the Steering Committee, an expanded and revised version was arrived at and resubmitted to the Steering Committee.

One of the elements in this text which was the subject of a careful revision related to the reimbursement of travel costs and appropriate guarantees in connection therewith; provisions on this matter should be included in contracts of employment, taking into account national or local customs. The terms " social tourism " or " popular tourism " occurring in the original draft were also considered. These terms were replaced by the expression " tourism for all ".

Mr. CEUPPENS (Workers' delegate, Belgium; Vice-Chairman of the Meeting) said that the terms finally used in the resolution attempted to avoid misunderstandings in different countries. He stressed the importance which, in the opinion of the Workers, the question dealt with had for the tourist industry. The staggering of the tourist seasons, in addition to bringing great economic benefits to the establishments concerned, also provided more jobs for workers and better facilities for the tourists. As far as clause *(b)* of subparagraph (1) of the operative paragraph was concerned, it seemed essential that seasonal workers should have the same benefits as those granted to permanent workers, in proportion to the length of their service. With regard to clause *(c)* he mentioned two problems—the refund of travel costs incurred by seasonal and migrant workers and the possible loss of earnings resulting from these journeys.

The draft resolution was adopted unanimously.

The text of the resolution (No. 6) is reproduced below.

5. *Draft Resolution concerning the Legal Protection of Foreign Workers*

The original draft of this resolution was submitted by the Workers' members. The Steering Committee made a few changes, mainly of a drafting character.

Mr. CEUPPENS (Workers' delegate, Belgium; Vice-Chairman of the Meeting) pointed out that subparagraph *(a)* of the operative paragraph of the draft resolution applied only to certain countries where, until administrative formalities had been complied with, the workers had no legal status or possibilities of recourse to justice. He hoped the legislation in these countries would be suitably modified so that the mere fact of being employed would carry

with it a right to the protection of social legislation. In the case of subparagraph *(b)* it was important that foreign workers entering a new country should be furnished with all the information necessary for them to become acquainted with the formalities to be complied with, and also to know their obligations and rights.

The draft resolution was adopted unanimously.

The text of the resolution (No. 7) is reproduced below.

6. *Draft Resolution concerning Young Workers*

The original draft of the resolution had been submitted by the Workers' members. Objections had been raised by the Employers' group against certain criticisms embodied in two paragraphs of the preamble, which referred to alleged abuses in connection with the employment of apprentices and other young workers. The authors of the text had agreed to the deletion of these paragraphs. In addition, some relatively minor drafting changes had been made in the text.

Mr. CEUPPENS (Workers' delegate, Belgium; Vice-Chairman of the Meeting) said that the problem dealt with in this resolution represented also a somewhat special problem for the hotel industry. He considered that the principles contained in the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60), and the Vocational Training Recommendation, 1962 (No. 117), were of particular importance for the hotel industry. The proposed resolution therefore urged, firstly, that the countries that had not yet ratified or accepted these international instruments should do so and, secondly, that even where the instruments had not yet been ratified the principles set forth in them should be effectively applied as far as possible. He also mentioned that, in the last paragraph of the draft resolution, reference was made to two points relating to apprenticeship. The first of these was covered by the very comprehensive Recommendation No. 117; in fact, it was particularly important that every hotel establishment should offer adequate guarantees if it was to have the right to take on apprentices. Unfortunately, this principle was not always applied. The second point suggested that the apprenticeship system in the establishment should be subject to a thorough supervision in which the employers' and workers' organisations should participate.

The draft resolution was adopted unanimously.

The text of the resolution (No. 8) is reproduced below.

7. *Draft Resolution concerning Hygiene in Hotels, Restaurants and Similar Establishments*

The original draft of the resolution was submitted by the Workers' members.

Mr. CEUPPENS (Workers' delegate, Belgium; Vice-Chairman of the Meeting) said that the resolution referred to the Hygiene (Commerce and Offices) Convention, 1964 (No. 120), and Recommendation, 1964 (No. 120), which were of particular importance for the hotel industry and even more so for the customers. The Workers' group therefore considered it desirable to urge the governments that had not yet ratified the Convention or given effect to the provisions of the Recommendation to do so. The principles contained in these international instruments should be applied in the interest of the employers, the workers and the customers in hotels, restaurants and similar establishments.

The draft resolution was adopted unanimously.

The text of the resolution (No. 9) is reproduced below.

8. *Draft Resolution concerning Invalidity, Old-Age and Survivors' Pensions*

The original draft of the resolution was submitted by the Workers' members. The Steering Committee had made some minor drafting changes to it.

Mr. CEUPPENS (Workers' delegate, Belgium; Vice-Chairman of the Meeting) remarked that the problem concerned only certain countries, for in many countries the problem had been solved to a large extent. However, in some countries the hotel industry was not, unfortunately, covered by social security systems concerning invalidity, old-age and survivors' pensions. It was therefore important to adopt a resolution on this question.

Mr. BLANCO-MELO (Government delegate, Mexico) proposed an amendment of the draft text to take into account the fact that some of the developing countries already had social security systems applicable to the workers concerned.

The draft resolution, thus amended, was unanimously adopted.

The text of the resolution (No. 10) is reproduced below.

9. *Draft Resolution concerning the Future Action of the International Labour Organisation in respect of Hotels, Restaurants and Similar Establishments*

The original text of this resolution was submitted by the Workers' members. In this text the Governing Body had been invited to take all suitable measures for the convening of further tripartite meetings on hotels, restaurants and similar establishments. Certain Employers' members had pointed out that this phrasing might lead it to be supposed that the intention was to have a succession of meetings; this would amount to establishing a new permanent Industrial Committee, which would be contrary to the clearly expressed intentions of the Governing Body.

The Workers' members had pointed out that this had not been their intention; apart from the possibility of having another meeting like the present one, smaller meetings to discuss particular problems affecting the hotel industry might be considered.

The amended draft text referring to new meetings of a tripartite character seemed sufficiently flexible to provide for various types of meetings, whether similar to the present one or in the form of smaller meetings of experts. The Indian Government delegate also wished the wording to be changed so as to conform more closely with Governing Body procedure, which was to consider requests for the holding of various types of meetings and then to make a choice between them.

Mr. CEUPPENS (Workers' delegate, Belgium; Vice-Chairman of the Meeting) drew attention to the four questions on which future study seemed desirable: (1) the social problems arising in hotels, restaurants and similar establishments in the developing countries; (2) the reasons for the instability of employment noted in all countries; (3) the problem of recruitment and employment of seasonal and migrant workers which arose in a large number of countries; (4) vocational training and promotion in view of the lack of qualified personnel in the hotel industry in the majority of countries. As it was not possible to know when future meetings might be held, the second operative paragraph of the draft resolution requested the International Labour Office to undertake studies to provide the information lacking on these subjects in case a meeting could not be held in due time.

The draft resolution was adopted unanimously.

The text of the resolution (No. 11) is reproduced below.

10. *Draft Resolution concerning Vocational Training in Hotels, Restaurants and Similar Establishments*

The original draft of the resolution was submitted by the Employers' members of the Steering Committee. However, the text took into account certain suggestions concerning further technical assistance in vocational training which had been previously included in another draft resolution presented by the Workers' members. Also, the Steering Committee in the course of its discussions unanimously approved the suggestion that the International Centre for Advanced Technical and Vocational Training in Turin might lend its help in this respect; this suggestion was included in subparagraph *(b)* of the operative paragraph of the draft resolution.

Mr. MILLER (Employers' Adviser, United Kingdom) stressed the great importance attached by the Employers' delegates to this resolution. While the Workers' members had considered placing the question on the agenda of a future meeting, the Employers' members considered that it should be dealt with sooner, and by experts.

Mr. OBIMBO (Government delegate, Kenya) proposed an amendment in subparagraph *(b)* to make the resolution refer to existing hotel schools instead of to European hotel schools.

The draft resolution, as amended, was adopted unanimously.

The text of the resolution (No. 12) is reproduced below.

Text of the Resolutions Adopted

Resolution (No. 3) concerning the Development of Tourism and Related Industries [1]

The Tripartite Technical Meeting on Hotels, Restaurants and Similar Establishments,

Having met in Geneva from 4 to 15 October 1965,

Considering the rapid development of tourism, including hotels, restaurants, cafés and similar establishments, during recent years, and in particular the expansion in popular tourism,

Considering the contribution these industries can make to economic development and especially to the improvement of the balance of payments, particularly in developing countries which often enjoy exceptional natural advantages for tourism,

Considering that the development of tourism and related industries can also contribute to the improvement of the standard of living of the workers concerned and of the population in general,

Considering the mutual obligations of employers and workers to their clientèle and to tourism, and the desire of customers to enjoy adequate services and facilities during their periods of rest and leisure,

Considering that these industries are essential elements in providing a real welcome to visitors, especially those from abroad;

Adopts this fourteenth day of October 1965 the following resolution:

A. The Governing Body of the International Labour Office is invited to request the Director-General—

(a) to take suitable measures in order to continue and expand, in consultation, where appropriate, with the United Nations, the technical assistance programme of the International Labour Organisation in the field of the hotel and related industries, particularly with a view to helping developing countries to improve their tourist industries;

(b) to associate the International Labour Organisation, where appropriate, with the work of the United Nations undertaken with a view to the development of tourism and related activities;

(c) to see that international experts working in this field pay particular attention to the social problems of this industry, in consultation with the workers' and employers' organisations concerned.

B. The Governing Body of the International Labour Office is also invited to request the Director-General to bring to the attention of the governments concerned and, through them, the organisations of employers and workers concerned, the following considerations:

1. It is advisable to ensure that, with regard to hotels and tourism, economic development proceeds on an orderly, progressive and fair basis, within the framework of international planning of the available resources and funds for investment and that, in over-all economic development plans, an appropriate part is reserved to the hotel and related industries, which should be considered as an essential element of the infrastructure of a developing country, as well as to tourism.

2. In submitting requests for technical co-operation to the United Nations and the specialised agencies, the governments concerned should give appropriate priority to projects aiming at the development of tourism and related industries.

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[1] Adopted unanimously.

3. Governments should associate, at all levels, the employers' and workers' organisations concerned in drawing up and implementing development plans on tourism and related industries.

4. A more extensive collaboration should be envisaged between industrialised and developing countries in the application of the principles of tripartite or bipartite co-operation concerning the social problems of tourism and related industries.

5. Particular attention should be paid, with a view to easing burdensome manual tasks and without thereby endangering security of employment, to the improvement, by modern techniques, of methods and systems of performing work in hotels and related industries.

Resolution (No. 4) concerning Freedom of Association and Trade Union Rights [1]

The Tripartite Technical Meeting of the International Labour Organisation on Hotels, Restaurants and Similar Establishments,

Having met in Geneva from 4 to 15 October 1965,

Considering the fundamental principles of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98),

Considering the importance of respecting rights relating to freedom of association and trade union rights as regards persons employed in hotels, restaurants and similar establishments;

Adopts this fourteenth day of October 1965 the following resolution:

The Governing Body of the International Labour Office is invited to request the Director-General—

(a) to appeal to member States of the International Labour Organisation that have not yet ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), to do so;

(b) to draw the attention of the governments of all member States, and through them that of the employers' and workers' organisations concerned, to the need to apply the provisions of these Conventions to persons employed in hotels, restaurants, cafés and similar establishments, particularly at the level of the undertaking, and to ensure the protection of workers who are members or representatives of trade unions in these establishments;

(c) to urge the governments and the employers' and workers' organisations concerned to denounce all cases where these Conventions are not effectively respected and implemented as regards persons employed in hotels, restaurants, cafés and similar establishments, making use, where appropriate, of the procedures laid down for the application of international labour Conventions and for the examination of alleged violations of freedom of association.

Resolution (No. 5) concerning Discrimination [1]

The Tripartite Technical Meeting of the International Labour Organisation on Hotels, Restaurants and Similar Establishments,

Having met in Geneva from 4 to 15 October 1965,

Considering that in some countries there still exists in hotels, restaurants, cafés and similar establishments discrimination in respect of employment, occupation, vocational training and remuneration on the basis of race, colour, sex, age, religion, political and trade union opinion, national extraction or social origin;

Adopts this fourteenth day of October 1965 the following resolution:

[1] Adopted unanimously.

The Governing Body of the International Labour Office is invited to request the Director-General to draw the attention of governments, and through them, of the employers' and workers' organisations concerned, to the importance of ensuring that the principles laid down by the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), as well as by the Recommendation dealing with the same subject, are fully and effectively implemented with regard to the staff of hotels, restaurants, cafés and similar establishments.

Resolution (No. 6) concerning Seasonal and Migrant Workers [1]

The Tripartite Technical Meeting of the International Labour Organisation on Hotels, Restaurants and Similar Establishments,

Having met in Geneva from 4 to 15 October 1965,

Considering that in many countries seasonal and migrant workers in hotels, restaurants, cafés and similar establishments are placed in several respects in a particularly unfavourable position in comparison with permanent workers, especially as regards hours of work, weekly rest, holidays with pay, payments of travel costs between home and the place of work and social security benefits;

Adopts this fourteenth day of October 1965 the following resolution:

The Governing Body of the International Labour Office is invited—

(1) to request the Director-General to draw the attention of the governments of all member States, and through them of the employers' and workers' organisations concerned, to the desirability—

(a) of promoting the extension of the seasons for tourism by advancing the beginning or delaying the end of the various entertainments offered to the visitors, by advertising campaigns out of season and by facilitating by all appropriate means the development of tourism for all, for example by reducing fares;

(b) of applying to the workers concerned, in proportion to their period of employment, all social benefits enjoyed by permanent workers, particularly as regards holidays with pay, public holidays, weekly rest, retirement pensions and unemployment benefit, board and lodging;

(c) of taking all possible steps to provide in contracts of employment for the reimbursement of travel costs between the home of the workers concerned and their place of work, within the country and abroad, as well as possible loss of earnings, subject to appropriate guarantees and taking into account any national or local customs which may exist; and

(2) to request the Director-General to undertake studies on the problems relating to seasonal and migrant workers in hotels, restaurants and similar establishments and to publish information thereon.

Resolution (No. 7) concerning the Legal Protection of Foreign Workers [1]

The Tripartite Technical Meeting of the International Labour Organisation on Hotels, Restaurants and Similar Establishments,

Having met in Geneva from 4 to 15 October 1965,

Considering that in certain cases workers have been refused legal protection that would normally follow from their contracts of employment because certain administrative or official formalities have not been fulfilled;

Adopts this fourteenth day of October 1965 the following resolution:

The Governing Body of the International Labour Office is invited to request the Director-General to urge governments—

(a) to take measures to ensure that, where a foreign worker is, or has effectively been, working in an hotel, restaurant, café or similar establishment without the compulsory administrative or official formalities having been fulfilled, this fact should not prevent

[1] Adopted unanimously.

the worker from being able to have legal recourse with a view to securing the protection resulting from the social legislation of the country concerned;

(b) to take measures to ensure that foreign workers are informed about the main provisions of laws, regulations or collective agreements affecting them and are provided with the necessary information concerning official agencies and organisations of employers and workers.

Resolution (No. 8) concerning Young Workers [1]

The Tripartite Technical Meeting of the International Labour Organisation on Hotels, Restaurants and Similar Establishments,

Having met in Geneva from 4 to 15 October 1965,

Considering the special need for protecting the health of young workers engaged in hotels, restaurants, cafés and similar establishments and to ensure their full physical, moral and intellectual development, enabling them in particular to enjoy the benefit of a sufficiently high standard of education,

Considering that, in a number of cases, young workers are employed at an age lower than that established by the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60);

Adopts this fourteenth day of October 1965 the following resolution:

The Governing Body of the International Labour Office is invited to request the Director-General—

(a) to remind the governments of member States which have not yet done so of the importance of ratifying the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60), and to give effect to the Vocational Training Recommendation, 1962 (No. 117);

(b) to remind the governments of member States, and through them the organisations of employers and workers concerned, of the importance of effectively applying the principles set out in Convention No. 60 and the provisions of Recommendation No. 117 as regards persons employed in hotels, restaurants, cafés and similar establishments;

(c) to emphasise especially the necessity of recognising for apprenticeship purposes only approved undertakings which offer the necessary guarantees and of ensuring a thorough supervision over apprenticeship with the participation of employers', workers' and other organisations concerned.

Resolution (No. 9) concerning Hygiene in Hotels, Restaurants and Similar Establishments [1]

The Tripartite Technical Meeting of the International Labour Organisation on Hotels, Restaurants and Similar Establishments,

Having met in Geneva from 4 to 15 October 1965,

Having noted with satisfaction the adoption by the International Labour Conference, at its 48th Session in 1964, of the Hygiene (Commerce and Offices) Convention (No. 120), and the Hygiene (Commerce and Offices) Recommendation (No. 120),

Considering that Convention No. 120 as well as Recommendation No. 120 are applicable to hotels, restaurants and similar establishments;

Adopts this fourteenth day of October 1965 the following resolution:

The Governing Body of the International Labour Office is invited to request the Director-General—

(1) to draw the attention of the governments of member States of the International Labour Organisation which have not yet done so to the importance of ratifying as soon as possible Convention No. 120 and giving effect to the provisions of Recommendation No. 120;

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[1] Adopted unanimously.

(2) to draw the attention of the governments of all member States and, through them, of the employers' and workers' organisations concerned, to the importance of applying the principles contained in Convention No. 120, and the provisions of Recommendation No. 120, to persons employed in hotels, restaurants, cafés and similar establishments.

Resolution (No. 10) concerning Invalidity, Old-Age and Survivors' Pensions [1]

The Tripartite Technical Meeting of the International Labour Organisation on Hotels, Restaurants and Similar Establishments,

Having met in Geneva from 4 to 15 October 1965,

Considering that, in a great number of countries, including especially some developing countries, there still exists no legal system of invalidity, old-age and survivors' pensions applicable to the workers in hotels, restaurants, cafés and similar establishments, and that in those countries where such systems exist the latter are often inadequate;

Adopts this fourteenth day of October 1965 the following resolution:

The Governing Body of the International Labour Office is invited to request the Director-General to draw the attention of the governments of the member States of the International Labour Organisation and, through them, of the employers' and workers' organisations concerned, to the importance of ensuring that—

(a) the legal system of invalidity, old-age and survivors' pensions be extended to cover workers in hotels, restaurants, cafés and similar establishments, in the countries where these workers do not yet benefit from such systems; and

(b) the total amount of legal and other pensions be sufficient to ensure to old and invalid workers and to survivors at least a normal standard of living.

Resolution (No. 11) concerning the Future Action of the International Labour Organisation concerning Hotels, Restaurants and Similar Establishments [1]

The Tripartite Technical Meeting of the International Labour Organisation on Hotels, Restaurants and Similar Establishments,

Having met in Geneva from 4 to 15 October 1965;

Adopts this fourteenth day of October 1965 the following resolution:

The Governing Body of the International Labour Office is invited—

(1) to consider the possibility of convening, at the earliest possible date, further meetings of a tripartite character on hotels, restaurants and similar establishments, which should consider, among other matters—

(a) the social problems arising in these establishments in the developing countries;

(b) the reasons for the instability of employment in these establishments;

(c) the conditions of recruitment and employment of seasonal and migrant workers;

(d) vocational training and promotion;

(2) to request the Director-General in the meantime to undertake studies on the above-mentioned subjects and to publish the results thereof.

Resolution (No. 12) concerning Vocational Training in Hotels, Restaurants and Similar Establishments [1]

The Tripartite Technical Meeting of the International Labour Organisation on Hotels, Restaurants and Similar Establishments,

Having met in Geneva from 4 to 15 October 1965,

Considering the importance of vocational training and further training of skilled workers and supervisory and managerial staff, who are needed in a great many countries in order

[1] Adopted unanimously.

that hotels, restaurants and similar establishments may develop in such a way as to satisfy customers;

Adopts this fourteenth day of October 1965 the following resolution:

The Governing Body of the International Labour Office is invited to request the Director-General—

(a) to draw the attention of governments and, through them, of employers' and workers' organisations and other institutions concerned, to the need for providing and developing, in all countries, and especially in those where the hotel and related industries are expanding, facilities for training workers for all categories of skilled occupations, including management, and for the exchange of students and trainees;

(b) in the meantime, to invite the International Centre for Advanced Technical and Vocational Training in Turin to consider the possibility of arriving at agreements with existing hotel schools with a view to enabling trainees from developing countries to complete their training in these institutions;

(c) to continue to give a favourable response to any further requests for technical assistance received in this field;

(d) to consider the possibility of including in the programme of work of the Office a meeting of experts drawn in part from employer and worker circles, on such vocational training.

Preparatory Technical Conference on Fishermen's Questions

(Geneva, 18-28 October 1965)

Note on the General Discussion, Reports of the Working Parties and Proposed International Instruments Adopted

In accordance with a decision taken by the Governing Body at its 159th Session (June-July 1964), the Preparatory Technical Conference on Fishermen's Questions was held in Geneva from 18 to 28 October 1965, with the following agenda:

I. Accommodation on board fishing vessels.

II. Vocational training of fishermen.

III. Fishermen's certificates of competency.

The Conference was attended by 93 delegates and advisers from 15 countries, comprising 37 Government, 30 Employers' and 26 Workers' delegates and advisers; all delegations except three were tripartite. Three additional countries were represented by observers. The following States Members of the Organisation were represented at the Conference:

Belgium.	Japan.	Rumania.
Canada.	Netherlands.	Spain.
Denmark.	Norway.	U.S.S.R.
France.	Peru.	United Arab Republic.
Federal Republic of Germany.	Philippines.	United Kingdom.
India.	Poland.	United States.

The Food and Agriculture Organisation of the United Nations and the Intergovernmental Maritime Consultative Organisation were represented at the Conference, as well as the following non-governmental international organisations: International Confederation of Free Trade Unions [1], International Federation of Christians Trade Unions [1], International Federation of Christian Trade Unions of Transport Workers, International Organisation of Employers [1], International Transport Workers' Federation and World Federation of Trade Unions.[1]

The Governing Body was represented by a delegation consisting of Mr. M. AOKI for the Government group, Mr. F. A. P. MURO DE NADAL for the Employers' group, and Mr. G. PONGAULT for the Workers' group.

The Conference unanimously elected as its President Captain J. G. HUTCHISON (Government delegate, Canada), and as its Vice-Presidents Mr. V. P. RAPPAI (Government delegate, U.S.S.R.), Mr. H. A. H. B. KRANENBURG (Employers' delegate, Netherlands) and Mr. E. HAUGEN (Workers' delegate, Norway).

The Conference appointed a Steering Committee composed of four members and a number of deputy members from each group, in addition to the ex officio

[1] Organisation with consultative status.

members—the President, the three Vice-Presidents and the representatives of the Governing Body. Captain Hutchison was elected Chairman of the Steering Committee.

The Conference had before it three reports prepared by the Office, one for each of the items on the agenda. These documents contained law and practice reports on the relevant subjects, as well as the comments and suggestions made by governments in respect of the conclusions reached by the Committee on Conditions of Work in the Fishing Industry (Geneva, December 1962), and specific proposals for international instruments relating to accommodation on board fishing vessels, vocational training of fishermen and fishermen's certificates of competency.

The Conference decided to consider successively in plenary sitting the three items on the agenda, and to appoint two working parties whose terms of reference were to formulate, in the light of the discussions in plenary sittings and for submission to plenary sittings of the Conference, conclusions relating to the three items.

Admiral J. BARRETO ALVÁN (Government delegate, Peru), was appointed Chairman of the Working Party on Accommodation on board Fishing Vessels, while Mr. T. D. RICE (Government adviser, United States) was appointed Chairman of the Working Party on Vocational Training and Certificates of Competency.

The Conference held 11 plenary sittings. One was devoted to opening speeches and the election of officers; two to the discussion of accommodation on board fishing vessels; three to the discussion of vocational training of fishermen; two to the discussion of fishermen's certificates of competency; and three to examination of the reports and conclusions proposed by the working parties.

This note gives a summary of the substantive discussions in plenary sitting and reproduces the reports of the two working parties as well as the texts of the conclusions concerning the training of fishermen, the conclusions concerning accommodation on board fishing vessels and the conclusions concerning fishermen's certificates of competency, which were adopted by the Conference.

DISCUSSION IN PLENARY SITTING

OPENING SPEECHES

In opening the Conference the SECRETARY-GENERAL briefly reviewed the earlier action in respect of fishermen taken by the I.L.O., and recalled the conclusions concerning the questions to be discussed which had been formulated by the Committee on Conditions of Work in the Fishing Industry in 1962. He stressed the importance of these questions to fishermen at this time, and said that the fishing industry had in recent years assumed great and steadily increasing significance as a major producer of food for the rapidly growing population of the world. Much emphasis was being laid, in both developing and highly industrialised countries, on the need to exploit more efficiently and rationally the resources of the sea. The techical and scientific developments in fishing had resulted in basic changes in the conditions of work of fishermen, their skill requirements and the training they needed. It was essential that these changes should be fully reflected in any instruments recommended for adoption by the International Labour Conference, as such instruments must be technically correct and so designed as to render the kind of service to members of the I.L.O. which they had the right to expect.

The Secretary-General pointed out that the discussion at the Conference would take the place of the first discussion by the International Labour Conference of the item concerning fishermen's questions. He suggested that each of the three questions might be discussed in turn in plenary sitting and subsequently referred to working parties which would be responsible for formulating conclusions on each question for submission to the Conference.

General Discussion

Accommodation on Board Fishing Vessels

The Government delegate of Japan said that his Government had in recent years taken several measures to improve accommodation on board fishing vessels. It had in particular encouraged in various ways the owners of vessels of over 100 tons to modernise and improve crew accommodation on board their vessels. However, it would be difficult to implement in Japan certain provisions of the proposed instrument.

The United Kingdom Government delegate said that there were no statutory regulations in his country governing crew accommodation, but that certain rules and instructions existed under the Merchant Shipping Act, 1894. Some other instructions had recently been prepared but were not yet in force. He pointed out that the parameter used in the United Kingdom for the application of regulations of this kind was the length of the vessel; New Zealand and Finland used the same system, and he considered that this criterion could usefully be applied in the proposed instrument. The limit could be set at 80 feet. The instrument should contain a clause making it applicable to smaller vessels when practicable. He then made several comments on the individual Articles of the proposed text.

The Government delegate of the U.S.S.R. referred to the difficult conditions of fishermen in many countries, and to the shortage of new entrants to the industry, which showed the dissatisfaction which fishermen felt with regard to their conditions of work on board fishing vessels. There was a great need to create more normal conditions of work for fishermen, and he recommended that the proposed instrument should take the form of a Convention, which should apply to fishing vessels of more than 25 tons.

The United States Government delegate suggested that the proposed instrument should be a Recommendation, and that it should apply to vessels of 100 tons and above. He also suggested a number of drafting changes, including improvements in definitions.

The Government delegate of India expressed a preference for laying down length and not tonnage as the criterion for vessels to be covered by the proposed instrument. He felt, however, that it would be even better if both criteria could be applied, and suggested a minimum of 80 feet and 100 tons for this purpose.

The Employers' delegates stated that they were in favour of improving conditions of employment of fishermen, and that they would support an international instrument on accommodation on board fishing vessels provided the objectives of this instrument were within their reach. The present situation in respect of accommodation on board fishing vessels, in the opinion of various Employers' delegates, varied greatly owing not only to the varying degree of development on the fishing industry in the countries concerned, but also to the prevailing climatic conditions and the type of fishing in which vessels were engaged.

The Belgian Workers' delegate emphasised that the proposed instrument should take the form of a Convention, which would make it mandatory for the various countries to bring about the desired changes. The workers had been waiting for action in this field for many years, and they considered that the time had now come for concrete action. The Workers' delegates were not prepared to accept a tonnage limit which would not be realistic and which would have the effect of excluding a great proportion of fishing vessels from the application of the instrument.

Several Workers' delegates put forward amendments to the text. The French Workers' delegate made suggestions aiming at improving the comfort of the crew. He stressed the increasing danger of noise on board fishing vessels, and suggested that noise levels should be reduced to a maximum of 90 to 100 decibels in workplaces and 60 to 70 in sleeping quarters or messrooms. The Workers' group as a whole, in view of the fact that studies at present being carried out on the effect of noise on the hearing faculty were still incomplete, reserved the right to refer to this question again at the 50th Session of the International Labour Conference.

The United States Workers' delegate, while indicating that in his country the standards laid down in the proposed instrument were largely surpassed, stressed that the establishment of minimum standards at an international level would have beneficial effects. Productivity in the fishing industry was increasing; an improvement in conditions of fishermen could not fail to increase productivity further. He made certain detailed proposals in

connection with several Articles of the proposed text, and suggested that the instrument should apply to vessels of over 25 tons.

The Norwegian Workers' delegate indicated that in many countries there was a tendency to abandon the fishing industry, and that recruitment was not satisfactory. Good conditions in regard to accommodation would certainly help to attract and to retain fishermen in their trade.

The representative of the Intergovernmental Maritime Consultative Organisation stated that very few provisions of the proposed instrument were concerned with the safety of life at sea, which was the subject in which I.M.C.O. was really interested. He felt that length instead of tonnage should be used as the measurement in determining the scope of the instrument, and made certain other suggestions aiming at improving the text from a safety point of view.

At the end of the general discussion the Conference decided to entrust the Working Party on Accommodation on board Fishing Vessels with the responsibility of drawing up conclusions concerning accommodation on board fishing vessels for submission to the Conference.

Vocational Training of Fishermen

During the discussion on vocational training of fishermen various Government delegates described the situation prevailing in their respective countries and the manner in which governmental assistance was being provided. The Canadian Government delegate pointed out that, in addition to giving financial assistance, the Government had recently conducted a functional analysis of the different types of work in the fishing industry as a means of assisting fishermen's training schemes to develop training in those fields which were most urgently in need of it.

The Government delegate of the United Kingdom said that in his country the formal training of fishermen was primarily directed towards the attainment of navigational skills to ensure safety at sea, but the Government was in the process of modernising legislation concerning training schemes for various industries. High standards should, in his view, be recommended for the training of skippers and mates, but as regards training in fishing techniques he favoured a flexible approach in order to take account of the varying conditions and practices involved. The United Kingdom Government was in general agreement with the proposals concerning fishermen's training drafted by the I.L.O., and considered that they would form a suitable basis for an international instrument.

The Government delegate of India stated that his Government provided very little assistance to fishermen's training programmes, and that there was a wide gap between the standards of fishermen's training in developing countries and those in advanced nations. He stressed the importance of international co-operation designed to assist developing nations in improving and expanding their fishermen's training schemes, and expressed himself in favour of an international instrument in the form of a Recommendation which would help to promote greater uniformity among the fishermen's training systems of different countries. While in general he approved of the proposals formulated by the I.L.O., he felt that the text might be made more flexible on certain points to enhance its applicability to developing countries.

The U.S.S.R. Government delegate was in favour of an international instrument as drafted by the I.L.O. He emphasised the importance of vocational training in the fishing industry being brought up to the level of that in other industries. Legislation in the U.S.S.R. ensured vocational training for all fishermen, and a state committee on training co-ordinated the activities of the various training establishments. Both regular and advanced training was provided by numerous institutions located in different regions of the country, and in addition there were correspondence courses for fishermen. The U.S.S.R. participated actively in international co-operation in the vocational training of fishermen in developing countries, and undertook the training in the Soviet Union of foreign nationals from many countries.

The Government delegate of France described the developments which had occurred in fishermen's training in recent years and which, in the interest of safety at sea, had been greatly spurred by the demand for better-trained fishermen. The policy adopted in 1963 required basic training for certain fishermen recruits, and involved separating fishery schools

from navigation schools and co-ordinating the activities of public and private training centres. An advanced fishery school was being planned, and a national committee of examiners was to be established.

The Government delegates of Japan and the United States supported the proposed conclusions on fishermen's training contained in the I.L.O. report, but made a number of observations on specific parts of the conclusions, either as they related to current practice in their countries or as suggestions for improvement of the scope or clarity of the text.

The Employers' delegates were in general agreement with the principles of fishermen's training as outlined by the I.L.O., which they felt should be embodied in a Recommendation. The Peruvian Employers' delegate stressed the importance of the proper training of fishermen for the protection of the large investment in the fishing industry of his country, and pointed out that the conclusions concerning fishermen's training must take full account of the needs of the various countries.

The United States Employers' delegate emphasised the complexity of vocational training of fishermen and the joint responsibility of employers, workers and governments for the development of training schemes corresponding to the particular needs of the various countries. He pointed out that the conclusions of the Conference must be flexible.

The U.S.S.R. Employers' delegate suggested certain drafting changes to the proposed conclusions, chiefly for purposes of clarity, while the United Kingdom Employers' delegate emphasised that the text should fully recognise the difference in operating conditions which existed among the various countries and regions of the world.

There was general agreement among the Workers' delegates that, in the interest of promoting safety at sea and to satisfy the demand for more highly qualified fishermen, there was a need for establishing international standards concerning the vocational training of fishermen. They felt that the proposed conclusions formed a suitable basis for discussing the possible contents of an international instrument.

The United States Workers' delegate suggested a number of modifications to the text, designed to stress the need to assist trainees to reach their highest productive and earning capacity, the importance to developing countries of training schemes for fishermen, and the usefulness of regional collaboration between groups of countries for the purpose of developing training programmes for fishermen.

The French Workers' delegate said that working conditions in the fishing industry must be improved if the industry were to overcome the serious manpower shortage which had developed in recent years. He attached great importance to the formal training of fishermen and the establishment of a certificate of competency for skilled fishermen, and asserted that an international instrument concerning the training of fishermen should take the form of a Convention.

The representative of the Food and Agriculture Organisation of the United Nations explained that his organisation had in the past 14 years sent 100 experts to various countries throughout the world to assist governments in establishing adequate training programmes for fishermen and in introducing modern fishing techniques and equipment. He reported on a recent international seminar on fishermen's training which had been sponsored by F.A.O. in collaboration with the Government of the U.S.S.R.

The representative of the Intergovernmental Maritime Consultative Organisation referred to the Convention on Safety of Life at Sea, 1960, and suggested that the competent authorities in the various countries should prescribe a minimum amount of instruction in subjects related to the safe navigation of fishing vessels, and that these authorities should consider the recommendations embodied in the report of the Joint I.L.O.-I.M.C.O. Committee on the Training of Seafarers in the Use of Aids to Navigation and Other Devices.

Upon completion of the general discussion on vocational training in plenary sitting, the Conference decided to assign to the Working Party on Vocational Training and Certificates of Competency the task of drawing up conclusions concerning the training of fishermen for submission to the Conference.

Fishermen's Certificates of Competency

The delegates who took part in the discussion in plenary sitting on this item expressed general agreement with the points for discussion prepared by the I.L.O. Several Government and Employers' delegates, however, felt that it would be undesirable in an international

instrument to make provision for the certification of able fishermen, as proposed by the I.L.O., on the ground that the justification for such a certificate rested on matters other than safety considerations.

The Government delegate from Norway suggested that the instrument should also cover certificates of competency for cooks on fishing vessels of over 100 tons, and the Government delegate from Japan explained that in Japan certificates for merchant seamen and fishermen were issued under the same regulations and were in fact identical. The proposed international instrument should cover only officers' certificates, and certification in fishing skills should be dealt with in the instrument on vocational training of fishermen.

The Government adviser of the Federal Republic of Germany and the United Kingdom Government delegate, who proposed various amendments, pointed out that international standards for fishermen's certificates should, because of their relationship to safety at sea, be laid down in a Convention which should be flexible enough to encourage ratification by countries already having legislation covering the subject. The Government adviser from France and the Belgian and U.S.S.R. Government delegates were also in favour of a Convention for fishermen's certificates of competency, whereas the Government delegate from the United States stated that he could not accept a Convention but was prepared to approve a Recommendation which should apply to vessels of 200 gross tons and over.

The Government adviser from Canada emphasised that a Recommendation would be the most suitable form for an international instrument covering certificates of competency for fishermen. He explained that Canada had certification regulations for engineers of fishing vessels and was presently introducing regulations to cover also skippers and mates of fishing vessels. It was to be hoped that the development of regulations for Canadian fishermen would be assisted by the proposals concerning certificates adopted by the Conference.

The Government delegate of India considered that there was no special advantage in establishing an international instrument pertaining to fishermen's certificates of competency. He was, however, not opposed to the establishment of such standards provided they were made applicable only to mechanised fishing vessels and did not require certificates of competency for skilled fishermen and cooks.

The Employers' delegates in general supported the viewpoint that any international instrument covering certificates of competency for fishermen should be flexibly framed so as to facilitate implementation and ratification by the various countries.

The Netherlands and Japanese Employers' delegates recommended that the proposed international instrument should be a Recommendation, and pointed out that there appeared to be no need for the establishment of a certificate of competency as able fisherman.

The Workers' delegates emphasised the desirability of establishing a flexible international instrument laying down detailed standards for certificates of competency for deck and engineering officers of fishing vessels, and they supported the proposals drawn up by the I.L.O. The Workers' delegate of the Federal Republic of Germany and the Japanese Workers' delegate said that the instrument should be a Convention, which should be capable of attracting general acceptance by the various fishing nations.

The French Workers' delegate suggested that the instrument should cover also certificates for able fishermen and boatswains of fishing vessels. The establishment of a certificate for cooks of fishing vessels was proposed by the Workers' delegate of the Federal Republic of Germany and the Japanese Workers' delegate.

The representative of the Intergovernmental Maritime Consultative Organisation stressed the importance of establishing certificates of competency for fishermen, and suggested that regulations concerning the certification of skippers and mates should be based upon the length of fishing vessels, and for engineers on the horsepower of propulsion machinery. Account must be taken of the waters in which vessels operate and other conditions, and should also require that radio operators of fishing vessels be certificated.

Texts Adopted by the Conference

At its last plenary sitting on 28 October 1965 the Conference noted that the texts concerning vocational training of fishermen, accommodation on board fishing vessels and fishermen's certificates of competency, which it had adopted unanimously, would serve as a basis for draft international instruments to be considered by the International Labour Con-

ference at its 50th Session in 1966. The Conference emphasised that the discussion next year of these questions would be greatly facilitated by the inclusion in national delegations of representatives of all sides of the fishing industry, and invited the member States of the I.L.O. to give all possible consideration to this question when determining the composition of their delegations to the 50th Session of the International Labour Conference.

Closing Speeches

Appreciation for the fine results of the Conference and for the excellent and painstaking work of all concerned with the preparation and organisation of, and participation in, the Conference was warmly expressed by the various members, including Admiral Barreto Alván (Government delegate, Peru), Mr. Cobley (Employers' delegate, United Kingdom), Mr. Haugen (Workers' delegate, Norway; Vice-President of the Conference), Mr. Kranenburg (Employers' delegate, Netherlands; Vice-President of the Conference), Mr. Rappai (Government delegate, U.S.S.R.; Vice-President of the Conference), Mr. Rice (Government Adviser, United States), Mr. Vandensteen (Government delegate, Belgium) and Mr. Wiemers (Workers' delegate, Federal Republic of Germany). Particular mention was made of the helpful technical knowledge furnished by the Government members, of the understanding shown by the Employers' members regarding the problems of fishermen, and of the evident desire of all the members of the Conference to reach agreement with a view to achieving a favourable evolution of social and working conditions in the fishing industry. Mr. Rappai expressed the hope that the International Labour Organisation would continue its work in this field by giving attention to other important fishermen's questions which remained to be examined, such as social security, holidays and safety techniques on fishing vessels.

The Secretary-General joined in the expression of appreciation for the fruitful work of the Conference. Its efforts would not fail to produce favourable effects not only on the population of the world as a whole, but also on world economy. The populations of the world were finding it increasingly necessary to give attention to fish as a food, and the sea was a source of nourishment which had hardly been opened up as yet. Fishermen should no longer be known as the " forgotten workers ", and the time would certainly come when their importance would be fully recognised. Measures taken to improve the conditions of fishermen contributed to solving the acute problem of feeding the populations of the world. Such measures had been provided for in the conclusions adopted by the Conference. It was now necessary to put these measures into practice.

He thanked all of the members for the work accomplished and for the spirit of co-operation which had pervaded the Conference throughout its duration.

The President thanked all of the members for their understanding and co-operation throughout the Conference. These had been important factors in the success of the Conference. Recalling that the finest words of praise in the maritime profession were " well done! ", he felt that the excellent work of the Conference merited the accolade " very well done, indeed! "

REPORTS AND CONCLUSIONS ADOPTED

Report of the Working Party on Accommodation on board Fishing Vessels

Composition and Officers

1. The Working Party on Accommodation on board Fishing Vessels was composed as follows:

Government members :

Titular members :

India: Mr. Purushottam.
Netherlands: Mr. Berlage.
Spain: Mr. Curiel Barragán.
U.S.S.R.: Mr. Rappai.

Deputy members :

Belgium: Mr. VANCRAEYNEST.
France: Mr. RENÉ.
Federal Republic of Germany: Mr. FETTBACK.
Norway: Mr. SALVESEN.
United Kingdom: Mr. WILSON.
United States: Mr. STOLTING.

Employers' members :

Titular members :

Mr. COBLEY (United Kingdom).
Mr. GENSCHOW (Federal Republic of Germany).
Substitute: Mr. OTTE.
Mr. RUTHFORD (United States).
Substitute: Mr. HARDEE.
Mr. YOSHIDA (Japan).
Substitute: Mr. GOTO.

Deputy members :

Mr. KRANENBURG (Netherlands).
Mr. BOZA BARRIOS (Peru).
Mr. SMITH (Canada).
Mr. BESNARD (France).

Workers' members :

Titular members :

Mr. DEKEYZER (Belgium).
Mr. HAUGEN (Norway).
Mr. BALINGER (United States).
Mr. NAKANO (Japan).

Deputy members :

Mr. CHUYEV (U.S.S.R.).
Mr. ANNERL (Federal Republic of Germany).
Mr. DE SARCILLY (France).
Mr. BUQUET (Netherlands).

2. The Chairman of the Working Party was Admiral J. BARRETO ALVÁN (Government member, Peru) who was elected also as Reporter. Mr. KRANENBURG and Mr. DEKEYZER were elected Employers' and Workers' Vice-Chairmen respectively.

3. The Working Party decided when discussing the proposed conclusions on accommodation on board fishing vessels drawn up by the I.L.O. to take into consideration the comments and observations that had been made in the course of the general discussion by the Conference on crew accommodation on board fishing vessels.

EXAMINATION OF THE PROPOSED CONCLUSIONS ON ACCOMMODATION ON BOARD FISHING VESSELS

4. The Working Party discussed in the first instance whether the proposed instrument should take the form of a Convention or a Recommendation. It was recalled that the 1962 Committee on Conditions of Work in the Fishing Industry had felt that it was not competent to decide which form its conclusions should take. The Workers' group was in favour of a Convention. Various Government members pointed out that since the instrument concerning seafarers was a Convention, fishermen should also be covered by a Convention. Some Government members also stated that an instrument having the form of a Convention was more likely to be effective.

5. On the other hand, a few Government members indicated their preference for an instrument having the form of a Recommendation. These members felt that a Convention was difficult to apply, especially in less developed countries and in countries where the fishing industry was in its early stages.

6. After the Employers' group had indicated that it would not object to a Convention the Working Party decided to suggest to the Conference that the proposed instrument should take the form of a Convention.

Discussion of the Proposed Convention Article by Article

Article 1.

Paragraph 1.

7. After a discussion as to whether the expression "maritime fishing in salt waters" was to be interpreted as covering fishing in the Great Lakes of Canada and the United States, the Working Party adopted paragraph 1 without change on the understanding that such interpretation would be left to the countries concerned.

Paragraph 2.

8. Paragraph 2 was adopted by the Working Party without change.

Paragraph 3.

9. The Working Party started the examination of paragraph 3 by discussing the minimum tonnage of the fishing vessels to which the proposed Convention should apply. The Workers' members indicated that they were in favour of a limit of 25 tons but might accept a limit of 50 tons if this would facilitate an agreement. The Government member for the United Kingdom pointed out that the legislation in force in his country used, as a parameter for the application of the various regulations to fishing vessels, the length of the vessel and not the tonnage. This seemed to be more precise. He stressed the fact that New Zealand and Finland used the same parameter. For the purpose of this Convention he suggested that the length of 80 feet should be considered as the minimum length of vessels to which the proposed Convention should apply. He added that a vessel of 80 feet would be equivalent to a vessel of approximately 100 tons.

10. Several Government members supported the proposal that the proposed Convention should not apply to fishing vessels of less than 100 tons. The Government member for the U.S.S.R. stated that he was in favour of a limit of 25 tons, while the Government members for Belgium and Norway felt that the minimum tonnage should be 50. The member from Norway agreed, however, that it might be necessary to make an exception in the case of certain provisions whose application would be difficult on smaller vessels of between 50 and 100 tons.

11. The Workers' members pointed out that if the proposed Convention were to apply only to fishing vessels of more than 100 tons the great majority of fishing vessels would be excluded from its application, even in the developed countries. However, in order to enable the Working Party to proceed with the discussion of the text they suggested that the discussion should proceed on the assumption that the tonnage limit would be fixed at 75. The Working Party agreed to this suggestion.

12. The Workers' members proposed that a clause be added to subparagraph *(b)* to the effect that the application of the proposed Convention to vessels between 25 and 75 tons should be determined by the competent authority after consultation with representatives of the two sides of the industry.

13. The Workers' members proposed that fishery research and protection vessels should be excluded from the application of the Convention, and a subparagraph to this effect was added to the text.

14. The Working Party discussed whether factory ships were to be covered by the provisions of the proposed Convention. The Government member for the United Kingdom

indicated that the legislation in his country made a distinction between factory ships which were engaged in catching fish and factory ships which only processed it. In the former case factory ships were considered as fishing vessels while in the latter case they were considered as foreign-going cargo vessels, and therefore covered by the Accommodation of Crews Convention (Revised), 1949 (No. 92), as well as by load-line regulations and the safety regulations for foreign-going ships.

15. The Employers' members felt that vessels receiving catch from other vessels should not be considered as fishing vessels.

16. The Assistant Secretary-General explained that whaling and sealing vessels had been excluded from the application of Convention No. 92 because it had been felt, at Seattle, that a considerable number of those employed on board such vessels did not belong to the seafaring profession and were comparable to factory workers, for whom special provisions were made.

17. The Working Party agreed that factory ships, whether they were actually engaged in catching fish or only in processing it, should be covered by an instrument concerning crew accommodation and that it would be for national legislation to determine whether such ships should be covered by legislation adopted in accordance with Convention No. 92 or with the present proposed Convention.

Paragraph 4.

18. The Employers' members suggested that the words " 24 hours " appearing in the first sentence of paragraph 4 should be replaced by " three days ". After a discussion the Working Party agreed that the provisions listed in paragraph 4 should not apply to ships and boats which normally remain at sea for periods of less than 36 hours.

19. The Government member for the United Kingdom suggested that the words " remain at sea " be replaced by the words " remain away from their home port "; in fact ships frequently touched port every day and yet were away from their home port for long periods. The Working Party agreed to this suggestion.

Paragraph 5.

20. The Workers' member for the U.S.S.R. suggested that the words " bona fide " appearing in this paragraph as well as in a number of other places in the text, when they were used to qualify fishermen's organisations, should be deleted. The Working Party agreed to this suggestion.

Article 2.

21. The Working Party adopted Article 2 without change.

Article 3.

22. The Working Party agreed to reverse the order of subparagraphs *(c)* and *(d)*. With this change Article 3 was adopted.

Article 4.

23. The Government member for the United Kingdom felt that paragraph 2 of Article 4 was unnecessarily complicated and suggested its deletion. However, to take into account the cases mentioned in paragraph 2 in which crew accommodation of existing vessels is altered or reconstructed, he suggested a corresponding addition to paragraph 1. The Working Party agreed to this suggestion.

Article 5.

24. The Government member for the United Kingdom proposed the addition of a subparagraph which would enable the competent authority to inspect fishing vessels at any time at its discretion. The legal adviser pointed out that the present text did not mean

that the competent authority was not entitled to carry out inspections at any time. It only meant that the competent authority was under the obligation to carry out an inspection in the three cases mentioned in Article 5.

Article 6.

Paragraph 1.

25. The French Workers' member proposed the addition of a sentence to paragraph 1 laying down the maximum noise level in working places and in sleeping rooms. These noise levels should not be more than 100 decibels in working places and 70 decibels in sleeping rooms. In addition, provision should be made to minimise vibration.

26. The Government member for France informed the Working Party that in his country studies were being carried out to determine the level at which noise becomes harmful. Although certain results had already been achieved, it was nevertheless clear that the findings were not yet final and it was therefore preferable not to include any figure in this instrument. The Government member for Belgium concurred with this opinion and added that a study carried out in Germany in 1961 had revealed that the maximum noise level should be of 90 din/phon in the engine room and of 70 din/phon in the crew quarters and on the bridge. The noise was measured in din/phon which seemed to express in a better way the effect of noise on human beings. As far as the vibrations were concerned the main sources on board ship were the main and auxiliary motors and the propeller. While it was possible to minimise this effect on auxiliary motors, it was much more complicated to do so in the case of the main motor and the propeller.

27. In view of the fact that the research on this subject was still incomplete, the Workers' group agreed to withdraw the proposed addition. They reserved, however, the right to bring this matter up again in 1966 at the 50th Session of the Conference when it was hoped that further study would make it possible to provide for a precise maximum level of noise.

New Paragraph 2.

28. On the proposal of the Government member for the United Kingdom the Working Party agreed to add a paragraph 2 to provide for emergency escape from crew accommodation where necessary.

Paragraph 3 (Old Paragraph 2).

29. Paragraph 3 was adopted with the addition of the words " and fish-meal rooms " after the words " fish holds ".

Paragraphs 4 to 12 (Old Paragraphs 3 to 11).

30. Paragraphs 4 to 12 were adopted without change.

New Paragraph 13.

31. On the proposal of the Government member of the United Kingdom the Working Party agreed to add a new paragraph 13 to provide that overhead exposed decks over crew accommodation should be sheathed.

Paragraphs 14 and 15 (Old Paragraphs 12 and 13).

32. The Working Party adopted paragraphs 14 and 15 without change.

New Paragraph 16.

33. On the proposal of the Government member of the United States a new paragraph 16 was added to provide for the protection of crew accommodation against the admission of flies and other insects.

Article 7.

Paragraphs 1 and 2.

34. The Working Party adopted paragraphs 1 and 2 without change.

Paragraph 3.

35. The Japanese Workers' member suggested that specific mention should be made in this paragraph of the Persian Gulf, although geographically it was not entirely included in the tropics.

36. After a discussion the Working Party agreed that after the words " in the tropics " the words " and other areas with similar climatic conditions " should be added.

37. On the proposal of the Peruvian Employers' member the Working Party also agreed to add after " shall " the words " as required by such conditions ".

Paragraphs 4 and 5.

38. The Working Party adopted paragraphs 4 and 5 without change.

Article 8.

Paragraphs 1 and 2.

39. The Working Party adopted paragraphs 1 and 2 without change.

Paragraph 3.

40. The Japanese Employers' member proposed the addition of a sentence to the effect that open fires should be permitted when an adequate protection was provided. The Workers' members opposed this proposal, which was finally withdrawn. The French Workers' member indicated that in his country heating was permitted by means of butane or propane gas. On ships of less than 200 tons coal stoves are also permitted. Various members expressed their opinion on this matter with reference to the legislation in force in individual countries. The Working Party eventually agreed to adopt paragraph 3 without change.

Paragraph 4.

41. The Working Party adopted paragraph 4 without change.

Paragraph 5.

42. The representative of the Intergovernmental Maritime Consultative Organisation suggested a change to paragraph 5 which would embody safety measures in connection with heating apparatus. The Working Party agreed to the suggested change.

Article 9.

Paragraph 1.

43. The Government observer for Denmark proposed a new drafting of the last sentence of paragraph 1 to take care of the cases in which it is not possible, for safety reasons, to provide natural lighting. The Working Party, after consideration of this proposal, agreed that the text as suggested should be maintained.

Paragraphs 2 and 3.

44. The Working Party adopted paragraphs 2 and 3 without change.

Paragraph 4.

45. On the proposal of the United States Workers' member the Working Party agreed to add, at the end of paragraph 4, the words " in addition to the normal lighting of the cabin ".

Article 10.

Paragraph 1.

46. The Workers' members recognised that in modern trawlers fishing from the stern was more and more extensively used and that when this system was applied crew accommodation could not be located aft. They suggested, however, that sleeping rooms should be

located in the forepart of the vessel only in exceptional circumstances. Therefore they supported the present text of paragraph 1.

47. The Employers' member from the Federal Republic of Germany pointed out that in modern trawlers the fishing operations were carried out from the stern and that the middle section of the fishing vessels was occupied by the engine room, the filleting machine, the refrigerated rooms, etc. The location of the crew accommodation was, therefore, in these modern ships, normally in the forepart. It was therefore perhaps opportune to change the text of this draft in order to provide that the location of the sleeping rooms in the forepart of the ship should be considered as normal and not exceptional as in the present text. It was clear that the accommodation should not be in any circumstances forward of the collision bulkhead.

48. The Employers' group supported this proposal while the Workers' group opposed it. The United Kingdom Government member indicated that the location of the crew accommodation in the forepart of the ship should be exceptional not only for safety reasons, but also for the comfort of the crew. The Working Party concluded that the present wording of the text gave the competent authority adequate scope to take into account the coming into use of stern trawlers which necessitated the location forward of the accommodation, and paragraph 1 was therefore adopted in its original text.

Paragraph 2.

49. The United Kingdom Government member expressed the opinion that paragraph 2 provided for too many categories of fishing vessels and that a clear-cut provision, without so many distinctions of sizes of ships, would be preferable. He therefore suggested that on all ships a clear space area of 1 square metre, or 10 square feet, should be provided for every member of the crew. By clear space he meant space not occupied by berths or lockers. He objected to 14 square feet or 1.3 square metres as being in excess of the area laid down for ships under Convention No. 92.

50. The U.S.S.R. Government member indicated that, according to the regulations in force in his country, the space at the disposal of every member of the crew was 4 cubic metres in larger vessels and 3.5 cubic metres in the smaller vessels. The floor area corresponding to this volume depended, of course, on the height of the cabin, which was normally 1.85 metres.

51. After a discussion, the Working Party agreed to maintain the original drafting of paragraph 2.

Paragraphs 3 and 4.

52. Paragraphs 3 and 4 were adopted without change.

Paragraph 5.

53. Following a suggestion by the United Kingdom Employers' member that the drafting of paragraph 5 should be changed to provide for a greater clarity of the terms " officers in charge of a department " and " officers in charge of a watch ", the Workers' group suggested the deletion of the entire subparagraph *(a)* of this paragraph, and the deletion of the word " Other " at the beginning of the following subparagraph. The Working Party agreed to this suggestion.

54. The Workers' group proposed the deletion of clause (iii) of subparagraph *(b)* (formerly *(c)*). They considered that a provision which permitted the accommodation of ten persons in the same cabin should not appear in an international instrument at the present time. The Working Party agreed and paragraph 5 was adopted with this change together with the consequential change in clause (ii) and also with a minor amendment suggested by the Government member for India.

Paragraphs 6 to 8.

55. The Working Party adopted paragraphs 6 to 8 without change.

Paragraph 9.

56. The United Kingdom Employers' member suggested that, when the berths were placed along the vessel's side and next to a sidelight, double tiers should be permitted if the sidelight could not be opened. The United Kingdom Government member pointed out that a berth placed against a sidelight prevented light from entering the cabin and therefore should be prohibited. He added that for safety reasons berths should not be placed along the ship's side. He did not suggest, however, that this provision should be included in the proposed text. After a discussion, the Working Party adopted the text of paragraph 9 without change.

Paragraph 10.

57. The United States Workers' member proposed that there should be at least 2 feet 6 inches clearance from the top of the lower berth to the bottom of the upper berth. It was indicated that the present text provided for approximately the same distance, and paragraph 10 was therefore adopted by the Working Party without change.

Paragraph 11.

58. The U.S.S.R. Government member observed that the regulations in force in his country prescribed that the inside dimensions of the berths should be 190 by 70 centimetres. The United Kingdom Government member suggested the deletion of the words " whenever possible " from the text. The Assistant Secretary-General explained that the words had been inserted in the text of the corresponding paragraph of Convention No. 92 because in certain smaller vessels it was necessary to permit the berths to be narrower at the foot in order to suit the form of the cabin. After this explanation paragraph 11 was adopted by the Working Party in its original form.

Paragraphs 12 to 16.

59. Paragraphs 12 to 16 were adopted without change.

Paragraph 17.

60. Following observations from the United Kingdom Government member that the minimum dimensions provided for clothes lockers were difficult to apply in smaller vessels, the Workers' members agreed that paragraph 17 could be drafted in a simpler way to let the competent authority determine the specifications of the lockers.

Paragraph 18.

61. The Working Party adopted paragraph 18 without change.

Paragraph 19.

62. On the suggestion of the Government member for France the words " or to harbour vermin " were added at the end of paragraph 19.

Paragraph 20.

63. The English text of paragraph 20 was amended to bring it into conformity with the French text and to add the words " wherever practicable ".

Paragraphs 21 to 23.

64. Paragraphs 21 to 23 were adopted by the Working Party without change.

Article 11.

Paragraph 1.

65. The United States Workers' member suggested that a separate mess room should be provided on vessels carrying a crew of more than four persons, instead of ten as is indicated in the proposed text. After a discussion, it was agreed that the present text should be maintained but a sentence added to the effect that wherever possible a separate mess room should be provided also in vessels carrying a smaller crew. Furthermore, a sentence was

added, on the proposal of the United Kingdom Government member, to the effect that, where it was impracticable to have a separate mess room, this might be combined with sleeping accommodation.

Paragraph 2.

66. On the proposal of the United States Workers' member the word " shall " was replaced by " may ". With this change, paragraph 2 was adopted.

Paragraphs 3 to 7.

67. Paragraphs 3 to 7 were adopted without change.

New Paragraph 8.

68. On the proposal of the Japanese Workers' member the addition of a new paragraph was agreed upon to provide for the possibility of using mess rooms as recreation rooms.

Article 12.

Paragraphs 1 and 2.

69. Paragraphs 1 and 2 were adopted without change.

Paragraph 3.

70. On the proposal of the United Kingdom Government member the Working Party agreed to add the words " wherever practicable " to the first sentence of paragraph 3.

Paragraph 4.

71. The United States Workers' member proposed the substitution of the word " fresh " by the word " potable ". The U.S.S.R. Government member opposed this amendment on the grounds that it was not necessary to have potable water for washing purposes. Paragraph 4 was adopted without change.

Paragraph 5.

72. The Working Party adopted paragraph 5 without change.

Paragraph 6.

73. On the proposal of the United Kingdom Government member the word " compartments " was added after the words " water closet ".

Paragraph 7.

74. Paragraph 7 was adopted without change.

Paragraph 8.

75. On the proposal of the Netherlands Government member paragraph 8 was amended to provide that soil pipes and waste pipes should not pass through fresh water or drinking water tanks. A sentence was also added to paragraph 8 providing that soil pipes and waste pipes should not pass overhead in mess rooms and sleeping accommodation.

Paragraph 9.

76. Paragraph 9 was adopted without change.

Paragraph 10.

77. The words " in all vessels " were, on the proposal of the United Kingdom Government member, deleted from paragraph 10, which was adopted.

Paragraph 11.

78. Paragraph 11 was adopted without change.

Paragraph 12.

79. On the proposal of the United States Workers' member paragraph 12 was amended to provide that the compartment for hanging clothes should be separate from water closets.

Article 13.

Paragraph 1.

80. A discussion took place to decide whether paragraph 1 should prescribe a sick cabin, a sick bay or a hospital. The Working Party agreed to use the word " cabin " instead of " sick berth " as used in the original text.

81. The Working Party also agreed on the proposal of the United Kingdom Government member to add a sentence to provide for a sick bay on ships over 500 tons.

Paragraph 2.

82. The Working Party also agreed, on the suggestion of the Workers' group, to add, in paragraph 2, a reference to the Ships' Medicine Chests Recommendation, 1958, and the Medical Advice at Sea Recommendation, 1958.

Article 14.

83. The Working Party adopted Article 14 without change.

Article 15.

84. The Working Party adopted Article 15 without change.

Article 16.

Paragraph 1.

85. On the proposal of the United Kingdom Government member the Working Party agreed to add a sentence to paragraph 1 to the effect that a separate galley should be provided wherever practicable.

Paragraph 2.

86. Paragraph 2 was adopted without change.

Paragraph 3.

87. On the proposal of the Assistant Secretary-General the Working Party agreed to amend paragraph 3 to prescribe that sinks should be of rust-proof material. After discussion, the Working Party agreed to replace the word " Fresh " by the word " Drinking " before " water ".

Paragraph 4.

88. The Working Party adopted paragraph 4 without change.

New Paragraph 5.

89. The Working Party agreed, on the proposal of the Workers' group, to add a new paragraph prescribing arrangements for the preservation of fresh foodstuffs by refrigeration or other low-temperature storage space and for the storage of dry foodstuffs.

New Paragraph 6.

90. On the proposal of the French Workers' member the Working Party agreed to add a new paragraph prescribing that gas containers should not be kept in the galley.

Article 17.

91. The Working Party adopted the whole of Article 17, with the deletion of the words " bona fide ", appearing in paragraphs 2, 3 and 4, as agreed before.

Article 18.

92. The Working Party adopted Article 18 without change.

New Tonnage Measurements

93. The United Kingdom Government member indicated that in the near future tween-decked larger ships might have two gross tonnage measurements, as a result of the coming into force of recent I.M.C.O. Recommendations. It had already been decided that for purposes of safety regulations the larger tonnage figures would apply.

Adoption of Report and Proposed Conclusions

94. The Working Party unanimously adopted the report and proposed conclusions on accommodation on board fishing vessels.

Geneva, 27 October 1965.

(Signed) J. Barreto Alván,
Chairman and Reporter.

Examination by the Conference of the Report of the Working Party on Accommodation on board Fishing Vessels and of the Proposed Conclusions Annexed Thereto

At its tenth plenary sitting the Conference had before it the foregoing report, together with the proposed conclusions on accommodation on board fishing vessels.

In submitting the report and the proposed conclusions Admiral Barreto Alván (Government delegate, Peru; Chairman and Reporter of the Working Party on Accommodation on board Fishing Vessels) thanked members of the Working Party for the assistance which they had rendered him in his dual capacity as Chairman and Reporter of the Working Party. The extensive preparatory work which the Committee on Conditions of Work in the Fishing Industry had undertaken on this matter in 1962 had been brought to a full and successful conclusion in the present report. Their work would be of great benefit to fishermen everywhere.

Mr. Dekeyzer (Workers' delegate, Belgium; Vice-Chairman of the Working Party on Accommodation on board Fishing Vessels) proposed, on behalf of the Workers' group, an amendment to Article 1, paragraph 4, of the proposed conclusions to the effect that the words " and in which the crew does not live on board " should be added to this paragraph. This phrase was identical to that which had been deleted by the Working Party, at the suggestion of the United Kingdom Government delegate.

Mr. Cobley (Employers' delegate, United Kingdom) accepted the amendment proposed by the Workers' group. On behalf of the Employers' group, he proposed a further amendment to Article 1, paragraph 4, to the effect that the words " their home " should be deleted.

Mr. Wilson (Government delegate, United Kingdom) accepted the amendment proposed by the Employers' group and that proposed by the Workers' group. He considered that the words added to Article 1, paragraph 4, were superfluous, but this matter could always be raised at the forthcoming session of the International Labour Conference.

The amendments proposed by the Workers' group and the Employers' group were unanimously adopted.

Mr. Dekeyzer, on behalf of the Workers' group, thanked Admiral Barreto Alván for his guidance and assistance in bringing their discussions to a successful conclusion. The Workers' group also wished to express its gratitude to the Employers' group and the Government group for the comprehension with which they had received the views of the Workers' group.

The international instrument on accommodation on board fishing vessels, which would take the form of a Convention, would have a wide impact on the future of the fishing industry. The Workers' representatives were concerned not only with the well-being of their members

but also with the perpetuation of the fishing industry. The instrument would help to attract young men to the fishing industry, which was at present experiencing manning difficulties, and thus increase the productivity of the industry and its contribution to the well-being of mankind.

Mr. Cobley congratulated Admiral Barreto Alván on the way in which he had brought the Working Party safely through its deliberations. He also expressed the appreciation of the Employers' group for the spirit of understanding in which its views had been considered by the Workers' group and the Government group.

Mr. Wilson stated that the United Kingdom Government, whilst it accepted the report, was disappointed that length had not been adopted as the parameter instead of tonnage. He hoped that national delegations would give further consideration to this matter before the next session of the International Labour Conference, particularly since large trawlers would soon have two gross tonnages. He drew attention to the fact that in Article 10, paragraph 2, the sleeping area prescribed for vessels over 500 tons was in excess of that laid down for merchant ships in Convention No. 92. The United Kingdom Government would raise this question at the forthcoming session of the International Labour Conference.

The Report of the Working Party on Accommodation on board Fishing Vessels was adopted unanimously.

The proposed conclusions on accommodation on board fishing vessels were unanimously adopted as amended. The text of the conclusions is reproduced below.

Conclusions concerning Accommodation on board Fishing Vessels

1. There should be an international instrument concerning accommodation on board fishing vessels.

2. The international instrument should take the form of an international Convention.

3. The international instrument should include the following provisions:

PART I. GENERAL PROVISIONS

Article 1

1. This Convention applies to all sea-going, mechanically-propelled ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters and are registered in a territory for which this Convention is in force.

2. National laws or regulations shall determine what ships and boats are to be regarded as sea-going ships and boats for the purpose of this Convention.

3. This Convention does not apply to—

(a) ships and boats normally employed in fishing for sport or recreation;

(b) ships and boats of less than 75 tons: Provided that the Convention may be applied to vessels between 25 and 75 tons where the competent authority determines, after consultation with the fishing vessel owners' and fishermen's organisations, where such exist, that this is reasonable and practicable;

(c) ships and boats primarily propelled by sail but having auxiliary engines;

(d) ships and boats engaged in whaling or similar pursuits;

(e) fishery research and protection vessels.

4. The following provisions of this Convention do not apply to ships and boats which normally remain away from port for periods of less than 36 hours and in which the crew does not live on board:

Article 9, paragraph 4;

Article 10;

Article 11;

Article 12;

Article 14:

Provided that in such ships and boats adequate sanitary installations as well as messing and cooking facilities and accommodation for resting shall be provided.

5. The provisions of Part III of this Convention may be varied in the case of any ships or boats if the competent authority is satisfied, after consultation with the fishing vessel owners' and fishermen's organisations, where such exist, that the variations to be made provide corresponding advantages as a result of which the over-all conditions are no less favourable than those that would result from the full application of the provisions of the Convention; particulars of all such variations shall be communicated by the Member to the Director-General of the International Labour Office, who shall notify the Members of the International Labour Organisation.

Article 2

In this Convention—

(a) the term " fishing vessel " or " vessel " means a ship or boat to which the Convention applies;

(b) the term " tons " means gross registered tons;

(c) the term " officer " means a person other than a master ranked as an officer by national laws or regulations, or, in the absence of any relevant laws or regulations, by collective agreement or custom;

(d) the term " rating " means a member of the crew other than an officer;

(e) the term " crew accommodation " includes such sleeping rooms, mess rooms and sanitary accommodation as are provided for the use of the crew;

(f) the term " prescribed " means prescribed by the national laws or regulations, or by the competent authority;

(g) the term " approved " means approved by the competent authority;

(h) the term " re-registered " means re-registered on the occasion of the simultaneous change in the territory of registration and ownership of the vessel.

Article 3

1. Each Member for which this Convention is in force undertakes to maintain in force laws or regulations which ensure the application of the provisions of Parts II, III and IV of this Convention.

2. The laws or regulations shall—

(a) require the competent authority to bring them to the notice of all persons concerned;

(b) define the persons responsible for compliance therewith;

(c) provide for the maintenance of a system of inspection adequate to ensure effective enforcement;

(d) prescribe adequate penalties for any violation thereof;

(e) require the competent authority to consult the fishing vessel owners' and fishermen's organisations, where such exist, in regard to the framing of regulations, and to collaborate as far as practicable, with such parties in the administration thereof.

Part II. Planning and Control of Crew Accommodation

Article 4

Before the construction of a fishing vessel is begun, and before the crew accommodation of an existing vessel is altered or reconstructed, detailed plans of, and information concerning, the accommodation shall be submitted to the competent authority for approval.

Article 5

On every occasion when—

(a) a fishing vessel is registered or re-registered;

(b) the crew accommodation of a vessel has been substantially altered or reconstructed; or

(c) complaint has been made to the competent authority in the prescribed manner and in time to prevent any delay to the vessel by a recognised trade union of fishermen representing all or part of the crew or by a prescribed number or proportion of the members of the crew of the vessel that the crew accommodation is not in compliance with the terms of this Convention;

the competent authority shall inspect the vessel and satisfy itself that the crew accommodation complies with the requirements of the laws and regulations.

Part III. Crew Accommodation Requirements

Article 6

1. The location, means of access, structure and arrangement in relation to other spaces of crew accommodation shall be such as to ensure adequate security, protection against weather and sea and insulation from heat or cold, undue noise or effluvia from other spaces.

2. Emergency escapes shall be provided from all crew accommodation spaces, as necessary.

3. Every effort shall be made to exclude direct openings into sleeping rooms from fish holds and fish-meal rooms, from spaces for machinery, from galleys, lamp and paint rooms or from engine, deck and other bulk store rooms, drying rooms, communal wash places or water closets. That part of the bulkhead separating such places from sleeping rooms and external bulkheads shall be efficiently constructed of steel or other approved substance and shall be watertight and gastight.

4. External bulkheads of sleeping rooms and mess rooms shall be adequately insulated. All machinery casings and all boundary bulkheads of galleys and other spaces in which heat is produced shall be adequately insulated when there is a possibility of resulting heat effects in adjoining accommodation or passageways. Care should also be taken to provide protection from heat effects of steam and/or hot-water service pipes.

5. Internal bulkheads shall be of approved material which is not likely to harbour vermin.

6. Sleeping rooms, mess rooms, recreation rooms and alleyways in the crew accommodation space shall be adequately insulated to prevent condensation or over-heating.

7. Main steam and exhaust pipes for winches and similar gear shall, whenever technically possible, not pass through crew accommodation or through alleyways leading to crew accommodation; where they do pass through such accommodation or alleyways they shall be adequately insulated and encased.

8. Inside panelling or sheathing shall be of material with a surface easily kept clean.

9. The competent authority shall decide to what extent fire-prevention or fire-retarding measures shall be required to be taken in the construction of the accommodation.

10. The wall surface and deckheads in sleeping rooms and mess rooms shall be capable of being easily kept clean and, if painted, shall be light in colour; lime wash must not be used.

11. The wall surface shall be renewed or restored as necessary.

12. The decks in all crew accommodation shall be of approved material and construction and shall provide a surface impervious to damp and easily kept clean.

13. Overhead exposed decks over crew accommodation shall be sheathed with wood or equivalent insulation.

14. Where the floorings are of composition the joinings with sides shall be rounded to avoid crevices.

15. Sufficient drainage shall be provided.

16. All practicable measures shall be taken to protect crew accommodation against the admission of flies and similar insects.

Article 7

1. Sleeping rooms and mess rooms shall be adequately ventilated.

2. The system of ventilation shall be controlled so as to maintain the air in a satisfactory condition and to ensure a sufficiency of air movement in all conditions of weather and climate.

3. Vessels regularly engaged on voyages in the tropics and other areas with similar climatic conditions shall, as required by such conditions, be equipped with both mechanical means of ventilation and electric fans: Provided that one only of these means need be adopted in spaces where this ensures satisfactory ventilation.

4. Vessels engaged elsewhere shall be equipped with either mechanical means of ventilation or electric fans. The competent authority may exempt vessels normally employed in the cold waters of the northern or southern hemispheres from this requirement.

5. Power for the operation of the aids to ventilation required by paragraphs 3 and 4 shall, when practicable, be available at all times when the crew is living or working on board and conditions so require.

Article 8

1. An adequate system of heating the crew accommodation shall be provided as required by climatic conditions.

2. The heating system shall, when practicable, be in operation at all times when the crew is living or working on board and conditions require its use.

3. Heating by means of open fires shall be prohibited.

4. The heating system shall be capable of maintaining the temperature in crew accommodation at a satisfactory level under normal conditions of weather and climate likely to be met with on service; the competent authority shall prescribe the standard to be provided.

5. Radiators and other heating apparatus shall be fitted with safety devices and shall be so placed and, where necessary, insulated as to avoid risk of fire or danger or discomfort to the occupants.

Article 9

1. All crew spaces shall be adequately lighted. The minimum standard for natural lighting in living rooms shall be such as to permit a person with normal vision to read on a clear day an ordinary newspaper in any part of the space available for free movement. When it is not possible to provide adequate natural lighting, artificial lighting of the above minimum standard shall be provided.

2. As far as practicable, in all vessels electric lights shall be provided in the crew accommodation. If there are not two independent sources of electricity for lighting, additional lighting shall be provided by properly constructed lamps or lighting apparatus for emergency use.

3. Artificial lighting shall be so disposed as to give maximum benefit to the occupants of the room.

4. Adequate reading light shall be provided for every berth in addition to the normal lighting of the cabin.

Article 10

1. Sleeping rooms shall be situated amidships or aft; the competent authority may, in particular cases, if the size, type or intended service of the vessel renders any other location unreasonable or impracticable, permit the location of sleeping rooms in the forepart of the vessel, but in no case forward of the collision bulkhead.

2. The floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than—

In vessels of			25	tons	but	below	50	tons:	0.5	m^2	(5.4	ft^2)
,,	,,	,,	50	,,	,,	,,	100	,,	0.75	,,	(8.1	,,)
,,	,,	,,	100	,,	,,	,,	250	,,	0.9	,,	(9.7	,,)
,,	,,	,,	250	,,	,,	,,	500	,,	1.0	,,	(10.8	,,)
,,	,,	,,	500	,,	or	over:			1.3	,,	(14.0	,,)

3. The clear head room in the crew sleeping rooms shall, wherever possible, be not less than 6 feet 3 inches (190 centimetres).

4. There shall be a sufficient number of sleeping rooms to provide a separate room or rooms for each department: Provided that the competent authority may relax this requirement in the case of small vessels.

5. The number of persons allowed to occupy sleeping rooms shall not exceed the following maxima:

(a) officers: one person per room wherever possible, and in no case more than two;

(b) ratings: two or three persons per room wherever possible, and in no case more than the following:

(i) in vessels of 250 tons and over, not more than four men;

(ii) in vessels under 250 tons, not more than six men:

Provided that the competent authority may permit exceptions in particular cases, if the size, type or intended service of the vessel make these requirements unreasonable or impracticable.

6. The maximum number of persons to be accommodated in any sleeping room shall be indelibly and legibly marked in some place in the room where it can conveniently be seen.

7. Members of the crew shall be provided with individual berths.

8. Berths shall not be placed side by side in such a way that access to one berth can be obtained only over another.

9. Berths shall not be arranged in tiers of more than two; in the case of berths placed along the vessel's side, there shall be only a single tier where a sidelight is situated above a berth.

10. The lower berth in a double tier shall not be less than 12 inches (30 centimetres) above the floor; the upper berth shall be placed approximately midway between the bottom of the lower berth and the lower side of the deckhead beams.

11. The minimum inside dimensions of a berth shall wherever practicable be 6 feet 3 inches by 2 feet 3 inches (190 centimetres by 68 centimetres).

12. The framework and the lee-board, if any, of a berth shall be of approved material, hard, smooth and not likely to corrode or to harbour vermin.

13. If tubular frames are used for the construction of berths, they shall be completely sealed and without perforations which would give access to vermin.

14. Each berth shall be fitted with a spring bottom or a spring mattress and with a mattress of approved material. Stuffing of straw or other material likely to harbour vermin shall not be used.

15. When one berth is placed over another a dust-proof bottom of wood, canvas or other suitable material shall be fitted beneath the spring bottom of the upper berth.

16. Sleeping rooms shall be so planned and equipped as to ensure reasonable comfort for the occupants and to facilitate tidiness.

17. The furniture shall include a clothes locker for each occupant fitted with a hasp for a padlock. The competent authority shall ensure that such locker is as commodious as practicable.

18. Each sleeping room shall be provided with a table or desk, which may be of the fixed dropleaf or slide-out type, and with comfortable seating accommodation as necessary.

19. The furniture shall be of smooth, hard material not liable to warp or corrode, or to harbour vermin.

20. The furniture shall include a drawer or equivalent space for each occupant which shall, wherever practicable, be not less than 2 cubic feet (0.056 cubic metre).

21. Sleeping rooms shall be fitted with curtains for the sidelights.

22. Sleeping rooms shall be fitted with a mirror, small cabinets for toilet requisites, a book rack and a sufficient number of coat hooks.

23. As far as practicable, berthing of crew members shall be so arranged that watches are separated and that no day-men share a room with watch-keepers.

Article 11

1. Mess-room accommodation separate from sleeping quarters shall be provided in all vessels carrying a crew of more than ten persons. Wherever possible it shall be provided also in vessels carrying a smaller crew; if, however, this is impracticable, the mess room may be combined with the sleeping accommodation.

2. In vessels engaged in high-sea fishing and carrying a crew of more than 20, separate mess-room accommodation may be provided for master and officers.

3. The dimensions and equipment of each mess room shall be sufficient for the number of persons likely to use it at any one time.

4. Mess rooms shall be equipped with tables and approved seats sufficient for the number of persons likely to use them at any one time.

5. Mess rooms shall be as close as practicable to the galley.

6. Where available pantries are not accessible to mess rooms, adequate lockers for mess utensils and proper facilities for washing utensils shall be provided.

7. The tops of tables and seats should be of damp-resisting material, without cracks and capable of being easily cleaned.

8. Wherever practicable mess rooms shall be planned, furnished, and equipped to give recreational facilities.

Article 12

1. Sufficient sanitary accommodation, including wash basins and tub and/or shower baths, shall be provided in all vessels.

2. National laws or regulations shall prescribe the allocation of water closets to various groups, subject to the provisions of paragraph 3 of this Article.

3. Sanitary facilities for all members of the crew who do not occupy rooms to which private facilities are attached shall, wherever practicable, be provided for each group of the crew on the following scale:

(a) one tub and/or shower bath for every eight persons or less;

(b) one water closet for every eight persons or less;

(c) one wash basin for every six persons or less:

Provided that when the number of persons in a group exceeds an even multiple of the specified number by less than one-half of the specified number, this surplus may be ignored for the purpose of this paragraph.

4. Cold fresh water and hot fresh water or means of heating water shall be available in all communal wash places. The competent authority, in consultation with the fishing vessel owners' and fishermen's organisations, where such exist, may fix the minimum amount of fresh water which the fishing vessel owner may be required to supply per man per day.

5. Wash basins and tub baths shall be of adequate size and constructed of approved material with a smooth surface not liable to crack, flake or corrode.

6. All water closet compartments shall have ventilation to the open air, independently of any other part of the accommodation.

7. All water closets shall be of an approved pattern and provided with an ample flush of water, available at all times and independently controllable.

8. Soil pipes and waste pipes shall be of adequate dimensions and shall be so constructed as to minimise the risk of obstruction and to facilitate cleaning. They shall not pass through fresh water or drinking water tanks; neither should they, if practicable, pass overhead in mess rooms or sleeping accommodation.

9. Sanitary accommodation intended for the use of more than one person shall comply with the following requirements:

(a) floors shall be of approved durable material, easily cleaned and impervious to damp, and should be properly drained;

(b) bulkheads shall be of steel or other approved material and shall be watertight up to at least 9 inches (23 centimetres) above the level of the deck;

(c) the accommodation shall be sufficiently lighted, heated and ventilated;

(d) water closets shall be situated convenient to, but separate from, sleeping rooms and washrooms, without direct access from the sleeping rooms or from a passage between sleeping rooms and water closets to which there is no other access; Provided that this requirement shall not apply where a water closet is located in a compartment between two sleeping rooms having a total of not more than four persons;

(e) where there is more than one water closet in a compartment, they shall be sufficiently screened to ensure privacy.

10. Facilities for washing and drying clothes shall be provided on a scale appropriate to the size of the crew and the normal duration of the voyage.

11. The facilities for washing clothes shall include suitable sinks, which may be installed in wash rooms, if separate laundry accommodation is not reasonably practicable, with an adequate supply of cold fresh water and hot fresh water or means of heating water.

12. The facilities for drying clothes shall be provided in a compartment separate from sleeping rooms, mess rooms and water closets, adequately ventilated and heated and equipped with lines or other fittings for hanging clothes.

Article 13

1. Wherever possible, an isolated cabin shall be provided for a diseased or injured member of the crew. On ships of 500 tons or more there shall be a sick bay.

2. An approved medicine chest with readily understandable instructions shall be carried in every vessel which does not carry a doctor. In this connection the competent authority shall give consideration to the Ships' Medicine Chests Recommendation, 1958, and the Medical Advice at Sea Recommendation, 1958.

Article 14

Sufficient and adequately ventilated accommodation for the hanging of oilskins shall be provided outside but convenient to the sleeping rooms.

Article 15

Crew accommodation shall be maintained in a clean and decently habitable condition and shall be kept free of goods and stores not the personal property of the occupants.

Article 16

1. Satisfactory cooking equipment shall be provided on board and shall, wherever practicable, be fitted in a separate galley.

2. The galley shall be of adequate dimensions for the purpose and shall be well lighted and ventilated.

3. The galley shall be equipped with cooking utensils, the necessary number of cupboards and shelves, sinks and dish racks of rust-proof material and satisfactory drainage. Drinking water shall be supplied to the galley by means of pipes. Where hot water is not supplied to the galley, an apparatus for heating water shall be provided.

4. Galleys shall be provided with suitable facilities for the preparation of hot drinks for the crew at all times.

5. A provision store room of adequate capacity shall be provided which shall be capable of being kept dry, cool and well ventilated in order to avoid deterioration of the stores. Where necessary refrigerators or other low-temperature storage space shall be provided.

6. Where butane or propane gas is used for cooking purposes in galleys the gas containers shall be kept on the open deck.

PART IV. APPLICATION TO EXISTING SHIPS

Article 17

1. Subject to the provisions of paragraphs 2, 3 and 4 of this Article, this Convention applies to vessels the keels of which are laid down subsequent to the coming into force of the Convention for the territory of registration.

2. In the case of a vessel which is fully complete on the date of the coming into force of this Convention for the territory of registration and which is below the standard set by Part III of this Convention, the competent authority may, after consultation with the fishing vessel owners' and fishermen's organisations, where such exist, require such alterations for the purpose of bringing the vessel into conformity with the requirements of the Convention as it deems possible having regard to the practical problems involved, to be made when—

(a) the vessel is re-registered;

(b) substantial structural alterations or major repairs are made to the vessel as a result of long-range plans and not as a result of an accident or an emergency.

3. In the case of a vessel in the process of building and/or reconversion on the date of the coming into force of this Convention for the territory of registration, the competent authority may, after consultation with the fishing vessel owners' and fishermen's organisations, where such exist, require such alterations for the purpose of bringing the ship into conformity with the requirements of the Convention as it deems possible having regard to the practical problems involved; such alterations shall constitute final compliance with the terms of this instrument, unless and until the vessel be re-registered.

4. In the case of a vessel, other than such a vessel as is referred to in paragraphs 2 and 3 of this Article or a vessel to which the provisions of this Convention were applicable while she was under construction, being re-registered in a territory after the date of the coming into force of this Convention for that territory, the competent authority may after consultation with the fishing vessel owners' and fishermen's organisations, where such exist, require such alteration for the purpose of bringing the vessel into conformity with the requirements of the Convention as it deems possible having regard to the practical problems involved; such alterations shall constitute final compliance with the terms of this Convention, unless and until the vessel is again re-registered.

Article 18

Nothing in this Convention shall affect any law, award, custom or agreement between fishing vessel owners and fishermen which ensures more favourable conditions than those provided for by this Convention.

* * *

First Report of the Working Party on Vocational Training and Certificates of Competency

Composition and Officers

1. The Working Party on Vocational Training and Certificates of Competency was composed as follows:

Government members:

Titular members:

France: Mr. Doguet.
Federal Republic of Germany: Mr. Dahnen.
Philippines: Mr. Bengzon.
United Kingdom: Mr. Corley.

Deputy members:

Belgium: Mr. Vandensteen.
Canada: Mr. Simard.
Japan: Mr. Okada.
Netherlands: Mr. Ouwehand.

Employers' members:

Titular members:

Mr. Boza Barrios (Peru).
Alternate: Mr. Fernández Stoll (Peru).
Mr. Cobley (United Kingdom).
Mr. Kranenburg (Netherlands).
Mr. Ruthford (United States).

Deputy members:

Mr. Fernández Sánchez (Spain).
Mr. Genschow (Federal Republic of Germany).
Mr. Vindenes (Norway).

Workers' members:

Titular members:

Mr. Dekeyzer (Belgium).
Mr. Gruenais (France).
Mr. Head (United Kingdom).
Mr. Wiemers (Federal Republic of Germany).

Deputy members:

Mr. Harm (Canada).
Mr. Nes (Norway).
Captain Sekine (Japan).

2. The Working Party was chaired by Mr. Rice (Government member, United States) with Mr. Cobley (Employers' member, United Kingdom) as Employers' Vice-Chairman and Mr. Wiemers (Workers' member, Federal Republic of Germany) as Workers' Vice-Chairman. The Reporter was Mr. Corley (Government member, United Kingdom).

3. The Working Party decided to consider, in the light of the comments and suggestions that had been made in the course of the general discussion on the vocational training of fishermen in the Conference, the proposed conclusions on the training of fishermen drafted by the I.L.O.

Examination of Proposed Conclusions on the Training of Fishermen

Paragraph 1

4. The Working Party agreed that there should be an international instrument concerning the training of fishermen.

Paragraph 2

5. The Workers' members proposed that the instrument should take the form of a Convention in view of the importance of vocational training to fishermen at the present time. The Employers' members were firmly opposed to the adoption of a mandatory instrument on vocational training in the form in which it had been proposed by the Office; the instrument should be a Recommendation which should set targets towards which the various countries should aim. The Working Party decided that the instrument should take the form of a Recommendation after the Workers' members, in the interest of obtaining a comprehensive and detailed instrument on vocational training, had agreed to accept a Recommendation.

Paragraph 3

6. A Government member expressed hesitation at the idea expressed in Paragraph 3 that the vocational training of fishermen should be of a standard equivalent to that provided for other trades, occupations and industries in the country. The Working Party felt, however, that it was necessary to retain this provision to emphasise the need for bringing up the standard of training in the fishing industry to the general standard of training prevailing in the various countries.

Paragraph 4

Clause (a).

7. The Working Party accepted a proposal to amplify clause *(a)* so as to refer to improving the efficiency of the fishing industry as a basic objective of training.

Clause (b).

8. The Working Party adopted clause *(b)* as drafted.

Clause (c).

9. The Working Party adopted clause *(c)* as drafted.

Clause (d).

10. The Workers' members supported this provision but felt that it should be further amplified and strengthened to emphasise that trained personnel should be given priority over untrained personnel in employment placing. The Employers' members stated that they could not guarantee employment to fishermen simply because they had undergone a course of training. People with many years' experience in fishing who had not undergone formal training had an equal claim to consideration for obtaining employment. The Employers' members were, however, prepared to facilitate and assist trainees in obtaining employment in the fishing industry. The Working Party adopted clause *(d)* as drafted.

New Clause (e).

11. To meet the view expressed by various delegates in plenary sittings the Working Party decided to add a new provision as follows: " to assist trainees in reaching their highest productive and earning capacity ".

Paragraph 5

12. To meet the views expressed by delegates in plenary sitting as well as in the Working Party, a modification was made to exclude from the coverage of the proposed instrument research and fishery protection vessels as well as individuals fishing for sport or recreation.

Paragraph 6

13. The Working Party was in agreement with the definitions of skipper, mate and engineer as proposed in the Office text. The Employers' members and a number of Government members expressed misgivings regarding the definition of able fishermen. After long discussion the Working Party decided to defer consideration of Paragraph 6 until the discussion on the question of certificates of competency. The Working Party noted the request

made in plenary sitting for amplification of the term " navigation " but considered that in the circumstances the text should remain as drafted on this point.

Paragraph 7

14. Paragraph 7 was adopted as drafted.

Paragraph 8

15. Paragraph 8 was adopted as drafted.

Paragraph 9

16. The Working Party considered a proposal made in plenary sitting to the effect that provision should be made for collaboration not only with neighbouring countries but also with other countries of the region. The Working Party felt that there might be cases where countries outside the region concerned would be involved in collaboration concerning the development of common fishermen's training schemes and decided to replace the word " neighbouring " by " other " countries.

Paragraph 10

17. The Working Party considered several amendments, including two made by delegates in plenary sitting. A proposal to insert the words " whenever possible " in the first sentence was not accepted as it was felt that it would be undesirable to weaken the text on this point. Another proposal to make reference to bodies and individuals having an intimate knowledge of vocational training of fishermen in the second sentence was adopted. The Working Party also accepted a proposal to refer to the role which should be played by specialised fishery research or development institutions in developing countries in connection with the establishment of a national vocational training programme for fishermen. A proposal to insert the words " whenever possible " in the final sentence was accepted.

Paragraph 11

18. Paragraph 11 was adopted as drafted.

Paragraph 12

Clause (a).

19. A proposal made in plenary sitting for fishery research institutions to make information available to other bodies in addition to training centres was incorporated in the text.

Clause (b).

20. Clause *(b)* was adopted as drafted.

Clause (c).

21. A Government member expressed hesitation about this provision, which he felt might give rise to difficulties in his country, where the Constitution did not allow preference to be given to any particular persons in employment placement. He accepted, however, that the wording was not such as to contain any obligation to give preference to trained fishermen in employment placement, and the Working Party then adopted clause *(c)* as drafted.

Clause (d).

22. Clause *(d)* was adopted as drafted.

Clause (e).

23. Clause *(e)* was adopted as drafted.

Paragraph 13

Subparagraph (1).

24. The Working Party considered a proposal made in plenary sitting for a reference to be included to the potential contribution—particularly in developing countries—which the fishing industry might make to economic development if proper training schemes were introduced. The Working Party felt that this idea was expressed elsewhere in the conclusions, n particular in Paragraph 4, and therefore did not accept the proposal but adopted the text as proposed.

Subparagraph (2).

25. Subparagraph (2) was adopted as drafted.

Subparagraph (3).

26. The Working Party considered a proposal made in plenary sitting to the effect that training in publicly operated training centres could not always be given entirely without charge to the trainee. The Workers' members expressed strong opposition to this proposal and the Working Party accepted the text as drafted.

Paragraph 14

Subparagraph (1).

27. The Working Party adopted subparagraph (1) with the addition of the word " seamanship " in clause *(d)*.

Subparagraph (2).

28. The Working Party adopted subparagraph (2) as drafted.

Paragraph 15

29. The Working Party adopted a proposal to make it clear that the subjects to be included in the curricula of the various training programmes for fishermen should include only such as were appropriate for the functions to be exercised by the trainee.

Clause (a).

30. A proposal to make reference to repair of electronic equipment in clause *(a)* was not accepted, the view of the Working Party being that fishermen should not be required to repair such equipment which demanded very highly specialised servicing. The Working Party adopted the text as proposed.

Clause (b).

31. The Working Party adopted clause *(b)* as drafted.

Clauses (c) *and* (d).

32. The Working Party considered a proposal made in plenary sitting to the effect that specific reference should be made in clause *(c)* to methods of processing fishing products on board fishing vessels wherever fishermen may be engaged in such activities. The Working Party felt that this proposal was fully covered under the present wording.

33. The Working Party, however, divided the clause into two clauses, namely *(c)* and *(d)*, the remaining clauses being relettered accordingly.

Clause (e) *(Formerly Clause* (d)*)*.

34. A proposal made in plenary sitting to delete reference to merchant vessels in clause *(e)* was accepted and the words " or other equipment " were inserted after the word " engines ".

Clause (f) *(Formerly Clause* (e)*)*.

35. The Working Party adopted clause *(f)* as drafted.

Clause (g) *(Formerly Clause* (f)*).*

36. A proposal to insert a reference to fire fighting was included in clause *(g)*.

Clause (h) *(Formerly Clause* (g)*).*

37. The Working Party adopted clause *(h)* as drafted.

Clause (i) *(Formerly Clause* (h)*).*

38. The Working Party adopted clause *(i)* as drafted.

Clause (j) *(Formerly Clause* (i)*).*

39. The Working Party adopted clause *(j)* as drafted.

Clause (k) *(Formerly Clause* (j)*).*

40. The Working Party adopted clause *(k)* as drafted.

Clause (l) *(Formerly Clause* (k)*).*

41. The Working Party adopted clause *(l)* as drafted.

Clause (m) *(Formerly clause* (l)*).*

42. The Working Party adopted clause *(m)* as drafted.

Paragraph 16

43. The Working Party considered certain proposals relating in particular to the question of able fishermen but decided to defer consideration of Paragraph 16 to the discussion concerning fishermen's certificates of competency.

Paragraph 17

Subparagraph (1).

44. The Working Party adopted subparagraph (1) as drafted.

Subparagraph (2).

45. Various members expressed strong hesitation about the need for giving college-level training to fishermen, while others emphasised that this was the practice in their countries. The Working Party agreed to qualify subparagraph (2) by adding at the beginning the words " Where appropriate to the vessels in use " so as to make it clear that the skippers of smaller fishing boats did not require college-level training.

Paragraph 18

Clause (a).

46. The Working Party adopted clause *(a)* as drafted.

Clause (b).

47. The Working Party adopted clause *(b)* as drafted.

Clause (c).

48. The Working Party adopted clause *(c)* as drafted.

Clause (d).

49. The proposal was made to delete clause *(d)* on the grounds that it enabled countries to reduce the period of training of fishermen in cases of strong demand for manpower for the fishing industry to a level which was inconsistent with the standards required. Some members emphasised the importance of the provision, and the Working Party agreed to retain it with the addition of the words " subject to the maintenance of adequate standards of training ".

Paragraph 19

Subparagraph (1).

50. The Working Party adopted subparagraph (1) as drafted.

Subparagraph (2).

51. The Working Party adopted subparagraph (2) as drafted.

Subparagraph (3).

52. The Working Party adopted subparagraph (3) as drafted.

New Subparagraph (4).

53. The Working Party decided to add a new subparagraph (4) in order to emphasise the need for teaching staff to possess an aptitude for teaching and to receive training in teaching techniques.

Paragraph 20

54. The Working Party decided to qualify this provision by adding the words " in so far as this is appropriate to the general conditions in the particular country ".

Paragraph 21

55. The Working Party adopted paragraph 21 as drafted.

Paragraph 22

Subparagraph (1).

56. The Working Party adopted subparagraph (1) as drafted with the addition of the following words in clause *(b)*: " and in making the latter where appropriate ".

Subparagraph (2).

57. The Working Party adopted subparagraph (2) as drafted.

Paragraph 23

58. The Working Party adopted Paragraph 23 as drafted, with a slight amendment to indicate that the training programmes enumerated in the paragraph could be given separately.

Paragraph 24

59. Various suggestions for additions to or redrafting of the text were considered. The Workers' members emphasised the desirability of employers' releasing their fishermen for training periods ashore. During short-term training courses fishermen, including share fishermen, should receive payments which enabled them to maintain themselves and their families at a level similar to that which they enjoyed when working. The Employers' members stated that they could not agree to the present wording, under which they were obliged to release fishermen who asked for time off to attend a training course. They also felt that they could not pay fishermen full wages for the periods of attendance of short-term training courses. There was also the difficulty of determining the appropriate wage, particularly for share fishermen. A number of Government members referred to the various payments and subsistence allowances which were available in their countries to trainees during their training. The Working Party finally agreed that Paragraph 24 should be redrafted as follows:

(1) All appropriate measures should be taken to enable working fishermen to attend short courses ashore.

(2) Working fishermen should receive adequate financial compensation for the periods in which they attend short-term training courses.

There was general agreement that the provisions of this paragraph applied to working fishermen only and not to entrants to the industry.

Paragraph 25

60. The Working Party considered a proposal to qualify this provision to take into account the position in the developing countries and agreed to substitute the word " should " in the third line by the word " may ".

Clause (a).

61. The Working Party adopted clause *(a)* as drafted.

Clause (b).

62. The Working Party adopted clause *(b)* as drafted.

New Clause (c).

63. The Working Party agreed to add a new clause which would refer to " periodic visits of research workers and extension officers to fishing areas ".

Paragraph 26

64. A proposal to incorporate in Paragraph 26 a reference to the need that before attending a training course trainees should have sea experience was not accepted as it was contrary to the practice followed in a number of countries, and the Working Party adopted the provision as drafted.

Paragraph 27

Subparagraph (1).

65. The Working Party adopted subparagraph (1) as drafted.

Subparagraph (2).

66. The Working Party adopted subparagraph (2) as drafted, with the addition of the word " seamanship ".

Subparagraph (3).

67. The Working Party adopted subparagraph (3) as drafted.

Subparagraph (4).

68. The Working Party adopted subparagraph (4) as drafted.

Paragraph 28

69. The Working Party adopted Paragraph 28 as drafted.

Paragraph 29

70. The Working Party adopted Paragraph 29 as drafted.

Paragraph 30

Subparagraph (1).

71. On the basis of a proposal made in plenary sitting the Working Party decided to add a specific reference to developing countries in subparagraph (1).

Subparagraph (2).

72. The Working Party adopted subparagraph (2) as drafted.

ADOPTION OF REPORT AND PROPOSED CONCLUSIONS

73. The Working Party unanimously adopted its first report and certain conclusions concerning the training of fishermen. The Working Party will present a second report relating to the other points for discussion referred to it by the Conference.

Geneva, 25 October 1965.

(Signed) T. D. RICE,
Chairman.
P. M. S. CORLEY,
Reporter.

Second Report of the Working Party on Vocational Training and Certificates of Competency

COMPOSITION

1. The following changes were made in the composition of the Working Party for the discussion of the item on certificates of competency:

Government members :

Titular members :

France: Mr. WARASSE.

Alternate: Mr. DOGUET.

Federal Republic of Germany: Mr. FETTBACK.

2. The Working Party considered the proposed conclusions concerning fishermen's certificates of competency as drafted by the I.L.O. and the various suggestions put forward in plenary sitting on this question. The Working Party also discussed the two points in the conclusions concerning the training of fishermen which had been postponed for consideration under the item on certificates of competency.

3. The report comments only on those points on which the Working Party as a whole or members of it desired to clarify their position.

EXAMINATION OF OUTSTANDING QUESTIONS PERTAINING TO THE PROPOSED CONCLUSIONS CONCERNING THE TRAINING OF FISHERMEN

4. The Working Party held a long discussion on the desirability of including in the text on certificates of competency provisions covering able fishermen. The Workers' members strongly emphasised the advantages of a certification system for this occupation: it would help to maintain standards of fishing skills, improve the efficiency of fishermen, foster the development and improvement of fishermen's vocational training programmes by setting goals for training schemes, and promote safety at sea. They pointed out that a number of countries already issued certificates and diplomas to various categories of skilled fishermen.

5. The Employers' members were opposed to a mandatory provision which would require countries to introduce a certificate of competency for able fishermen similar to those issued to deck and engineer officers in view of the diverse nature of the fishing industry, of fishing operations and fishing vessels which demand different skills of the crews of fishing boats.

6. The Government members expressed strong hesitation at introducing a certificate of competency for able fishermen to be issued under governmental authority, on the grounds that the justification for such a certificate rested on matters concerning status and pay rather than on safety. They referred to the diplomas and certificates issued by various bodies, including in particular training institutions, and emphasised that recognition of the skill possessed by a fisherman was given also in other ways, as, for example, in collective agreements. The Working Party agreed that the certification of able fishermen should be dealt with in the conclusions concerning the training of fishermen.

Paragraph 6

7. The Working Party, having accepted the definitions of skipper, mate and engineer as proposed in the draft conclusions, examined a text which would cover the term " fisherman ". The Working Party agreed to refer in the provision to " skilled " instead of " able " fisherman and to accept the following definition: " any experienced member of the deck crew working on board a fishing vessel, participating in the operation of the vessel, pre-

paring gear for fishing, catching fish, loading catch and processing it, and maintaining and repairing nets or other fishing equipment ".

Paragraph 16

8. The Working Party accepted a text for Paragraph 16 based on a draft produced by the Reporter in the light of the ideas expressed in the draft regarding the certification of able fishermen.

EXAMINATION OF PROPOSED CONCLUSIONS CONCERNING FISHERMEN'S CERTIFICATES OF COMPETENCY

Articles 1 and 2

9. The Working Party agreed that there should be an international instrument concerning fishermen's certificates of competency and that this should take the form of a Convention. The United States Government and Employers' members stated that they could not accept a Convention but were in favour of a Recommendation.

Article 3

10. The Working Party adopted Article 3 as drafted.

Article 4

11. The Working Party agreed to exclude from Article 4 " ships and boats engaged in fishing for sport or recreation " and " fishery research and protection vessels ". The United States Government member submitted a proposal to increase the minimum tonnage from 25 to 75 gross registered tons. This was carefully considered but the Working Party decided, in the light of the position in law and in practice in the majority of countries, to retain the tonnage as drafted. The United States Government and Employers' members emphasised that they could not accept this tonnage, as regulations in the United States required the carrying of certificated officers only on board vessels of over 200 gross registered tons. Reservations were also expressed by the Government and Employers' members of Canada, who were prepared to accept 100 gross tons, and the Netherlands Government member, who could accept 50 gross tons.

Article 5

12. The Working Party adopted Article 5 as drafted with the deletion of the reference to " able fishermen ", it being understood that member States were not obliged to use the terms set out in this Article and that a member State could use different titles to distinguish different grades of certificates.

Article 6

13. The Working Party adopted Article 6 as drafted.

Article 7

Paragraph 1, Clause (a).

14. The Working Party adopted clause *(a)* as drafted, it being understood that the term " skipper " should be taken to mean any person having command or charge of a fishing vessel.

Clause (b).

15. The Working Party accepted a proposal to insert a reference to " areas " in clause *(b)* in order to clarify the powers of the competent authorities as regards the application of this

provision to coastal fishing. Other proposals to raise the tonnage requirement to 150 and 200 gross tons were not accepted as it was felt that the provision as drafted provided sufficient flexibility to exclude vessels over 100 gross registered tons, engaged in inshore and coastal fishing, which in many countries were not required to carry both a skipper and a certificated mate. The Government member of Japan and the Employers' members of Spain and the United States entered general reservations as regards the application of this provision in their countries.

Clause (c).

16. The Working Party considered a proposal to delete a reference to a specific horsepower requirement in clause *(c)* and agreed that the requirement concerning engine power should be determined by the competent authority in each country after consultation with fishing vessel owners' and fishermen's organisations. The Working Party also agreed to make provision for the mate to act as engineer in appropriate cases and on condition that he also holds an engineer's certificate.

Paragraph 2.

17. The Working Party decided to add a reference to " area " to paragraph 2 and to specify that the various grades of certificates for skippers, mates or engineers should be determined by national laws and regulations.

New Paragraph 3.

18. The Working Party also accepted a new provision which would enable the competent authorities in individual cases to permit a fishing vessel to put to sea without the full complement of certificated personnel in certain clearly defined cases.

Article 8

19. The Working Party accepted a proposal to reduce the minimum age for obtaining a certificate of skipper from 21 to 20 years and to reduce from 19 to 18 years the age requirement for obtaining a certificate as skipper in a fishing vessel engaged in coastal fishing and as engineer in a fishing vessel of less than 500 h.p. The French Government member entered a reservation in respect of the proviso of Article 8 which he considered did not provide sufficient flexibility for application to conditions in France.

Article 9

Paragraph 1.

20. The Working Party adopted paragraph 1 as drafted, with the deletion of the word " able " before " fisherman ".

Paragraph 2.

21. The Working Party considered a proposal to render paragraph 2 more flexible and adopted wording to that effect.

Article 10

22. A proposal to make Article 10 more flexible was accepted by the Working Party, and reference to able fishermen was deleted. The French Government member entered a reservation in respect of this provision, which could not be applied to conditions in his country.

Article 11

23. The Working Party accepted a proposal to reduce the qualifying period of sea service required for obtaining an engineer's certificate by a certificated skipper or mate.

Article 12

24. The Working Party adopted Article 12 as drafted. The Government member of Japan entered a general reservation in respect of the period of 12 months.

Article 13

25. The Working Party considered a proposal to make a distinction between the nautical and purely fishing subjects which should be covered by certification examinations for skippers and mates and agreed that the inclusion of fishing subjects should not be made mandatory. The fishing subjects are set out in Article 14 of the proposed conclusions. The Working Party also agreed to certain minor modifications.

New Article 14

26. The Working Party agreed to insert a new Article 14 concerning fishing subjects as a result of the decision to divide the list of subjects to be covered by deck officers' examination requirements, as noted in paragraph 25 of this report.

Article 15 (Formerly Article 14)

27. The Working Party adopted Article 15 as drafted.

Article 16 (Formerly Article 15)

28. The Working Party accepted a proposal to delete clause *(c)* as drafted, which provided that Members should make arrangements for mutual assistance in the enforcement of national laws or regulations giving effect to the provisions of the instrument on the grounds that this might lead to confusion and difficulties between contracting governments.

Article 17 (Formerly Article 16)

29. The Working Party accepted a proposal to delete clause *(b)* of paragraph (2) which provided that penalties or disciplinary measures should be prescribed for cases in which a skipper had allowed duties requiring certification to be performed by a person not holding the appropriate or a superior certificate on the grounds that this provision was too onerous for skippers having regard to the nature of conditions of work at sea. The former clause *(c)* now becomes clause *(b)*.

30. The Canadian Employers' member stated that in the light of developments in his country he was obliged at this time to enter a general reservation regarding the application of the proposed conclusions concerning fishermen's certificates of competency in Canada.

ADOPTION OF THE REPORT AND OF THE PROPOSED CONCLUSIONS

31. The Working Party unanimously adopted its second report, Paragraphs 6 and 16 of the proposed conclusions concerning the training of fishermen and the text of the proposed conclusions concerning fishermen's certificates of competency. The text of these two sets of conclusions is reproduced below.

28 October 1965.

(Signed) T. D. RICE,
Chairman.

P. M. S. CORLEY,
Reporter.

Examination by the Conference of the First Report of the Working Party on Vocational Training and Certificates of Competency and of the Proposed Conclusions Annexed Thereto

At its ninth plenary sitting the Conference had before it the first report of the Working Party on Vocational Training and Certificates of Competency, together with the proposed conclusions concerning the training of fishermen (with the exception of Paragraphs 6 and 16).

Mr. CORLEY (Government delegate, United Kingdom; Reporter of the Working Party on Vocational Training and Certificates of Competency), in presenting the report and the proposed conclusions concerning the training of fishermen, drew attention to the fact that the Working Party had deferred consideration of Paragraphs 6 and 16 of the proposed conclusions. These Paragraphs contained references to able fishermen which the Working Party felt should be considered in the context of the proposed conclusions concerning fishermen's certificates of competency. The Working Party would be submitting a second report on this matter.

The Working Party had been particularly anxious to produce a text which would act as a guide to both industrialised and developing countries. He felt that the Working Party had succeeded in this objective and, in this connection, he expressed his gratitude to Mr. Rice, the Chairman.

Mr. RICE (Government adviser, United States; Chairman of the Working Party on Vocational Training and Certificates of Competency) thanked the Working Party for its co-operation, which had enabled it to complete its work satisfactorily.

Mr. WIEMERS (Workers' delegate, Federal Republic of Germany; Vice-Chairman of the Working Party on Vocational Training and Certificates of Competency) stated that the Workers' group had nothing to add to the first report. Although their wishes had not been entirely met they were in general agreement with the proposed conclusions and felt that the instrument would benefit not only fishermen and the fishing industry but also the world's economy and the nutrition of mankind.

The Workers' group considered that Part III of the proposed conclusions concerning fishermen's certificates of competency would have to be added to the proposed conclusions on the vocational training of fishermen.

He paid tribute, on behalf of the Workers' group, to Mr. Rice, as Chairman of the Working Party, and to Mr. Corley for his contribution to their discussions as a member of the Government group and for his excellent and succinct report.

Mr. COBLEY (Employers' delegate, United Kingdom; Vice-Chairman of the Working Party on Vocational Training and Certificates of Competency) expressed the general satisfaction of the Employers' group with the first report. He associated the Employers' group with the thanks expressed by Mr. Wiemers on behalf of the Workers' group to Mr. Rice and Mr. Corley for their invaluable assistance in the deliberations of the Working Party.

Mr. FERNÁNDEZ STOLL (Employers' adviser, Peru) explained that the Peruvian Employers' delegation had certain reservations concerning the last sentence of Paragraph 13 (1) of the proposed conclusions. The financing of the training of fishermen should be commensurate with the needs of the fishing industry and not, as suggested in Paragraph 13 (1), commensurate with the contribution of the fishing industry to the national economy. In Peru the fishing industry earned nearly a third of Peru's annual foreign exchange and, if the wording of the text were to be applied in Peru, training schemes would have to include universities and schools for all children over the age of five. The Peruvian Employers' delegation was not putting forward specific proposals at this time, but was making a reservation which it would repeat at the forthcoming session of the International Labour Conference.

Mr. OKADA (Government delegate, Japan) stated that the Japanese Government was unable to accept the first sentence of Paragraph 13 (3).

The first report of the Working Party on Vocational Training and Certificates of Competency was adopted.

The proposed conclusions on the training of fishermen were adopted on the understanding that Paragraphs 6 and 16 would be considered in connection with the second report of the Working Party.

Examination by the Conference of the Second Report of the Working Party on Vocational Training and Certificates of Competency and of the Proposed Conclusions Annexed Thereto

At its eleventh plenary sitting the Conference had before it the second report of the Working Party on Vocational Training and Certificates of Competency, together with the proposed text of Paragraphs 6 and 16 of the conclusions on the training of fishermen and the proposed conclusions concerning fishermen's certificates of competency.

In submitting the report and the proposed conclusions Mr. CORLEY (Government delegate, United Kingdom; Reporter of the Working Party on Vocational Training and Certificates of Competency) drew attention to the fact that the Working Party had agreed, for reasons given in the second report, that the certification of able fishermen should be dealt with in the proposed conclusions on the training of fishermen. He also pointed out that the Working Party had accepted changes in the text of Paragraphs 6 and 16 of the proposed conclusions on the training of fishermen. The Working Party had endeavoured to reach agreement on instruments which would lay down precise international standards and at the same time leave room for flexibility of application in the different countries. Reservations which had been made in respect of certain provisions in these instruments had been reported in the second report.

Mr. RAPPAI (Government delegate, U.S.S.R.; Vice-President of the Conference) regretted that the proposed conclusions concerning fishermen's certificates of competency annexed to the second report excluded fishery research and protection vessels. In the U.S.S.R. many fishermen were employed on such vessels and were covered by the regulations in force. He recalled his earlier proposal to make the instrument flexible enough for the different governments to be able to take into account national practice and conditions. As this proposal did not seem to have been reflected in the proposed conclusions annexed to the second report, he reserved the right to raise this point again at the forthcoming session of the International Labour Conference.

The second report of the Working Party on Vocational Training and Certificates of Competency was adopted.

Paragraphs 6 and 16 of the proposed conclusions on the training of fishermen were adopted.

The proposed conclusions concerning fishermen's certificates of competency were adopted.

The texts of the conclusions concerning the training of fishermen and of the conclusions concerning fishermen's certificates of competency are reproduced below.

Conclusions concerning the Training of Fishermen

1. There should be an international instrument concerning the training of fishermen.

2. The instrument should take the form of a Recommendation.

3. In the preamble, the instrument should refer to the Vocational Training Recommendation, 1962, which, with three exceptions, applies to all training and should state that, in application of that instrument, the vocational training of fishermen should be of a standard equivalent to that provided for other trades, occupations and industries in the country.

4. The preamble should also state the basic objectives of the training of fishermen, as follows:

(a) to improve the efficiency of the fishing industry and to secure general recognition of the economic and social significance of fishing to the national economy;

(b) to encourage the entry into the fishing industry of a sufficient number of suitable persons;

(c) to provide training and retraining facilities commensurate with the current and projected manpower needs of the fishing industry for all the various fishing occupations;

(d) to assist and facilitate the entry into employment of all trainees after completion of their courses; and

(e) to assist trainees in reaching their highest productive and earning capacity.

5. (1) The instrument should apply to all training of fishermen for work on board fishing vessels.

(2) " Fishing vessels " should be defined as all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters, with the exception of ships and boats engaged in whaling and similar pursuits and research and fishery protection vessels.

(3) The instrument should not apply to individuals fishing for sport or recreation.

6. For the purpose of the instrument, the following terms should be defined as having the meanings hereby assigned to them:

(a) skipper: any person having command or charge of a fishing vessel;

(b) mate: any person exercising subordinate command of a fishing vessel, including any person other than a pilot liable at any time to be in charge of the navigation of the vessel;

(c) engineer: any person permanently responsible for the mechanical propulsion of a fishing vessel;

(d) skilled fisherman: any experienced member of the deck crew working on board a fishing vessel, participating in the operation of the vessel, preparing gear for fishing, catching fish, loading catch and processing it, and maintaining and repairing nets or other fishing equipment.

7. The instrument should further contain the following provisions:

I. National Planning and Administration

Planning and Co-ordination

8. In planning a national education and training policy, the competent authorities in the countries possessing or intending to develop a fishing industry should ensure that adequate provision is made in the general network of training facilities for the training of fishermen.

9. Where national circumstances do not permit the development of facilities for the training at all levels of skill required, collaboration with other countries in the development of common fishery training schemes for such skills and occupations as cannot be covered by national programmes should be considered.

10. (1) The activities of all public and private institutions in each country engaged in the training of fishermen should be co-ordinated and developed on the basis of a national programme.

(2) Such a programme should be drawn up by the competent authorities in co-operation with organisations of fishing employers and fishermen, with educational and fishery research institutions, and with other bodies or individuals having an intimate knowledge of the vocational training of fishermen. In developing countries in which specialised fishery research or development institutes are established in co-operation with other countries or international organisations, such institutes should play a leading part in the establishment of the national programme.

(3) To facilitate the planning, development, co-ordination and administration of fishermen's training schemes, joint advisory policy and administrative bodies should whenever possible be set up at the national level and, where appropriate, also at the regional and local levels.

11. The competent authorities should ensure that the various agencies and institutions responsible for the dissemination of information on training and employment opportunities, such as primary and secondary schools, vocational guidance and employment counselling services, public employment services, vocational and technical training institutions and organisations of fishing employers and fishermen, are supplied with complete information on public and private training schemes for fishermen and on conditions of entry into fishing.

12. The competent authorities should ensure that fishermen's vocational training schemes are fully co-ordinated with any other programmes and activities, public or private, related to the fishing industry. In particular, they should make certain that—

(a) fishery research institutions make information on their latest discoveries of practical interest to fishing readily available to training centres and other interested bodies, and through these to working fishermen. Where possible, the research institutions should contribute to the advanced training of fishermen, and fishermen's training centres should, as appropriate, assist these institutions in their work;

(b) measures are taken through the provision of general education prior to or simultaneously with vocational training to advance the general level of education in fishing communities, to promote greater satisfaction among fishermen and to facilitate the assimilation of technical and vocational training;

(c) arrangements are made, with the co-operation of organisations of fishing employers and fishermen, in order that, other things being equal, preference may be given in employment placement to persons who have completed a public or private training course;

(d) arrangements are made, with the co-operation of organisations of fishing employers and fishermen, particularly in developing countries, for trainees completing public and private courses either to enter employment on fishing vessels or, alternatively, to acquire and operate suitably equipped fishing vessels, individually, by forming co-operatives for the joint purchase and use of fishing boats, or by any other appropriate means;

(e) the output of trained fishermen is adjusted to the number of boats and the equipment available or planned to be available in the country.

Financing

13. (1) Fishermen's training schemes should be systematically organised, and financing should be on an adequate and regular basis commensurate with the contribution which the fishing industry makes to the national economy.

(2) Where required, the government should make financial contributions to training schemes carried on by local government or private bodies. These contributions may take the form of general subsidies, grants of land and buildings or of demonstration material such as boats, engines, navigational equipment and fishing gear, provision of instructors free of charge, or payment of fees for trainees.

(3) Training in publicly operated training centres for fishermen should be given without charge to the trainee. In addition, the training of adults and young persons in need should be facilitated by financial and economic assistance of the kind envisaged in Paragraph 7, subparagraphs 3 and 5, of the Vocational Training Recommendation, 1962.

Training Standards

14. (1) The competent authorities, in co-operation with the joint bodies mentioned in Paragraph 10, should define and establish general standards for fishermen's training applicable throughout the territory of the country. These standards should be in conformity with the national requirements for obtaining the various fishermen's certificates of competency and should lay down—

(a) the minimum age of entry into fishermen's training schemes;

(b) the nature of medical examinations, including chest X-rays and hearing and sight tests required for persons entering training schemes. The examinations, particularly the sight and hearing tests, may differ for boys entering deck and those entering engine courses;

(c) the level of general education which is required for admission to fishermen's training schemes;

(d) the fishing, navigation and seamanship, safety, engineering, catering and other subject-matter which should be included in the training curricula;

(e) the amount of practical training, including time spent in engineering shops and at sea, which trainees should undergo;

(f) duration of the training courses for the various fishing occupations and the different levels of competency;

(g) the nature of any examinations following the completion of the training courses; and

(h) the experience and qualifications of the teaching staff of training institutions.

(2) Where national standards cannot be laid down, the recommended standards, which should be as uniform as possible throughout the territory of the country, should be determined by the competent authorities in co-operation with the joint bodies mentioned in Paragraph 10.

II. Training Programmes

General

15. The curricula of the various training programmes for fishermen should be based on a systematic analysis of the work required in fishing and should be established in consultation with the joint advisory bodies mentioned in Paragraph 10. They should be periodically reviewed and kept up to date with technical developments and should, as appropriate for the functions to be exercised, include, *inter alia*, training in—

(a) fishing techniques, including where appropriate the operation of electronic equipment for the location of fish, and operation, maintenance and repair of fishing gear;

(b) navigation, seamanship and ship handling, appropriate to the sea area and to the type of fishing for which the course is designed;

(c) stowage, cleaning and processing of fish on board;

(d) boat maintenance and other related matters;

(e) engine operation, maintenance and repair of steam or internal combustion (gasoline or diesel) engines or other equipment which the trainee may be called upon to use;

(f) operation and maintenance of radio and radar installations which the trainee may be called upon to use;

(g) safety at sea and safety in handling fishing gear, including such matters as stability, effects of icing, fire fighting, water-tight integrity, personal safety, gear and machinery safeguards, rigging safety measures, engine-room safety and lifeboat handling, use of inflatable life rafts, first aid and medical care and other related matters;

(h) theoretical subjects relevant to fishing, including marine biology and oceanography, which will enable trainees to gain a broad foundation of further instruction and training leading to promotion or to changing to another fishing occupation or to another type of fishing;

(i) general educational subjects, especially in long-term training but also, although to a more limited extent, in short courses;

(j) operation, maintenance and repair of refrigeration systems, fire-fighting equipment, deck and trawling winches and other mechanical equipment of fishing vessels;

(k) principles of shipboard electrical power installations, and maintenance and repair of the electrical machinery and equipment of fishing vessels;

(l) health and physical education, especially swimming, where training facilities permit;

(m) specialised courses in deck, engine and other subjects after an introductory period of general fishing instruction.

16. (1) National standards should, where practicable and appropriate, be established for certificates of competency; diplomas qualifying a person to act as skipper (various grades); mate (various grades); engineer (various grades); boatswain; skilled fisherman (various grades); cook; or other deck or engine-room personnel.

(2) Training programmes should be chiefly designed to prepare trainees for certification and should be directly related to national certification standards; they should take account of the minimum ages and minimum professional experience laid down by the competent authorities in respect of the various grades of certificates of competency.

(3) Where national certification examinations do not exist or do not exist for the particular duty in question, training courses should nevertheless prepare trainees for particular duties such as those listed above. All trainees successfully completing such training courses should receive a diploma concerning the course followed.

17. (1) Programmes should be available to train fishermen to perform duties as skippers and engineers of all types of vessels in use in the fishing fleet of the country concerned, including larger distant-water vessels.

(2) Where appropriate to the vessels in use, college-level fishing and navigation courses should be established which are of the same level as merchant navy officers' training programmes but which provide training in subject-matters appropriate to fishing.

18. The duration of the various training programmes should be sufficient to enable trainees to assimilate the instruction given, and should be determined with reference to such matters as—

(a) the level of training required for the occupation for which the course is designed;

(b) the general educational level and age required of trainees entering the course;

(c) the trainees' previous practical experience; and

(d) the urgency of turning out trained fishermen in the country, subject to the maintenance of adequate standards of training.

19. (1) The teaching staff should include persons possessing a broad general education, a theoretical technical education and satisfactory relevant practical fishing experience.

(2) Where it is not possible to recruit a teaching staff with these qualifications, persons with practical experience in fishing and holding appropriate certificates of competency should be employed.

(3) Where it is not possible to recruit a full-time teaching staff with practical fishing experience, persons with satisfactory relevant practical fishing experience should be employed on a part-time basis.

(4) All teaching staff should have an aptitude for teaching and should be given appropriate teacher training by the competent educational authorities.

Pre-Vocational Training

20. In fishing communities, measures consistent with the Minimum Age (Fishermen) Convention, 1959, should be taken to provide pre-vocational training, including training in elementary practical seamanship, basic commercial fishing techniques and navigational principles, to schoolchildren, in so far as this is appropriate to the general conditions in the particular country.

Short Courses for Working Fishermen

21. Training courses should be available for working fishermen to enable them to increase their technical skills and knowledge, to keep abreast of improved fishing and navigation techniques and to qualify for promotion.

22. (1) Training courses for working fishermen should be specifically designed for the purposes of—

(a) complementing the basic long-term courses by providing advanced specialised training for promotion;

(b) providing training in fishing techniques new to the area, in operating, maintaining and repairing new types of engines or gear, and in making the latter where appropriate;

(c) providing all levels of training for fishermen who were unable to participate in a basic long-term training course;

(d) providing accelerated training in countries in process of development.

(2) The courses should be of short duration and should be considered to be complementary to and not substitutes for basic long-term training programmes.

23. The courses, which may take the form of mobile courses which can be used to bring instructors and demonstration equipment to isolated fishing centres, should in particular consist of programmes involving—

(a) evening courses;

(b) seasonal courses offered during stormy months or slack fishing periods; or

(c) daytime courses for which fishermen temporarily leave their work for short periods.

24. (1) All appropriate measures should be taken to enable working fishermen to attend short courses ashore.

(2) Working fishermen should receive adequate financial compensation for the periods in which they attend short-term training courses.

25. Where long-term courses and short courses for working fishermen do not meet training needs, particularly in isolated areas, these courses may be supplemented by—

(a) special radio and television courses and programmes providing fishing information;

(b) correspondence courses specially adapted to the needs of working fishermen and arranged for use by study groups with occasional lectures or attendance at training schools;

(c) periodic visits of research workers and extension officers to fishing areas.

III. Methods of Training

26. The training methods adopted by fishermen's training schemes should be the most effective possible, considering the nature of the courses, the trainees' experience, general education and age, and the demonstration equipment and financial support available.

27. (1) Practical training, in which the students themselves participate, should be an important part of all fishermen's training programmes.

(2) Fishing training vessels should be used by all training institutions with programmes for boys entering fishing to provide instruction in fishing techniques, navigation and seamanship, engine operation and other matters. These vessels should conduct actual fishing operations.

(3) Training vessels should, whenever possible, be attached to technical schools providing advanced training.

(4) *(a)* Demonstration equipment such as engines, gear, fishing-boat models, workshop equipment and navigational aids should be used in training programmes.

(b) Such equipment should be prepared in collaboration with fishing research centres and should include, whenever possible, the latest gear and navigational aids.

(c) Such equipment should be selected with reference to the gear, boats and engines which the trainees may be called upon to use.

(d) Films and other audio-visual aids, although they may be useful in some cases, should not be a substitute for demonstration equipment in the use of which trainees themselves take an active part.

(e) Visits should be organised for trainees to fishing vessels equipped with modern or special installations, fishery research centres, or fishing centres away from the area in which the school is located.

28. Practical training may also be provided by periods of fishing at sea on board commercial fishing vessels.

29. Theoretical training, including general education, given as part of a training course should be directly related to the knowledge and skills required by fishermen and should, wherever possible, be integrated with the practical training offered.

IV. International Co-operation

30. (1) Countries should co-operate in promoting fishermen's vocational training, particularly in developing countries.

(2) This co-operation, as appropriate, may include such matters as—

(a) working with the help of international organisations to obtain and train teaching staff to establish and improve fishermen's training facilities;

(b) establishing joint training facilities or joint fishing research centres with other countries, where the need arises;

(c) making training facilities available to selected trainees or instructor trainees from other countries, and sending trainees or instructor trainees to training facilities in other countries;

(d) arranging international exchanges of personnel and international seminars and working parties;

(e) providing instructors for fishermen's training schools in other countries.

Conclusions concerning Fishermen's Certificates of Competency

Article 1

There should be an international instrument concerning fishermen's certificates of competency.

Article 2

The international instrument should take the form of a Convention.

Article 3

The instrument should recall in its preamble the provisions of the Officers' Competency Certificates Convention, 1936, which is applicable to fishing vessels, and which provides that no person shall be engaged to perform or shall perform on board any vessel to which it applies the duties of master or skipper, navigating officer in charge of a watch, chief engineer or engineer officer in charge of a watch, unless he holds a certificate of competency to perform such duties, issued or approved by the public authority where the vessel is registered, and should indicate that experience has shown that further international standards specifying minimum requirements for certificates of competency for service in fishing vessels are desirable.

Part I: Scope and Definitions

Article 4

For the purpose of this instrument, the term " fishing vessel " should be defined as including all ships and boats of any nature whatsoever, whether publicly or privately owned,

which are engaged in maritime fishing in salt waters and are registered in a territory for which the instrument is in force, with the exception of—

(a) ships and boats of less than 25 gross registered tons;

(b) ships and boats engaged in whaling and similar pursuits;

(c) ships and boats engaged in fishing for sport or recreation;

(d) fishery research and protection vessels.

Article 5

For the purpose of the instrument, the following terms should be defined as having the meanings hereby assigned to them:

(a) skipper: any person having command or charge of a fishing vessel;

(b) mate: any person exercising subordinate command of a fishing vessel, including any person other than a pilot liable at any time to be in charge of the navigation of a vessel;

(c) engineer: any person permanently responsible for the mechanical propulsion of a fishing vessel.

Part II: Certification

Article 6

The instrument should provide for the establishment of national standards of qualification for certificates of competency entitling a person to perform the duties of skipper, mate and engineer on board a fishing vessel.

Article 7

1. The instrument should provide that—

(a) all fishing vessels to which the instrument applies should be required to carry a certificated skipper;

(b) all fishing vessels over 100 gross registered tons engaged in operations and areas to be defined by national laws or regulations should be required to carry a certificated mate;

(c) all fishing vessels over an engine power to be determined by the competent authority, after consultation with the fishing vessel owners and fishermen's organisations, where such exist, should be required to carry a certificated engineer: Provided that the skipper or mate of a fishing vessel may act as engineer in appropriate cases and on condition that he also holds an engineer's certificate.

2. The certificates of skippers, mates or engineers may be full or limited, according to the size, type and nature and area of operations of the fishing vessel, as determined by national laws or regulations.

3. The competent authorities may in individual cases permit a fishing vessel to put to sea without the full complement of certificated personnel if they are satisfied that no suitable substitutes are available and that having regard to all the circumstances of the case it is safe to allow the vessel to put to sea.

Article 8

The instrument should provide that the minimum age prescribed by national laws or regulations for the issue of a certificate of competency should be not less than—

(a) 20 years in the case of a skipper;

(b) 19 years in the case of a mate;

(c) 20 years in the case of an engineer:

Provided that for the purpose of service as a skipper in a fishing vessel engaged in coastal fishing, and for the purpose of service as an engineer in a fishing vessel of less than 500 horsepower, the minimum age may be fixed at 18 years.

Article 9

1. The instrument should provide that the minimum professional experience prescribed by national laws or regulations for the issue of a skipper's certificate of competency should be not less than three years' sea service in a deck capacity, and an additional 12 months' service as certificated mate on board a fishing vessel: Provided that service for the same period as a fisherman in a fishing vessel which under national laws or regulations is not required to carry a certificated mate may be regarded as equivalent to service as such a mate.

2. Where national laws or regulations provide for the issue of different grades of certificates of competency, full and limited, to skippers of fishing vessels, the nature of the qualifying service as a certificated mate or the type of certificate held while performing such qualifying service should vary accordingly.

Article 10

The instrument should provide that the minimum professional experience prescribed by national laws or regulations for the issue of a mate's certificate of competency should be not less than three years' sea service in a deck capacity.

Article 11

The instrument should provide that the minimum professional experience prescribed by national laws or regulations for the issue of an engineer's certificate of competency should be not less than three years' sea service in the engine room: Provided that for part of that period work in an engineering workshop may be regarded as equivalent to sea service: Provided also that in the case of a certificated skipper or mate a shorter qualifying period of sea service may be specified.

Article 12

The instrument should provide that in respect of persons who have successfully completed an approved training course, the periods of sea service required in virtue of Articles 9, 10 and 11 may be reduced by the period of training, but in no case by more than 12 months.

PART III: EXAMINATIONS

Article 13

The instrument should provide that examinations organised and supervised by the competent authority for the purpose of testing whether candidates for competency certificates possess the qualifications necessary for performing the duties corresponding to the certificates for which they are candidates should require knowledge, appropriate to the categories and grades of certificates, of the following subjects:

(a) in the case of members of the deck department of fishing vessels—

(i) general nautical subjects, including seamanship, shiphandling and safety of life at sea;

(ii) practical navigation, including the use of electronic and mechanical aids to navigation;

(iii) safe working practices, including safety in the handling of fishing gear;

(b) in the case of members of the engine department of fishing vessels—

(i) theory, operation, maintenance and repair of steam or internal combustion engines and related auxiliary equipment;

(ii) operation, maintenance and repair of refrigeration systems, pumps, deck winches and other mechanical equipment of fishing vessels, including the effects on stability;

(iii) principles of shipboard electric power installations, and maintenance and repair of the electrical machinery and equipment of fishing vessels; and

(iv) engineering safety precautions and emergency procedures, including the use of life-saving and fire-fighting appliances.

Article 14

The examinations for deck certificates referred to in Article 13 *(a)* may also cover the following subjects:

(i) fishing techniques, including where appropriate the operation of electronic equipment for the finding of fish, and operation, maintenance and repair of fishing gear; and

(ii) stowage, cleaning and processing of fish on board.

Article 15

The instrument should provide that, during a period of three years from the date of the coming into force of national laws or regulations giving effect to its provisions, competency certificates may be issued to persons who have not passed an examination of the kind referred to in Articles 13 and 14, but who have in fact had sufficient practical experience of the duties corresponding to the certificate in question and have no record of any serious technical error against them.

Part IV: Enforcement Measures

Article 16

The instrument should provide that—

(a) each Member should ensure the enforcement of national laws or regulations giving effect to its provisions by an efficient system of inspection;

(b) national laws or regulations giving effect to its provisions should provide for the cases in which the authorities of a Member may detain vessels registered in its territory on account of a breach of these laws or regulations.

Article 17

1. The instrument should further provide that national laws or regulations giving effect to its provisions should prescribe penalties or disciplinary measures for cases in which these laws or regulations are not respected.

2. In particular, such penalties or disciplinary measures should be prescribed for cases in which—

(a) a fishing vessel owner or his agent, or a skipper, has engaged a person not certificated as required;

(b) a person has obtained by fraud or forged documents an engagement to perform duties requiring certification without holding the requisite certificate.

Permanent Agricultural Committee

(Seventh Session, Geneva, 22 November-3 December 1965)

TEXTS OF THE CONCLUSIONS AND RESOLUTION ADOPTED

Conclusions concerning the Technical Review of the I.L.O. Rural Development Programme

The Permanent Agricultural Committee—

Recalls the unanimous adoption by the International Labour Conference at its 44th (1960) Session of a resolution concerning the contribution of the International Labour Organisation to the raising of incomes and living conditions in rural communities, with particular reference to countries in process of development, which recommended a considerable expansion of the activities of the International Labour Organisation in the rural sector;

Recalls that the Committee at its Sixth Session (1960) was requested to examine the general conclusions concerning future I.L.O. activities in the rural sector as laid down in the 1960 Conference resolution, with a view to translating them into a practical programme of work and indicating those fields on which it would be desirable to place major emphasis, due account being taken of the great variation in physical, economic, social, demographic and cultural conditions between the different countries and regions;

Notes with satisfaction the action taken by the Governing Body of the International Labour Office to allocate additional though limited resources in staff and funds to enable the launching of a special long-term programme of practical research and operational activities designed to raise incomes and living conditions in rural communities in developing countries, in accordance with the directives of the Conference and the conclusions of the Committee;

Notes that this special long-term programme—known as the Rural Development Programme—has now effectively been in operation for three years, and that the purpose of the Governing Body, in deciding to place on the agenda of the Committee at its present session an item concerning the technical review of the Programme, was to enable the Committee to acquaint itself with the way in which its recommendations and those of the Conference had been given effect by the International Labour Office in drawing up the Programme, and to report to the Governing Body on the progress achieved so far and on the orientation that it would be desirable for the Programme to take in the years to come;

Has examined the working paper prepared by the International Labour Office entitled " Technical Review of the I.L.O. Rural Development Programme ", and has noted with interest the information contained therein, as well as the statements made by representatives of the International Labour Office supplementing this information, concerning the balance and content of the Programme, and the way in which the International Labour Office has implemented the various activities included in the Programme during its three years of operation;

While recognising that it is not possible to evaluate fully the results thus far achieved of many projects launched under this Programme both because of the shortness of the period that projects have been in operation and their inherently difficult and pioneering nature, considers that the action taken so far by the International Labour Office within the framework of its Rural Development Programme has generally been in conformity with the directives laid down by the Conference and the recommendations made by the Committee, and notes that certain delays and difficulties which have in some cases affected the timetable of operations originally envisaged were due to factors beyond the Office's control;

In order that the International Labour Organisation's assistance may be effective, stresses that governments should take the necessary measures to ensure that there is full co-ordination and co-operation between the various national authorities concerned and the international experts, and to provide on time the administrative services and material facilities required for the implementation of the projects in question, and that the attention of the governments concerned should be specifically drawn to the provisions of paragraph 10 [1] of the 1960 Conference resolution;

Stresses in particular the importance of the provision from the very beginning of suitably qualified counterpart personnel, or of personnel suitable for training as such, to work alongside the international experts, who will be ready to take over from the experts and continue their work when the international assistance comes to an end;

While recognising that certain long-term projects within the Programme need to be continued for some years, notes that these projects take up a large part of the limited funds available and restrict the flexibility of the Programme. The Committee stresses, therefore, that the International Labour Organisation's Rural Development Programme as financed out of its regular budget should not become a substitute for the vastly superior resource possibilities afforded by the United Nations Special Fund, the Expanded Programme of Technical Assistance, etc., and that the Rural Development Programme should in such cases rather play a pioneering role, being particularly used for paving the way for longer-term and larger-scale activities financed from other sources;

In cognizance of the increasing magnitude and urgency of the problems involved, and the need to assist the developing countries in improving the living and working conditions of their rural communities and in promoting more productive and fuller employment in the rural areas, makes the following recommendations for the continuation of the International Labour Office's activities in the rural sector, on the understanding that, in carrying out these activities, the International Labour Office will continue to collaborate closely and co-ordinate its work with the Food and Agriculture Organisation of the United Nations and other international agencies concerned:

1. The International Labour Organisation should continue to strengthen and expand its activities in the rural sector, by means, where appropriate, of an integrated approach, in accordance with the directives laid down in the 1960 Conference resolution and in the conclusions adopted by the Committee at its Sixth Session. It is essential that adequate resources in staff and funds should be allocated for this purpose, and that they be so used as to benefit the greatest number of rural people in the developing countries as possible.

2. It would be particularly important in this connection to devote attention to conditions of work and life of agricultural workers of all categories; to rural employment promotion; to vocational training of rural people for farm and non-farm occupations; to the problems arising in connection with the processing and marketing of agricultural products and the provision and improvement of rural credit facilities (in full-co-operation with the Food and Agriculture Organisation of the United Nations); to the problems of rural co-operatives; to the International Labour Organisation's contribution to the concerted international action in agrarian reform and community development, in implementation, with respect to the former, of the resolution on agrarian reform, with particular reference to employment and social aspects, adopted by the International Labour Conference at its 49th (1965) Session; to assistance in the application of standards set by the International Labour Conference; to inter-agency activities and joint projects, particularly in respect of integrated projects and vocational training (e.g. vocational training in forestry work); and to practical studies and investigations of the experiences of countries in the implementation of national agrarian reform and rural development programmes.

3. In carrying out the technical assistance activities under the Rural Development Programme, the International Labour Organisation missions should, in conformity with the tripartite character of the International Labour Organisation, consult and work in co-

[1] " 10. Governments requesting assistance should be encouraged to establish a co-ordinating authority within the government administration for the planning, implementation and adequate supervision of rural development, so that international assistance drawn from various sources, including in particular the I.L.O., might fit into a concerted national programme."

operation with representative employers' and workers' organisations in the rural sector.

4. The attention of the governments of countries receiving assistance under the Rural Development Programme should be drawn to the provisions of paragraph 10 of the 1960 Conference resolution and to the indispensability of their taking the appropriate measures to help select suitable sites for the projects and to ensure that projects receive the required support from the national authorities concerned, including the provision and training of counterpart personnel, for the successful implementation and punctual conclusion of the international assistance provided and enabling the recipient country to continue action after the termination of such assistance and to derive maximum benefit therefrom.

5. Governments receiving long-term assistance under the Rural Development Programme should be urged to make every effort to ensure as soon as possible the use of other means of financing the continuation of long-term projects, including the possibility of making appropriate requests to the United Nations Special Fund or the Expanded Programme of Technical Assistance. The greatest possible effort should be made for the use of these or related sources of financing in connection with long-term activities which may be undertaken in the future.

6. The International Labour Office should provide, at appropriate intervals and as practicable, detailed information on the results of important projects undertaken under the Rural Development Programme, including an assessment of the achievements, so that the benefit of the experiences gained may be more widely available. Particular attention should be paid to assessing the value of the results of such projects to the developing countries generally in the formulation of plans for the improvement of the economic and social standards of their rural communities.

Conclusions concerning the Role of Agricultural Organisations in Promoting Economic and Social Development in Rural Areas

The Permanent Agricultural Committee—

Is aware of the major place which rural organisations of various types (e.g. general farm organisations, agricultural trade unions, agricultural employers' organisations, rural co-operatives) occupy in the institutional framework of many countries, and of the important and significant role which they play in promoting economic and social development in the rural sector;

Realises the potentialities of such organisations to play an even greater role in this respect;

Notes with regret that the growth of rural organisations has been slow in many developing countries, despite the fact that economic and social development is particularly urgent in the rural sector in these countries;

Has examined the working paper prepared by the International Labour Office on " The Role of Agricultural Organisations in the Economic and Social Development of Rural Areas ";

Has noted the supplementary information given by representatives of the International Labour Office and by the members of the Committee, as well as by representatives of international agricultural organisations;

Is aware that in many cases rural organisations have been able to render extensive services in the formulation and implementation of measures of agricultural policy;

Is conscious of the contribution that rural organisations make and can make to economic and social development in the rural sector by such means as participation in statutory bodies, conclusion of collective agreements; social protection of rural populations, in particular ensuring the improvement of their living and working conditions; achieving increased production of agricultural produce; provision or distribution of credit to agricultural producers; marketing and processing of agricultural produce; implementation of various agrarian reform measures; education and dissemination of technical information; defence of the freedom of rural people to form associations to attain economic and social goals;

Is convinced that every effort should be made to foster the growth of independent rural organisations in a co-ordinated manner so as to enable rural people effectively to further their own welfare and fully to contribute to national economic and social development;

Appreciates that, while it is not always advisable for developing countries to follow exactly the pattern of rural organisations in the more advanced countries, the principles, functions and experience of such organisations can be of value to the developing countries and are capable of adaptation to local conditions in a way which would still enable them to make a significant contribution to economic and social development;

Notes in this connection that certain indigenous forms of organisation may constitute in a number of cases a sound basis for the establishment of more modern forms of organisation, which organisations can begin to contribute to economic and social development at an early stage;

Considers that rural co-operatives are one of the most effective organisations for rural development, and that they and other self-help groups have a particular role to play in economic and social development, since they can be introduced into small communities and their effect on the standard of living of people in rural areas can be both evident and capable of rapid achievement;

It therefore notes with satisfaction the already considerable work of the International Labour Organisation in this field, and that the question of " The Role of Co-operatives in the Economic and Social Development of Developing Countries " has been placed on the agenda of the International Labour Conference;

Notes also with satisfaction in this connection the close co-ordination and collaboration between the International Labour Organisation and the Food and Agriculture Organisation of the United Nations in the field of co-operatives;

Considers that constructive measures capable of encouraging the creation of strong and independent rural organisations and of accelerating their development should be taken, and include—

(a) removal of legislative restrictions, general ratification and full application of international labour Conventions, particularly the Freedom of Association and Protection of the Right to Organise Convention, 1948, and the Right to Organise and Collective Bargaining Convention, 1949;

(b) promotion of educational and vocational training programmes among rural people;

(c) provision of training on rural organisation for the people concerned;

(d) ensuring the participation of rural organisations in the activities of planning and policy-making bodies of various types, as appropriate;

(e) associating rural organisations with the implementation of development measures;

(f) encouraging rural organisations to engage, in addition to the defence of the social and economic interests of their members, in the dissemination of the results of technical research in the provision of marketing and processing facilities for agricultural produce, and in the promotion of communal, recreational and leisure-time activities;

The Committee consequently recommends that the International Labour Organisation, in collaboration, as appropriate, with other United Nations agencies and particularly with the Food and Agriculture Organisation of the United Nations, as well as with the international non-governmental organisations concerned, should—

(1) prepare as a matter of priority a detailed study on the role of rural organisations in the economic and social development of rural areas, and on the reasons for their slow growth in many developing countries;

(2) undertake a programme of technical co-operation, and of research generally designed to encourage and foster the formation of independent rural organisations and the increase of their effectiveness, and make available information on experience in this respect;

(3) organise, after careful preparatory studies of specific needs, appropriate educational and training activities, designed to ensure that the qualified personnel necessary to administer rural organisations, and to carry out their advisory functions, are available;

(4) explore the possibilities of practical action by organising meetings, seminars and study tours and granting fellowships.

Conclusions concerning Vocational Preparation and Employment of Rural Youth

The Permanent Agricultural Committee—

Recognises that the economic and social progress of developing countries in particular is largely dependent on the development of the rural economy and on the improvement of conditions of work, the standard of living and incomes of rural people;

Recognises that rural young people can and must make an essential contribution to this process if afforded an opportunity to do so through programmes suited to their age and their capacities;

Considers that the increase of employment opportunities for rural youth should constitute an essential feature of economic and social development plans;

Considers that in the rural areas of many developing countries unemployment and underemployment, particularly of young people, reach disquieting proportions, especially among the great mass of primary school leavers, and that the conditions in which rural young people live and work are unsatisfactory;

Notes that this situation induces an increasing number of generally unskilled young people to leave the land for urban areas where employment opportunities are very limited, the consequences being urban overcrowding and a higher incidence of unemployment among youth;

Recognises that agriculture is not only a way of life but a vocation, and that recent technological changes are such that the technical knowledge acquired by young agricultural workers through traditional methods is no longer sufficient; that the transition from subsistence agriculture to market agriculture obliges the young agricultural worker to extend considerably the range of his technical, economic and general knowledge; and that rural producers must face rapid developments which require improved techniques, whether the materials used are traditional or new;

Considers that the prospects for young people to find work or to increase their income depend to a large extent upon the technical training which they have received, and that almost everywhere the lack of training facilities and the inadequacy of training methods and programmes of training constitute serious obstacles to the improvement of the conditions of rural youth;

Has noted the appeal made under the Freedom from Hunger Campaign to the rural young people of all countries with a view to securing their participation in this campaign;

Refers to the instruments and the resolutions adopted by the International Labour Conference at its various sessions, in particular to the Vocational Training (Agriculture) Recommendation, 1956; to the resolution concerning the contribution of the International Labour Organisation to the raising of incomes and living conditions, with particular reference to countries in process of development (1960); to the resolution on agrarian reform, with particular reference to economic and social aspects (1965); as well as to various resolutions adopted by regional conferences of the International Labour Organisation and earlier sessions of the Permanent Agricultural Committee;

Has been informed of the technical assistance which the International Labour Organisation can provide under its Rural Development Programme and the Expanded Programme of Technical Assistance, of the programmes financed by the United Nations Special Fund, etc., whose object is, in particular, to increase the possibilities of employment in the rural zones and to develop vocational training for rural youth;

Has examined the report on vocational preparation and employment of rural youth, and has taken note of the supplementary information provided by its members as well as by representatives of the International Labour Office;

Expresses the opinion that, to deal in a constructive manner with the problem, it is necessary—

to take all appropriate measures to increase employment opportunities for rural youth, taking into account the importance in this respect of agrarian reform, land settlement and the setting up of rural and other appropriate industries in carefully selected areas;

to organise, in rural areas, education and vocational training for rural young people in a manner suitable to fit them for productive employment, and in particular to set up programmes of pre-vocational training for rural school leavers, including those who have had only a few years of education;

to organise special training programmes for the beneficiaries of agrarian reform or land settlement, and for the technicians responsible for the implementation of such measures, in order that they may derive the maximum benefit therefrom;

to take measures to increase production and productivity in the rural sector, and consequently incomes, particularly through the introduction of better techniques;

to set on foot programmes of vocational training calculated to improve the conditions of work in agriculture and related activities, to make rural people more receptive to progress and to draw the maximum from the resources invested therein;

to take measures to improve social services and to organise recreational facilities in rural communities.

I. Consequently recommends that within the framework of its research and operational activities the International Labour Organisation should encourage countries to formulate national programmes, integrated within over-all social and economic planning, for the promotion of employment and vocational training, and to pay due regard to the special needs of rural youth, in particular rural school leavers, when drawing up such programmes. These programmes should—

(1) be based upon a careful study of available natural and manpower resources, the degree to which they are utilised, and the manpower implications of development plans;

(2) comprise the formulation of employment promotion and vocational training objectives with due regard to the present and future requirements to be met and existing possibilities;

(3) establish a quantitative and qualitative assessment of the existing educational and training systems, including apprenticeship;

(4) ensure the establishment of appropriate machinery for the planning and implementation of co-ordinated rural employment promotion and vocational training programmes;

(5) include pedagogical, sociological and other types of research into the best methods of training rural young people as well as into the most suitable ways of integrating them into the rural community, with a view not only to bringing them technical progress but also to enabling them to assimilate it more easily and to impart it to others, within the farm or undertaking as well as within the community as a whole. It would be desirable for such research to devote particular attention to rural sociological problems, and for the experts working in the rural area to have the continuous assistance of specialists in this field;

(6) provide for the organisation, whenever possible, of vocational guidance and placement services in rural areas, in such a manner as to keep the rural population, and the young people in particular, informed as to employment possibilities and as to the ways in which they may prepare themselves for such employment;

(7) provide for the organisation, in rural areas, of social services and organised leisure-time activities, in order to attract young people and to retain them in agriculture and other rural occupations.

II. Recommends further that the International Labour Organisation should undertake practical action on the basis of the following principles:

(1) national studies should be systematically undertaken in order to assess the manpower problems and vocational training needs of rural youth, and to suggest how these prob-

lems may be solved with the technical assistance of the International Labour Organisation, in order to assist the countries concerned to establish a long-term policy in this field and to establish the necessary administrative framework;

(2) the programmes of vocational training should be adapted to the employment opportunities and needs of the countries concerned, be sufficiently flexible as regards their content, their duration and their level, take account of the pressing economic and social needs of rural development, as well as the need for a well-balanced general and technical training, and be within the limits of the financial and staffing resources of those countries;

(3) pilot projects should be undertaken in order to help countries in assessing the magnitude and nature of the employment and vocational training problems of young people in rural areas and to demonstrate how close collaboration between the local communities, public authorities and international organisations can help in solving these problems;

(4) long-term practical action, commenced under the Rural Development Programme and followed up by other forms of assistance, in particular that granted by the Special Fund of the United Nations, should assist countries to train the instructors needed to staff the increased numbers of training centres, either for young people leaving school and pre-vocational centres, or young rural workers who will become the elements upon which large-scale action to spread technical knowledge could later on be based;

(5) particular attention should be given to the training of instructors or teachers, and to their in-service and refresher training, in order that they may continuously adapt their educational activities to the development of techniques of agricultural production and marketing;

(6) the formation of organisations of rural youth able to contribute to economic and social progress should be encouraged, by the organisation of seminars, study tours and other activities;

(7) existing collaboration between the International Labour Organisation and various international organisations, in particular the United Nations, including the United Nations Children's Fund, the Food and Agriculture Organisation of the United Nations and the other specialised agencies, should be expanded through the effective co-ordination of their respective activities, in order to formulate and make available to the countries concerned concerted programmes of action designed to bring about early improvements;

(8) adequate resources should be set aside, under the Rural Development Programme and other funds, to expand the activities of the International Labour Organisation for the vocational and pre-vocational training of rural youth, in particular primary school leavers in rural areas.

Resolution concerning the Improvement of the Conditions of Women in Rural Areas

The Permanent Agricultural Committee,

Conscious of the important role which women play in the rural sector and the necessity of improving their conditions of life and work and of developing by all possible means their vocational and pre-vocational training and their employment opportunities in order that they should no longer be prompted to leave the country areas in excessive numbers and should be enabled to bring their full contribution to the economic and social development of rural areas;

Takes note of the wish expressed by the Meeting of Consultants on Women Workers' Problems at its session of September 1965 in Geneva that the Permanent Agricultural Committee should examine at one of its early future sessions the problem of the improvement of the conditions of women in rural areas and of their training;

Expresses the hope that this suggestion will be taken into consideration in drawing up the agenda of the next session of the Committee.

Conclusions concerning the Stabilisation of the Prices of Agricultural Products and the World Food Programme

The Permanent Agricultural Committee,

Recognising the urgency of improving the economic and social conditions of rural areas and the vital necessity of increasing world agricultural production to meet the needs of a rapidly rising world population,

Bearing in mind that most of the developing countries, in order to develop their economies, depend at present to a large extent upon the returns of exports of a single or a few agricultural products whose price fluctuations on the world market they are unable to control;

Appreciating the role which the International Labour Organisation's Rural Development Programme and the related activities of other international agencies can play in these respects,

Considering, however, that neither international nor national programmes for rural development and increased agricultural production can achieve their objectives and that the value of all these measures will be nullified or substantially reduced unless fair and stable prices are assured for agricultural products;

Recommends that the attention of the United Nations Conference on Trade and Development, the Food and Agriculture Organisation of the United Nations and other international agencies concerned be drawn to the urgent and pressing need for—

(1) the conclusion of measures such as international commodity agreements which will ensure fair and stable prices for agricultural products;

(2) the continuation of the World Food Programme on a substantially increased scale.

Relations with Other International Organisations

Agreement between the International Labour Organisation and the Organisation of African Unity [1]

PREAMBLE

Whereas all Members of the International Labour Organisation have, by the Declaration of Philadelphia embodied in the Constitution as a statement of the aims and purposes of the Organisation, solemnly affirmed that " all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity ",

Whereas the purposes for which the Organisation of African Unity has been established include the co-ordination and intensification of the co-operation and efforts of its member States to achieve a better life for the peoples of Africa and to promote international co-operation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights,

The International Labour Organisation and the Organisation of African Unity,

Desirous of contributing, within the general framework of the Charter of the United Nations, the Constitution of the International Labour Organisation and the Charter of the Organisation of African Unity, to the effective accomplishment in Africa of those objectives which they have in common, in the light of their respective world-wide and regional responsibilities;

Have agreed upon the following:

ARTICLE I

Mutual Consultation

1. The International Labour Organisation and the Organisation of African Unity will consult regularly on matters of common interest for the purpose of furthering the effective accomplishment in the African States of their common objectives.

2. The International Labour Organisation will inform the Organisation of African Unity of any plans for the development of its technical activities in the social and labour fields within the territories of the Members of the Organisation of African Unity and will consider any observations concerning such plans which may be communicated to it by the Organisation of African Unity with a view to accomplishing effective co-ordination between the two organisations.

3. The Organisation of African Unity will inform the International Labour Organisation of any plans for the development of its technical activities in the social and labour fields and will consider any observations concerning such plans which may be communicated to it by the International Labour Organisation with a view to accomplishing effective co-ordination between the two organisations.

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[1] In accordance with the provisions of article VI, paragraph 1, this Agreement entered into force on 25 November 1965, the date on which it was signed by the duly authorised representatives of the two organisations.

Article II

Reciprocal Representation

1. For the purpose of furthering the effective accomplishment in the member States of the Organisation of African Unity of the objectives which the two organisations have in common, the International Labour Organisation will invite the Organisation of African Unity to be represented at meetings of the International Labour Conference and at meetings within or particularly concerning the African countries, members of the Organisation of African Unity, convened under the auspices of the International Labour Organisation, including the meetings of the African Regional Conference and the African Advisory Committee of the International Labour Organisation.

2. The Organisation of African Unity will likewise invite the International Labour Organisation to be represented at the meetings of its Economic and Social Commission as well as at all other technical and scientific meetings convened under the auspices of the Organisation of African Unity at which subjects for discussion include matters within the competence of the International Labour Organisation.

3. Appropriate arrangements may be made by agreement from time to time for the reciprocal representation of the International Labour Organisation and the Organisation of African Unity at other meetings convened under their respective auspices which consider matters in which the other organisation has an interest.

4. The Director-General of the International Labour Office and the Administrative Secretary-General of the Organisation of African Unity will each appoint a liaison officer to maintain close, direct and continuing contact between their two organisations with a view to ensuring the implementation of the provisions of the present Agreement.

Article III

Exchange of Information

1. The International Labour Organisation and the Organisation of African Unity will combine their efforts to obtain the best use of statistical and legislative information and to ensure the most effective utilisation of their resources in the assembling, analysis, publication and diffusion of such information with a view to reducing the burdens on the governments and other organisations from which such information is collected.

2. Subject to such arrangements as may be necessary for the safeguarding of confidential material, the fullest and promptest exchange of information and documents concerning social matters of common interest will be made between the International Labour Organisation and the Organisation of African Unity.

3. The International Labour Organisation will be kept informed by the Organisation of African Unity of developments in the work of the latter which are of interest to the International Labour Organisation.

4. The Organisation of African Unity will be kept informed by the International Labour Organisation of developments in the work of the latter which are of interest to the Organisation of African Unity.

Article IV

Technical Co-operation

1. Whenever desirable for the development of their activities in fields of mutual concern, the International Labour Organisation and the Organisation of African Unity may each seek the other's technical co-operation where it is specially equipped to assist in the development of such activities.

2. Every effort will be made to meet any such request for technical co-operation in a manner to be agreed in such cases as may arise.

3. The International Labour Organisation and the Organisation of African Unity, upon request and within their available resources, shall assist each other as regards administrative, conference and general service staff, as well as in the provision of experts on economic, social and labour matters. This assistance shall be furnished with due regard to the exclusively international character of the staff of the two Organisations, and to their obligations under the Constitution of the International Labour Organisation and the Charter of the Organisation of African Unity as well as to their respective staff rules and regulations.

4. Likewise, within the limits of their resources, the two organisations shall assist each other in the professional training of the different categories of personnel specified in paragraph 3 above.

ARTICLE V

Supplementary Arrangements

The Director-General of the International Labour Office and the Administrative Secretary-General of the Organisation of African Unity will make appropriate arrangements to ensure close collaboration and liaison between the staffs of the two organisations in matters of common interest and, in particular, between the Directors of the International Labour Organisation field offices in Africa and the General Secretariat of the Organisation of African Unity.

ARTICLE VI

Entry into Force

1. The present Agreement will enter into force from the date at which it is signed by the authorised representatives of the International Labour Organisation and the Organisation of African Unity.

2. The Agreement may be modified with the consent of the two parties.

In witness whereof, the Director-General of the International Labour Office, duly authorised by the Governing Body of the International Labour Office, and the Administrative Secretary-General of the Organisation of African Unity, duly authorised by the Council of Ministers of the Organisation of African Unity, signed the present Agreement.

Geneva, 25 November 1965.

(Signed) David A. MORSE,
Director-General of the International Labour Office.

Addis Ababa, 5 November 1965.

(Signed) Diallo TELLI,
Administrative Secretary-General of the Organisation of African Unity.

Judgments Given by the Administrative Tribunal of the International Labour Organisation

Text of the Judgment Given in the Case of: Wipf against United International Bureaux for the Protection of Intellectual Property

INTERNATIONAL LABOUR ORGANISATION

ADMINISTRATIVE TRIBUNAL

Fifteenth Ordinary Session (Geneva, 1-6 November 1965)

Registry's translation, the French text alone being authoritative.

In re Wipf

Judgment No. 86

The Administrative Tribunal,

Considering the complaint against the United International Bureaux for the Protection of Intellectual Property, drawn up by Mr. Wipf on 23 April 1965;

A. Considering that the said complaint prays for the quashing of a decision to assign the complainant to a grade and salary scale established for the purpose of assimilating the conditions of employment of the staff of the United International Bureaux to those of the common system of the United Nations and the specialised agencies, and further prays for the regrading of the complainant in a higher grade corresponding to the level of his former duties and responsibilities;

B. Considering that by an instrument dated 25 May 1965, filed with the Registrar prior to the filing of the Organisation's reply, the complainant stated that he withdrew any claim whatsoever with respect to the relief prayed for in his complaint; and furthermore that, by letter dated 1 June 1965, the Organisation stated that it had no other submissions to make;

DECISION

The Tribunal notifies the parties that Mr. Wipf's withdrawal of suit is hereby recorded.

In witness of this judgment, delivered in public sitting in Geneva on 6 November 1965 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto attached their signatures to these presents, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed) :

M. LETOURNEUR. André GRISEL. DEVLIN.

Jacques LEMOINE.

Text of the Judgment Given in the Case of: Di Giuliomaria against Food and Agriculture Organisation of the United Nations

INTERNATIONAL LABOUR ORGANISATION

ADMINISTRATIVE TRIBUNAL

Fifteenth Ordinary Session (Geneva, 1-6 November 1965)

Registry's translation, the French text alone being authoritative.

In re Di Giuliomaria — Judgment No. 87

The Administrative Tribunal,

Considering the complaint against the Food and Agriculture Organisation of the United Nations drawn up by Mr. Di Giuliomaria and dated 15 March 1965, and the Organisation's reply dated 27 April 1965;

Considering articles II and VIII of the Statute of the Tribunal and provisions 301.081, 301.082 and 301.102 of the Staff Regulations of the Organisation, provisions 302.82 of the Staff Rules and provisions 330.150, 330.151, 330.152, 330.200, 330.251 and 330.300 of the Administrative Manual of the Organisation;

Having heard, in oral proceedings on 1 November 1965, Mr. Jacques Mercier, counsel for the complainant, and Mr. Saint-Pol, agent of the Organisation, as well as Mr. Di Giuliomaria, who was questioned by the Tribunal;

Considering that the material *facts* of the case are as follows:

A. The complainant, who entered the service of the Organisation on 26 February 1962, was employed as a locally recruited administrative clerk in grade G. 4 of the General Service category, and since 1 September of the same year had held an indefinite appointment.

B. An Assembly of the Staff Association of the Organisation, held on 18 December 1963, decided on the proposal of Mr. Di Giuliomaria to reject the report presented to it by the Staff Council (a body which, under the terms of provision 301.081 of the Staff Regulations, is elected by the staff and responsible to it and is entrusted with representing the interests of the staff in its relations with the Director-General), to withdraw its confidence from the members of the Council and to relieve them of their functions, while his proposal to dissolve the Association and reconstitute it in the form of a trade union was referred to a committee elected by the Assembly, to which Mr. Di Giuliomaria was appointed. At General Assemblies of the Association held on 21 and 28 February and 4 and 11 March 1964, to which the report of the above-mentioned committee was presented, it was decided, first, to appoint a committee to aid the Staff Council in its negotiations with the administration for the improvement of General Service salaries, Mr. Di Giuliomaria being elected a member of this committee and subsequently assuming its chairmanship, and secondly, to set up a committee to redraft the constitution of the Association in accordance with the Assembly's instructions.

C. The complainant acted as Chairman of the Salary Committee until his dismissal and in that capacity took part, together with members of the Staff Council, in negotiations relating to the improvement of General Service category salaries, both in the Joint Advisory Committee provided for under provision 302.82 of the Staff Rules and directly with the competent administrative authorities, including the Director-General himself, without the representative capacity or mandate of Mr. Di Giuliomaria being challenged at any time. During this period the committee of which Mr. Di Giuliomaria was Chairman had on several occasions publicly expressed its reservations in regard to the proposals for the improvement of General Service category salaries which were being worked out by the administration. Having been informed of the proposals which the Director-General was submitting to the

Finance Committee of the Council of the Organisation, the Staff Council expressed its objections to them by a telegram dated 28 May 1964, with particular reference to the methods proposed for a statistical survey for the purpose of reviewing the General Service salary scale and to its own participation in such a survey. As a result of the Finance Committee's decisions, which, in accordance with the Director-General's proposals, recommended that for the adjustment of General Service category salaries a wage index should be substituted for a cost-of-living index, the latter being less favourable, and that a statistical survey should be undertaken by new methods to serve as the basis for an advanced review of salary scales, a difference of opinion arose between the Staff Council, which was prepared to accept these measures and to participate in the proposed survey, and the Salary Committee of which Mr. Di Giuliomaria was Chairman, which took the view that the objections expressed in the telegram of 28 May 1964 should be reaffirmed, that participation in the statistical survey should be refused, that the staff representatives should be withdrawn from the joint machinery, that a Staff Assembly should be convened and the possibility of a protest demonstration in the form of a strike considered. The Staff Council having refused to follow these suggestions, a Staff Assembly was convened through the agency of the members of the Salary Committee of which Mr. Di Giuliomaria was Chairman.

D. A Staff Assembly having been convened for 25 June 1964, Mr. Di Giuliomaria, at a date which is not specified but was probably 23 June 1964, distributed to the staff as a whole a statement or circular entitled " Some Remarks on the Attitude of the Staff Council and Some Proposals for the Next Assembly of 25 June ". The full text of this document, included in the dossier, has been recognised as authentic by both parties. In this document its author declares that he takes full personal responsibility for it in order to avoid any difficulties arising from the fact that two of the members of the Salary Committee did not concur in the majority view, while stating, however, that as other members of the staff have made their views known by the same method he is all the more entitled to do so inasmuch as he is a staff representative. Mr. Di Giuliomaria then criticises the Staff Council for its lack of democratic spirit (shown by its refusal to consult the Staff Assembly), its lack of determination and its contradictoriness (shown by its change of mind in regard to participation in the statistical survey), its lack of autonomy (indicated by its passive acceptance of the administration's decisions) and its inefficiency (indicated by its lack of initiative and its reluctance to hear the views of the Salary Committee). The statement goes on to propose that, having regard to the deterioration of the situation since the date of the preceding Assembly on 5 May 1964, the Assembly should—*(a)* withdraw its confidence from the Staff Council and remove all its members from office; *(b)* decide not to participate in any way in the statistical survey and to annul any decisions in that regard already taken by the Staff Council, proposing instead to maintain a demand for a 20 per cent. increase in salaries with effect from 1 January 1964; and *(c)* demand that the F.A.O. member countries form a committee to examine the relations between the Director-General and the staff, the author of the statement adding the comment that in his belief the situation of the staff and the consequent dissatisfaction did not derive from the fact that the Director-General might be ill advised or might not know the facts of the situation. Finally, after emphasising that everyone is entitled to have his own ideas in regard to problems of staff representation, the author of the memorandum expresses his intention of considering joining an Italian trade union which would be better able to look after his interests than the Staff Council, and his desire to discuss beforehand any objections to this course that might be submitted to him.

E. On 25 June 1964 the Staff Assembly, by 193 votes to 93, with 19 abstentions, passed a vote of no confidence in the Staff Council and decided to remove its members. On 26 June 1964 the complainant was summarily dismissed.

F. The complainant's appeal for reconsideration of his case on 7 July 1964 was rejected on 17 July 1964, the Appeals Committee issued an unfavourable recommendation on the appeal lodged with it by the complainant, and the Director-General's decision to confirm his summary dismissal, dated 18 December 1964, was received by the complainant on 21 December 1964. The complainant thereupon submitted to the Tribunal the complaint under reference, in the conclusions of which he prays that the decision to dismiss the complainant should be quashed, that the complainant should be reinstated, and that compensation should be paid to him for the injury he had suffered as a result of the above-mentioned decision.

G. The Organisation in its conclusions prays that it may please the Tribunal to find that the conduct of the complainant was such as to warrant his summary dismissal and that the procedure followed was in conformity with the relevant rules and regulations, and to dismiss the complaint. In support of these conclusions the Organisation charges the complainant, in the light of the above-mentioned statement, with insubordination and impertinence, misrepresentation of facts, incitement to agitation and offensive and injurious language. In subsidiary conclusions submitted during the oral proceedings the agent of the Organisation stated that in the very unlikely event of the Tribunal finding that the complaint was well founded, the granting of redress in the form of compensation for injury suffered would appear to be preferable to the complainant's reinstatement.

CONSIDERATIONS

On the procedure before the Tribunal:

1. The complainant's counsel, after the close of the last public hearing, submitted ten documents which had not been communicated to the agent of the Organisation and upon which he therefore had no opportunity to comment. In conformity with the principle that each party shall be fully heard on all the evidence admitted, these documents were excluded from the dossier on which the Tribunal took its decision.

On the legality of the decision impugned:

2. In the first place, whereas under provision 301.081 of the Staff Regulations the Staff Council is the only body officially representing the staff in its dealings with the administrative authorities of F.A.O., the Staff Association, in spite of its private character, is a lawful association which has in fact been recognised by the Director-General, its representatives having moreover been received by him on several occasions. Hence, in submitting to the sessions of the General Assembly of the Association motions pertaining to the staff's demands, Mr. Di Giuliomaria was merely availing himself of the right of any member of the staff to defend his occupational interests, subject only to his duty to observe the moderation incumbent on any public official.

Subsequently, however, he was appointed by the Assembly as a member of a special Salary Committee, of which he became Chairman, and from that date he carried on his activities as a representative of the Staff Association which had charged him with a specific mission; and in spite of his claim to be acting in a personal capacity it was in his representative capacity that he drafted and circulated the statement entitled " Some Remarks on the Attitude of the Staff Council and Some Proposals for the Next Assembly of 25 June ", the distribution of which led to the summary dismissal of the complainant for serious misconduct by the decision of 26 June 1964 referred to the Tribunal.

Without it being necessary to consider what the complainant's position would have been as a mere staff member, it may be observed that in his capacity of staff representative Mr. Di Giuliomaria had responsibilities but also enjoyed special rights, such as a considerable freedom of action and expression and the right to criticise the Staff Council and even, to some extent, the F.A.O. authorities; he also had special obligations, such as the obligation to act solely in defence of the interests of the staff and the strict duty not to abuse these rights by using methods or expressions incompatible with the decorum appropriate both to his status as a civil servant and to the functions entrusted to him by his colleagues.

3. Secondly, if the administrative authorities of F.A.O. consider that an official has behaved improperly, they are normally required to follow the disciplinary procedure laid down by provisions 330.130, 330.200 and 330.300 of the Administrative Manual, which provides specific safeguards for the official concerned. Consequently, by reason of its severity and of the fact that no formalities are prescribed for its application summary dismissal must necessarily be an exceptional measure which can be allowed only under an express provision and in accordance with the terms of such provision.

Provision 330.251 of the F.A.O. Administrative Manual permits summary dismissal in the following terms:

330.251. Imposition of this disciplinary measure consists in the termination of a staff member without benefit of notice period. The measure may be imposed only by the Director-General. It is imposed only when the misconduct of the staff member concerned is so serious that it has jeopardised or is likely to jeopardise the reputation of the Organisation and its staff.

4. In taking the impugned decision of 26 June 1964 under article 330.251 cited above, the Director-General took the view that the serious misconduct justifying summary dismissal was manifested in the aforementioned statement by Mr. Di Giuliomaria's insubordination and impertinence, misrepresentation of facts and incitement to agitation, and by his injurious language.

(a) These specific charges related to parts of the statement which criticised the action of the Director-General and of the Staff Council.

(i) So far as he himself is concerned, the Director-General charges the complainant, first, with having asked States Members of F.A.O. to form a Committee to examine the relations between the Director-General and the staff, and secondly, with having stated that the Director-General was not unaware of the unsatisfactory situation of the staff, thus implying that he had deliberately refused to improve it.

On the first point, it appears from the terms actually used by Mr. Di Giuliomaria in the original version of the statement that he did not make a direct appeal to the member States, but merely asked that they should be invited to form such a committee; in the light of the terms actually used by the complainant it cannot be asserted that in presenting this demand he was refusing to follow the procedure legally applicable to relations with the staff; at the most he was challenging its effectiveness. Furthermore, without its being necessary to consider whether this demand in itself implied some lack of the proper discretion which the complainant was bound to observe towards the Director-General, the fact that he made it did not in any case amount to an act of insubordination or impertinence.

On the second point, the sentence at issue at most implied that the Director-General had deliberately refused to allocate for staff purposes sums provided for in the F.A.O. budget for programme purposes, and that the complainant did not agree with the decision taken in this respect by competent authority, but this cannot be regarded as disrespectful or impertinent.

If Mr. Di Giuliomaria did not mention in his statement that at the beginning of June the Finance Committee had accepted the Director-General's recommendations concerning salary adjustments for the category of staff concerned, although he could not have been unaware of these facts when he drafted the statement, his silence can be explained by the fact that the principle of the Finance Committee's proposals to replace the cost-of-living index by a wages index and to review the salary scale on the basis of a statistical survey to be carried out by new methods, was contrary to the demands he had been pressing for several months past. The complainant may perhaps have misunderstood the importance and scope of the action taken by the F.A.O. directorate, but the possibly mistaken view he expressed in stating that the situation had deteriorated since the month of May cannot in the circumstances, and having regard to what has been said above, be described as misrepresentation of facts.

(ii) So far as the Staff Council is concerned, the decision impugned complains that Mr. Di Giuliomaria used injurious language towards the Council.

While the Staff Council is the official representative body of the staff in its relations with the F.A.O. authorities, it is not itself one of these authorities. As has already been noted, the Council is elected by the staff and is responsible to it under provision 301.081 of the Staff Regulations.

This necessarily implies that the Council's attitude and actions may be criticised—and even sharply criticised—by the staff without any restrictions other than those already indicated; it also implies that any member of the staff is entitled to express disapproval of serving members of the Council or to call on them to resign.

It does not appear that in his statement Mr. Di Giuliomaria abused his right of criticism or that he used injurious or defamatory language.

(b) In the written memorandum it presented to the Tribunal the Organisation submitted or specified two additional charges to the effect that by circulating his statement Mr. Di Giuliomaria was fostering useless agitation within F.A.O., and that he had urged staff members of the Organisation to join Italian trade unions.

On the first point, the mere fact that the Finance Committee's recommendations did not fully satisfy the category of officials concerned justified the complainant's action for the fulfilment of his demands on 23 June 1964; his activities still had an occupational objective.

On the second point, without expressing any view on the question whether a staff member of an international organisation can legally join a trade union of the country in which the organisation has its headquarters, a question which does not arise in the present case, the Tribunal considers that it follows from the terms of the complainant's statement that the charge against him has no factual basis.

5. It follows from the preceding considerations that the conduct which was deemed to justify Mr. Di Giuliomaria's summary dismissal did not constitute " misconduct " serious enough to jeopardise or to be likely to jeopardise the reputation of the Organisation or its staff; that hence it did not fall within the terms of provision 330.251 of the Administrative Manual cited above; and consequently, that the measure taken against the complainant was not justified and that the complaint is therefore well founded.

6. Article VIII of the Statute of the Administrative Tribunal provides that if the Tribunal is satisfied that the complaint was well founded it " shall order the rescinding of the decision impugned or the performance of the obligation relied upon. If such rescinding or execution is not possible or advisable, the Tribunal shall award the complainant compensation for the injury caused to him. "

Having regard to the present situation within F.A.O., resulting principally from the present dispute, the Tribunal considers the rescinding of the decision impugned to be inadvisable, and considers that in the circumstances of the case the complainant should be awarded compensation for the injury he has suffered.

7. The Tribunal considers that, after an appraisal of all the circumstances of the case, the proper amount to award Mr. Di Giuliomaria as compensation is 5 million Italian liras.

DECISION

1. The complaint is held to be well founded.

2. The rescinding of the decision impugned being inadvisable, compensation in the amount of 5 million Italian liras is awarded to Mr. Di Giuliomaria against the Food and Agriculture Organisation of the United Nations, for the injury caused to him.

3. The costs incurred by the complainant in connection with the present complaint are awarded against the Organisation and will be fixed by order of the President of the Tribunal.

In witness of this judgment, delivered in public sitting in Geneva on 6 November 1965 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto attached their signatures to these presents, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed) :

M. LETOURNEUR. André GRISEL. DEVLIN.

Jacques LEMOINE.

Text of the Judgment Given in the Case of: Kissaun against World Health Organisation

INTERNATIONAL LABOUR ORGANISATION

ADMINISTRATIVE TRIBUNAL

Fifteenth Ordinary Session (Geneva, 1-6 November 1965)

Registry's translation, the French text alone being authoritative.

In re Kissaun

(Fixing of Compensation) Judgment No. 88

The Administrative Tribunal,

Considering the memorandum dated 25 March 1965 by which Mr. Kissaun, in default of any settlement between the parties, prays the Tribunal to fix the amount of compensation payable to him by the World Health Organisation under an earlier judgment of the Tribunal, the reply of the Organisation dated 28 April 1965, the rejoinder of the complainant dated 13 May 1965 and supporting documents, and the observations of the Organisation on the said rejoinder and its annexes set out in a letter to the Registrar dated 9 June 1965;

Considering article VIII of the Statute of the Tribunal;

Considering Judgment No. 69, delivered by the Tribunal on 11 September 1964;

Considering that the material *facts* of the case are as follows:

A. In its judgment of 11 September 1964, quashing the decision not to confirm the appointment of the complainant at the end of the probationary period on the grounds of failure to comply with the recognised procedure and infringement of the right to be heard, the Tribunal invited the Organisation to reopen the case, to enable the complainant to exercise his rights, and to consider whether he should be reinstated. At the same time it reserved the complainant's right to claim compensation whether or not he was reinstated. It further provided that the complainant could at the most only claim " compensation for the prejudice effectively suffered from the time of the coming into force of the decision complained of up until the date of notification of the decision to be taken, or eventually, if this day is sooner, until the day when his appointment would normally have ended ".

B. By letter of 15 October 1964 the Organisation offered to pay the complainant compensation, explaining the reasons for which it was considered inadvisable to reopen the case with a view to his possible reinstatement. The complainant having challenged the basis on which the compensation was assessed, maintaining that it was payable even if, as he desired, steps were taken with a view to his possible reinstatement, and without prejudice to additional compensation in the event of non-reinstatement, the Organisation on 3 December 1964 offered him the sum of United States $10,120.43, representing his salary for the period between the premature termination of his appointment and the date when his appointment would normally have ended, including allowances and benefits, plus interest at 4 per cent. for the period between 1 June 1963, date of the normal termination of his appointment, and 11 September 1964, date on which the above-mentioned judgment was delivered. It was also specified that this sum was offered in final settlement of all the complainants's rights, and that if he insisted on the reopening of hearings on his case the offer would be withdrawn and any compensation would be fixed thereafter in the light of the results of such hearings. No settlement having been reached, the complainant requested the intervention of the Tribunal, which laid down the procedure for consideration of the dispute.

C. In the final version of his conclusions, the complainant recognises that he has nothing to gain from a fresh investigation and confines himself to claiming, besides a satisfactory certificate of service, compensation comprising his salary, including allowances and benefits, for the period between the premature termination of his appointment and the date of its normal termination, plus one salary step to which he claimed that he would have been

entitled if he had remained in the Organisation's service, interest at 4 per cent. on the amount thus computed from the normal date of expiry of his appointment to the date of payment of compensation, and additional compensation of United States $20,000 for damage to his health resulting from a nervous breakdown due to the illegal treatment he had received, entailing loss of earnings as well as suffering and expense. The Organisation opposes these claims and prays that payment of the sum offered by it on 3 December 1964 should be ratified as constituting full settlement of all its obligations under Judgment No. 69 of 11 September 1964.

CONSIDERATIONS

1. *On the principle of compensation :*

Both parties having agreed to the settlement of the complainant's claims by means of the payment of compensation, the Tribunal's task is confined to fixing the amount of such compensation. In any event, the complainant is entitled only to compensation for the injury actually caused to him by the rescinded decision.

2. *On the salary step on which the compensation is computed :*

The Organisation has offered the complainant compensation computed on the basis of grade P.4, step 1. The complainant, on the other hand, claims that as a result of the quashing of the decision to terminate his appointment he is deemed to have remained in the service of the Organisation until 31 May 1963, that in that event he would normally have received the salary applicable to grade P.4, step 2, from 31 May 1962 until 31 May 1963, and that he is therefore entitled to compensation computed on this basis for the period in question. However, once he has withdrawn his demand for a rehearing in regard to the circumstances of the termination of his appointment, the complainant can hardly claim that if he had remained in the Organisation's service until 31 May 1963 he would necessarily have received an increment on 31 May 1962. On the contrary, it is by no means improbable that at the latter date the Organisation would have extended the complainant's probationary period under article 440, paragraph 1 *(b)*, of the Staff Regulations without increasing his salary. There are therefore no grounds for departing from the basis of compensation adopted by the Organisation.

3. *On the claim for supplementary compensation of $20,000 :*

In addition to a sum corresponding to his salary from 15 September 1962 to 31 May 1963, the complainant also claims a sum of $20,000 as additional compensation for the psychological disturbance which he claims to have suffered as a result of his dismissal. It is not inconceivable that an official might be so deeply affected by the termination of his appointment as to fall ill and to become incapacitated for work for a certain length of time. In the present case, however, the complainant could in any event have expected the termination of his appointment on 31 May 1963, and therefore, failing quite exceptional circumstances he has no grounds for maintaining that his dismissal led to the deterioration of his health and to incapacity for work after that date. The existence of any such circumstances cannot be deemed to be established by the evidence submitted by the complainant. In particular, they do not appear to be sufficiently established by the statements of the psychiatrist who attended the complainant since June 1963 and whose comments on the origin of the complainant's alleged illness are based on conjecture rather than on observed facts. It follows that in offering the complainant compensation equal to the salary to which he would have been entitled from 15 September 1962 to 31 May 1963, without any deduction on account of possible earnings during that period, the Organisation has taken full account of the injury caused to him by the loss of his employment. Moreover, under the strict terms of Judgment No. 69, the complainant would be entitled only to compensation for the injury suffered by him up to 31 May 1963, and therefore his claim for higher compensation should be rejected without further consideration on this ground alone.

4. *On the date up to which interest is due :*

There is agreement between the parties that the complainant is entitled to interest on the compensation awarded at 4 per cent. from 1 June 1963. They are not agreed, however,

as to the date up to which interest is due. It follows from the considerations set out above that the Organisation's offer of 3 December 1964 was satisfactory as a whole. In the Tribunal's view, even if it was slightly inadequate in respect of interest it was liberal in respect of capital ; the complainant was therefore wrong to reject this offer and has accordingly no grounds for claiming supplementary compensation.

5. *On the issue of a certificate :*

The certificate issued to the complainant on 9 August 1965 deals with the nature and length of his service and with his abilities and conduct. It complies fully with the requirements of article 995 of the Staff Regulations and does not need to be supplemented, particularly as the complainant himself has not requested any amendment of it although it has been in his hands for nearly three months.

On these grounds,

DECISION

1. The Tribunal records the offer of the Organisation to pay the complainant a sum of United States $10,120.43 including interest, such payment constituting the full discharge of the obligations arising out of Judgment No. 69 dated 11 September 1964.

2. The complaint is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 6 November 1965 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto attached their signatures to these presents, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed) :

M. LETOURNEUR. André GRISEL. DEVLIN.

Jacques LEMOINE.

Text of the Judgment Given in the Case of: Barakat against International Labour Organisation

INTERNATIONAL LABOUR ORGANISATION

ADMINISTRATIVE TRIBUNAL

Fifteenth Ordinary Session (Geneva, 1-6 November 1965)

Registry's translation, the French text alone being authoritative.

In re Barakat — Judgment No. 89

The Administrative Tribunal,

Considering the complaint against the International Labour Organisation drawn up by Mr. Aziz Barakat on 19 February 1965, the Organisation's reply dated 30 March 1965, the complainant's rejoinder dated 29 June 1965, the Organisation's surrejoinder dated 10 September 1965, together with the complainant's rectifications dated 5 October 1965, and the Organisation's observations thereon, dated 26 October 1965;

Considering articles II, VII and VIII of the Statute of the Tribunal, and articles 1.2, 1.8, 11.2, 12.1, 12.2, 12.8, 12.9 and 13.1 of the Staff Regulations of the International Labour Office, together with Annex IV to the said Regulations;

Having examined the documents in the dossier, whereupon the oral proceedings and the hearing of witnesses prayed for by complainant and the hearing of witnesses requested by the Organisation in a subsidiary plea, were found without relevance to the disposition of the case and were therefore disallowed;

Considering that the material *facts* of the case are as follows:

A. The complainant having requested, on 8 September 1964, a waiver of his immunity from jurisdiction in order to institute judicial proceedings relating to the refusal to make available a substantial financial contribution which he considered to have been pledged for the purposes of a transaction of a commercial character, the investigation of his request led to an inquiry as a result of which the defendant Organisation felt satisfied that complainant was engaging in unauthorised outside activities which, moreover, were incompatible with his status as an international civil servant.

B. On 13 October 1964 the complainant was advised that the Director-General deemed that the outside occupations in the sense of article 1.2 of the Staff Regulations in which the complainant had engaged without permission, the fact that the complainant had made use of his position as an international official in Switzerland for purposes foreign to the reasons for his presence in the country, and the risk of public discredit that the size of his financial operations placed on the Organisation, constituted serious misconduct liable to the sanction of summary dismissal. However, before submitting to the Joint Committee a proposal for summary dismissal, in accordance with the prescribed procedure, the complainant would be allowed the option to resign within 48 hours, failing which disciplinary proceedings would be initiated. On 15 October 1964 the complainant submitted a resignation without conditions or restrictions, to take effect on 15 November 1964, which resignation was accepted forthwith.

C. On 13 November 1964 the complainant submitted a complaint under article 13.1 of the Staff Regulations, relating to the unfair and unjustifiable treatment to which he had been subjected when confronted with the choice between resignation and summary dismissal, which complaint he wished to be referred to the Joint Committee. On 24 November 1964 the complainant was advised that, in fact, he had been offered a choice between resignation and the initiation of disciplinary proceedings leading to the consideration of a proposal for summary dismissal by the Joint Committee, following whose opinion a final decision would have been taken, and that, in resigning, the complainant had himself forfeited the opportunity to have the case referred to the Joint Committee, so that his request had become without purpose. On 19 February 1965 the complainant lodged the aforementioned complaint with the Tribunal.

D. Before the Tribunal Mr. Barakat submits that the financial operations he had engaged in and, in particular, that for the purpose of which he had requested a waiver of immunity, were aimed at investing his private estate, the management of which could not be regarded as an outside activity, all the more so as these investments, which he alleges were known to high officials, would have given rise to no adverse comments on their part; he further submits that, as the operations he engaged in were in no way contrary to law and involved no financial risks that were not secured by real property collaterals, these operations involved no risk of throwing the Organisation into public discredit and were not incompatible with his status as an international civil servant. In the circumstances, the decisions of 13 October and 24 November 1964, which in his view resulted in obtaining his resignation under duress, and to depriving him of the opportunity to rebut the charges preferred against him, were illegitimate and arbitrary and should be held to be so by the Tribunal, which, according to the complainant's last submission, should quash them, in so far as appropriate, and prays for the award of an indemnity for the prejudice suffered as a consequence of these decisions.

E. The defendant Organisation first challenges, *in limine litis*, the competence of the Tribunal to entertain the complaint, on the ground that, in objecting to the alternative between resignation and the initiation of disciplinary proceedings which was offered to him, the complainant fails to advance any violation of his terms of appointment or any relevant regulation, while the Tribunal is competent only to pass upon such violations, and that the complainant fails to indicate any genuine relationship between the complaint and the statutory provisions invoked. Subsidiarily, the defendant Organisation submits that the complaint is not receivable under four heads: firstly, the lack of any administrative decision adversely affecting the complainant, since neither the initiation of disciplinary proceedings, nor a resignation—separately or taken together—were such as to cause in themselves any damage; secondly, the tardy submission of the complaint which was lodged after the expiry of the time limit for recourse to the Tribunal, which should run from 13 October 1964;

thirdly, the financial nature of the prayer for relief, since where it finds a complaint to be well founded the Tribunal is to order the quashing of the decision complained of or the performance of the obligation relied upon; and fourthly, the lack of definition of the points at issue, in so far as the complaint treats as one two separate decisions taken on different dates. More subsidiarily, the defendant Organisation submits that the complaint should be dismissed as not well founded, in that the option offered to the complainant was legitimate. Even more subsidiarily, should the Tribunal wish to review possible errors in fact or in law in respect of the charges made against Mr. Barakat, the defendant Organisation prays for the previous consideration of further evidence.

CONSIDERATIONS

1. *On the competence of the Tribunal:*

Under article II, paragraph 1, of its Statute, the Tribunal is competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials of the International Labour Office, and of such provisions of the Staff Regulations as are applicable to the case. In the present case the complainant has not confined himself to alleging infringement of articles 1.2 and 12.1 of the Staff Regulations, but has also complained that undue influence was brought to bear upon him to secure his resignation, thus implying infringement by the Director-General of a general rule of law which is equally applicable to the international civil service. On this reasoning, the present complaint is among those that the Tribunal is competent to hear.

It being unnecessary to consider the administration's submission to the effect that the complaint is not receivable:

2. *On the merits:*

It appears from the documents in the dossier that the allegations against Mr. Barakat were of such a nature as to justify initiating disciplinary proceedings. The Director-General was therefore entitled to institute these proceedings. Consequently, in offering Mr. Barakat the choice between voluntary resignation and appearing before the Joint Committee, the Director-General, far from bringing any kind of pressure to bear, was simply offering him a solution which he was in no way obliged to offer.

Moreover, it was open to Mr. Barakat in the course of the proceedings, if he so desired, to defend himself against the charges preferred against him. The choice that lay before him was therefore entirely free. Furthermore, in the circumstances, the time allowed to the complainant to choose between the alternatives put before him was not unduly short, having regard to the fact that the complainant was a man of experience and that, if he had thought it necessary to reflect further or to take legal advice, it was open to him to ask for an extension of the time limit, which he did not do. It follows that the complainant's appointment was terminated as a result of his own resignation, freely tendered, and that his complaint is therefore not well-founded and must be dismissed.

On these grounds,

DECISION

The complaint is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 6 November 1965 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed):

M. LETOURNEUR. André GRISEL. DEVLIN.

JACQUES LEMOINE.

Text of the Judgment Given in the Case of: Prasad against Food and Agriculture Organisation of the United Nations

INTERNATIONAL LABOUR ORGANISATION

ADMINISTRATIVE TRIBUNAL

Fifteenth Ordinary Session (Geneva, 1-6 November 1965)

In re Prasad — Judgment No. 90

The Administrative Tribunal,

Considering the complaint against the Food and Agriculture Organisation of the United Nations drawn up by Mr. Ram Prasad on 12 June 1965, and the Organisation's reply of 4 August 1965;

Considering articles II and VIII of the Statute of the Tribunal and article 301.091 of the Staff Regulations of F.A.O., and section 314.221 of its Administrative Manual;

Having examined the documents in the dossier, oral proceedings having neither been requested by the parties nor ordered by the Tribunal;

Considering that the material *facts* of the case are as follows:

A. The complainant was appointed as staff member of F.A.O. on 14 November 1951 as a porter at the G.1 grade, serving in the New Delhi Office. The complainant's appointment was converted into a permanent appointment effective on 1 May 1961. On 1 January 1963 his post was reclassified from porter at G.1 grade to driver-messenger at the G.2 grade. For the purposes of his duties as driver-messenger he used a motor scooter belonging to the Organisation.

B. On 7 January 1963 the complainant was given a cheque for 1,000 rupees to draw cash from the bank. He gave the money to Mr. Singh, the administrative assistant, who on checking it found that there were 99 ten-rupee notes. The complainant immediately put his hand in his pocket and found another ten-rupee note which he gave to Mr. Singh. Mr. Singh alleged that this sort of thing had happened on several occasions previously and that the complainant had explained it by saying that he distributed the cash in all his pockets to avoid losing the full sum if robbed. Following upon this incident Mr. Hachiya, the administrative officer, gave the complainant a written reprimand in which he said: "In future, whenever you are deputed for cash drawings you should be very cautious in many matters and always count the cash before giving it to anybody."

C. On 29 January 1963 Mr. Hachiya gave the complainant a written reprimand for using the office address for his private affairs, saying: "You are therefore immediately instructed to take suitable steps to correct your private address as soon as possible."

D. On 2 August 1963 the complainant, while driving the Office scooter along the Lodhi road in Delhi, collided with a cyclist coming out of a side lane. The complainant sustained minor injuries and was on sick leave for a fortnight. Since the cyclist also sustained only minor injuries, the matter was amicably settled. It is alleged by the Organisation that the police report (which has not been produced) placed the principal blame for the accident on the complainant because of excessive speed. No criminal prosecution was, however, brought against him. On being questioned by Mr. Hachiya, the complainant admitted that on an earlier occasion, the date of which is not stated, he had been fined for a minor traffic infringement. Mr. Hachiya gave the complainant a written reprimand, reminding him to drive the scooter very carefully and not to over-speed.

E. On 30 September 1963 a dispute arose between the complainant and Mr. Singh as to whether the complainant had been paid his September salary. Mr. Singh asserted that he had been paid on 27 September and the complainant denied it. Mr. Hachiya, feeling that the dishonesty was on the part of the complainant, instructed him not to come to the Office after 2 October until further notice. The complainant asked the Acting Deputy Regional Representative in Delhi, Mr. Cedric Day, for an investigation.

F. On 18 October 1963 Mr. Hachiya wrote to the Director of Personnel and Management of F.A.O. in Rome recounting the incidents set out above and saying he wished to dismiss the complainant " since his daily interference in many matters is creating a bad impression on the other local staff members ". He added that he had carefully watched the complainant's job during the last 11 months and found that it was not satisfactory. Consequently, the complainant was informed that " as several facts indicative of misconduct have come to the attention of the Organisation " he was formally suspended from 25 October 1963 pending investigation.

G. Meanwhile, on 1 October 1963, the day when the complainant was first suspended for suspected dishonesty, he drove a motor scooter down a one-way street in the wrong direction. His excuse was that he had not observed it to be a one-way street. The Organisation was unaware of this offence until 4 November 1963 when it received a police notice. It does not appear that the complainant was prosecuted.

H. Mr. Day was unable in his investigation to reach a firm conclusion on the dispute about payment of salary and, in fact, the complainant was paid the amount *ex gratia.* Mr. Day dealt in detail with the incidents recounted above and also with the general charge of unsatisfactory conduct. Under this head, he reported that the complainant's behaviour and attitude during the last three years had gradually deteriorated and that it was necessary for his supervisors to reprimand him for lack of attention to duty, disobedience, argumentativeness and insolence. He reported that the complainant had been surly and aggressive in his attitude towards senior members of the local staff and that, despite repeated warnings, he had been guilty of such behaviour as late appearance on duty, early departure from the office, failure to return from delivery missions, overstaying annual leave and taking unreasonably long breaks during office hours.

The Tribunal has observed that no statements have been furnished by persons complaining of the complainant's misbehaviour in these respects, that no specific incidents are detailed and that no written reprimands on this subject were addressed to the complainant. It appears that the practice of issuing written reprimands was not introduced into the Delhi Office until 1963.

I. The complainant strongly denies any misbehaviour of the sort described in the preceding paragraph. He relies on the fact that the evaluations of his service, the last of which was dated 13 March 1962, have never been unfavourable. He relies on the fact that on 1 January 1963 he was upgraded from G.1 to G.2. The Organisation has pointed out that the upgrading occurred because the post which the complainant held was reclassified from porter at the G.1 grade to driver-messenger at the G.2 grade; and it states that at the time of the reclassification it was decided to retain the complainant in the post he was occupying rather than to transfer him to another post since he was the oldest and most senior eligible staff member.

J. On 6 April 1964 the Deputy Regional Representative notified the complainant that he had decided that the complainant's appointment should be terminated, effective immediately, on the grounds of unsatisfactory performance of duty. He said: " In coming to this decision I have in mind especially the occasions of unsatisfactory service which have been brought to your attention such as careless handling of cash entrusted to you, careless driving, your accident record, and your general attitude of non-co-operation with your supervisors and colleagues, all of which had made your job performance below the acceptable level."

K. By letter of 18 April 1964 the complainant requested the Director-General to reconsider the decision to terminate the complainant's appointment and, on 18 May 1964, the Director-General informed the complainant that he maintained his decision. The complainant thereupon submitted an appeal to the F.A.O. Appeals Committee, which heard the case on 19 November 1964 and submitted its recommendation in the following terms: " After due consideration of this appeal in all its aspects, the Committee strongly recommends that the Director-General reconsider his decision of termination." The Director-General felt that he could not follow the recommendation of the Appeals Committee but, by letter of 18 March 1965, which reached the complainant on 5 April 1965, the Director-General informed the complainant that, while maintaining his decision to terminate his appointment, he was prepared to convert the termination for unsatisfactory service into a termination in the interest of the good administration of the Organisation, with consequent increase in

the termination indemnities payable to the complainant. Under Staff Regulation 301.091 such action can be taken provided it is not contested by the staff member concerned. The complainant declined this offer and instituted proceedings before the Tribunal, praying for the quashing of the decision to terminate his appointment and for reinstatement. The Organisation prays the Tribunal to find that the Director-General's decision to terminate the complainant for unsatisfactory service was in conformity with the applicable Staff Regulations, Staff Rules and the Administrative Manual, and to dismiss the complaint.

CONSIDERATIONS

1. Staff Regulation 301.091 provides that the Director-General may terminate an appointment of a staff member who holds a permanent appointment if the services of the individual concerned prove unsatisfactory. Staff Manual provision 314.221, relating to termination for unsatisfactory service, lays down that a staff member may be separated following written warning for failure to perform prescribed duties in a satisfactory manner (e.g. because of lack of fitness, aptitude or suitability for the post).

2. For the purpose of fulfilling the requirements in Staff Manual provision 314.221 that there must be a written warning of failure to perform prescribed duties, the Organisation relies upon the three reprimands referred to in paragraphs B, C and D of the summary of facts.

As to the first, it is not alleged that after the receipt of the reprimand there was any further cause for complaint about the careless handling of cash. As to the second, the reprimand related to an incident that is not relied upon as evidence of unsatisfactory service, and furthermore it is not alleged that the instruction contained in it was disregarded.

The only reprimand therefore that it is relevant to consider is the reprimand for over-speeding which was followed by the careless entry into the one-way street.

3. The Tribunal notes that none of the specific incidents recounted above is relied on as of itself sufficient to justify the termination of the complainant's employment. They are presented as evidence of unsatisfactory service. It is unnecessary for the Tribunal to consider whether, taken together and viewed against the background of 12 years' service, they amount to sufficient evidence; or whether the general charge of unco-operative conduct is sufficiently proved; or to what extent the Tribunal should, in a case of this sort, review a decision of the Director-General.

4. The Tribunal can dispose of the case on the ground that there was no written warning as required by the terms of Staff Manual provision 314.221 and as indeed is necessary to protect the employee from sudden dismissal on a general charge. A warning is different from a reprimand. It is not enough that the employer should be able to point to several occasions in the course of a long service when a rebuke has been administered. What is contemplated by the provision is that the employee should be told in what respects his service as a whole has proved unsatisfactory and warned that if he does not give better service he faces the possibility of dismissal. A reminder to drive more carefully and not to over-speed is not a warning the disregard of which is sufficient to justify a dismissal for unsatisfactory service.

DECISION

For the above reasons,

The decision of 18 March 1965 to terminate the complainant's appointment for unsatisfactory service is quashed.

In witness of this judgment, delivered in public sitting in Geneva on 6 November 1965 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto attached their signatures to these presents, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed) :

M. LETOURNEUR. André GRISEL. DEVLIN.

Jacques LEMOINE.

INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

Vol. XLIX, No. 2 *April 1966*

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Supplement

The Supplement to the present issue contains the 86th, 87th and 88th Reports of the Governing Body Committee on Freedom of Association.

Price of this issue: $1.50; 10s. 6d.

INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

Vol. XLIX, No. 2 *April 1966*

INFORMATION

164th Session of the Governing Body of the International Labour Office [1]

(Geneva, 28 February-4March 1966)

The 164th Session of the Governing Body of the International Labour Office was held in Geneva from 28 February to 4 March 1966.

The agenda of the session was as follows:

1. Approval of the minutes of the 163rd Session.
2. Report of the Meeting of Experts on Respiratory Function Tests in Pneumoconioses (Geneva, 20-28 September 1965).
3. Report of the Meeting of Consultants on Women Workers' Problems (Geneva, 20-28 September 1965).
4. Report of the Permanent Agricultural Committee (Seventh Session, Geneva, 22 November-3 December 1965).
5. Report of the Working Group on the Revision of the International Standard Classification of Occupations (I.S.C.O.) (Geneva, 6-17 December 1965).
6. Record of the Preparatory Technical Conference on the Maximum Permissible Weight to Be Carried by One Worker (25 January-4 February 1966).
7. Report of the Working Party on the Programme and Structure of the I.L.O.
8. Reports of the Committee on Freedom of Association.
9. Reports of the Financial and Administrative Committee (including budget estimates for 1967).
10. Report of the Committee on Standing Orders and the Application of Conventions and Recommendations.

[1] The texts of the documents and reports submitted to the Governing Body which contain full information on the questions dealt with, will be published subsequently in the appendices to the printed minutes of the session. However, the " Documents " section of this number contains the text of the report by the Director-General concerning action on the resolution concerning Southern Rhodesia adopted by the Governing Body at its 163rd Session (November 1965) (see pp. 227-248).

11. Report of the International Organisations Committee.
12. Report of the Committee on Industrial Committees.
13. Report of the Committee on Operational Programmes.
14. Report of the Committee on Discrimination.
15. Composition and agenda of committees and of various meetings.
16. International Institute for Labour Studies.
17. International Centre for Advanced Technical and Vocational Training.
18. Report of the Director-General.
19. Programme of meetings.
20. Appointment of Governing Body representatives on various bodies.
21. Date and place of the 165th Session of the Governing Body.

The Governing Body was composed as follows:

Chairman : Mr. O. B. DIARRA *(Mali)*.

Government group :

Algeria : Mr. A. BOUHARA.
Australia : Mr. B. C. HILL.
Brazil : Mr. A. B. MENDES CADAXA.
Bulgaria : Mr. A. TZANKOV.
Canada : Mr. G. V. HAYTHORNE.
China : Mr. LIU Tsing-chang.
Ecuador : Mr. J. R. MARTÍNEZ COBO.
France : Mr. H. HAUCK.
Gabon : Mr. P. MEBALEY.
Federal Republic of Germany : Mr. F. HAENLEIN.
India : Mr. P. C. MATHEW.
Italy : Mr. R. AGO.
Japan : Mr. M. AOKI.
Liberia : Mr. A. D. WILSON.
Mali : Mr. O. B. DIARRA.
Mexico : Mr. E. BRAVO CARO.
Pakistan : Mr. S. H. RAZA.
Peru : Mr. J. A. ENCINAS DEL PANDO.
Poland : Mr. L. CHAJN.
U.S.S.R. : Mr. I. V. GOROSHKIN.
United Kingdom : Mr. D. C. BARNES.
United States : Mr. G. L. P. WEAVER.

Employers' group :

Mr. L. APARICIO VALDEZ (substitute for Mr. A. DESMAISON) *(Peruvian)*.
Mr. G. BERGENSTRÖM *(Swedish)*.
Mr. E. G. ERDMANN *(Federal Republic of Germany)*.
Mr. F. A. P. MURO DE NADAL *(Argentine)*.
Mr. M. NASR *(Lebanese)*.
Mr. E. P. NEILAN (substitute for Mr. R. WAGNER) *(United States)*.
Mr. H. M. OFURUM *(Nigerian)*.
Sir George POLLOCK *(United Kingdom)*.
Mr. M. A. RIFAAT *(United Arab Republic)*.
Mr. N. H. TATA *(Indian)*.

Mr. WAJID ALI *(Pakistani)*.
Mr. P. WALINE *(French)*.

Workers' group :

Mr. ABID ALI *(Indian)*.
Mr. F. AHMAD *(Pakistani)*.
Mr. A. BECKER *(Israeli)*.
Mr. H. BEERMANN *(Federal Republic of Germany)*.
Mr. B. BOLIN *(Swedish)*.
Mr. L. L. BORHA *(Nigerian)*.
Lord COLLISON *(United Kingdom)*.
Mr. M. BEN EZZEDDINE *(Tunisian)*.
Mr. R. FAUPL *(United States)*.
Mr. K. KAPLANSKY *(Canadian)*.
Mr. J. MÖRI *(Swiss)*.
Mr. A. SÁNCHEZ MADARIAGA *(Mexican)*.

The following regular Government representatives were absent and were not represented by substitutes:

Lebanon : Mr. R. WAHID.
Tanzania [1] *:*

The following regular representatives were absent:

Government group :

Australia : Sir Henry BLAND.
Brazil : Mr. L. DE CARVALHO COELHO.
France : Mr. A. PARODI.
Mexico : Mr. A. GÓMEZ ROBLEDO.

Employers' group :

Mr. A. DESMAISON *(Peruvian)*.
Mr. R. WAGNER *(United States)*.

Workers' group :

Mr. A. E. MONK *(Australian)*.

The following deputy members or substitute deputy members were present:

Government group :

Argentina : Mr. R. A. BILLINGHURST.
Congo (Leopoldville) : Mr. A. MAKWAMBALA.
Ethiopia : Mr. M. AMEDE.
Morocco : Mr. H. REKIOUAK.
Norway : Mr. K. J. ØKSNES.
Philippines : Mr. V. A. PACIS.
Ukraine : Mr. A. KISSEL.
Uruguay : Mr. M. J. MAGARIÑOS DE MELLO.
Venezuela : Mr. F. ÁLVAREZ CHACÍN.

Employers' group :

Mr. P. CAMPANELLA *(Italian)*.
Mr. C. R. VÉGH GARZÓN *(Uruguayan)*.

[1] Regular representative not yet appointed.

Mr. A. G. FENNEMA *(Netherlands)*.
Mr. C. KUNTSCHEN *(Swiss)*.
Mr. D. ANDRIANTSITOHAINA *(Malagasy Republic)*.
Mr. T. H. ROBINSON *(Canadian)*.
Mr. F. MARTÍNEZ ESPINO *(Venezuelan)*.
Mr. P. FOURN *(Dahomean)*.
Mr. G. MAUTNER-MARKHOF *(Austrian)*.
Mr. J. A. T. PERERA *(Malaysian)*.

Workers' group :

Mr. R. BOTHEREAU *(French)*.
Mr. D. COPPO *(Italian)*.
Mr. N. DE BOCK *(Belgian)*.
Mr. A. FAHIM *(United Arab Republic)*.
Mr. Y. HARAGUCHI *(Japanese)*.
Mr. J. J. HERNANDEZ *(Philippine)*.
Mr. S. SHITA *(Libyan)*.
Mr. G. WEISSENBERG *(Austrian)*.

The following representatives of States Members of the Organisation were present as observers:

Belgium : Mr. J. DENYS.
Chile : Mr. F. CONTRERAS.
Cuba : Mr. E. CAMEJO ARGUDÍN.
Czechoslovakia : Mr. P. PAVLÍK.
Hungary : Mr. J. BÉNYI.
Iran : Mr. S. AZIMI.
Ireland : Mr. J. C. B. MACCARTHY.
Israel : Mr. E. F. HARAN.
Netherlands : Mr. T. M. PELLINKHOF.
New Zealand : Mr. W. G. THORP.
Rumania : Mr. T. TABACARU.
Switzerland : Mr. B. ZANETTI.
Turkey : Mr. O. AKSOY.
Yugoslavia : Mr. K. VIDAS.

The following representatives of international governmental organisations were present:

United Nations : Mr. N. G. LUKER.
United Nations Development Programme : Mr. R. P. ETCHATS.
Office of the High Commissioner for Refugees : Mr. J. ASSCHER.
Food and Agriculture Organisation of the United Nations : Mr. G. DELALANDE.
United Nations Educational, Scientific and Cultural Organisation : Mr. V. P. NIKOLSKY.
World Health Organisation : Mr. C. FEDELE.
International Bank for Reconstruction and Development : Mr. E. LÓPEZ HERRARTE.
International Monetary Fund : Mr. E. JONES.
General Agreement on Tariffs and Trade : Mr. P. SOBELS.
Organisation of American States : Mr. R. C. MIGONE.
Council of Europe : Mr. F. TENNFJORD.
High Authority of the European Coal and Steel Community : Mr. C. SAVOUILLAN.
European Economic Community : Mr. L. LAMBERT.

Intergovernmental Committee for European Migration: Mr. A. G. NATALE.
League of Arab States: Mr. M. EL-WAKIL.

The following representatives of international non-governmental organisations were present:

International Confederation of Free Trade Unions: Mr. A. HEYER.
International Co-operative Alliance: Mr. M. BOSON.
International Federation of Christian Trade Unions: Mr. G. EGGERMANN.
International Organisation of Employers: Mr. R. LAGASSE.
World Federation of Trade Unions: Mr. G. BOGLIETTI.

APPROVAL OF THE MINUTES OF THE 163RD SESSION

Subject to the insertion of the corrections received, the Governing Body approved the minutes of the 163rd Session.

REPORT OF THE MEETING OF EXPERTS ON RESPIRATORY FUNCTION TESTS IN PNEUMOCONIOSES

(Geneva, 20-28 September 1965)

The Governing Body had before it the report of the Meeting of Experts on Respiratory Function Tests in Pneumoconioses (Geneva, 20-28 September 1965).[1]

The Governing Body—

(a) took note of the report and authorised its widest possible distribution;

(b) authorised the Director-General to communicate the report to governments with the request that they transmit it to the bodies and services concerned; and

(c) requested the Director-General to take account of the recommendations made by the Meeting of Experts when drawing up the work programme of the Office for future years.[2]

REPORT OF THE MEETING OF CONSULTANTS ON WOMEN WORKERS' PROBLEMS

(Geneva, 20-28 September 1965)

The Governing Body also had before it the report of the Meeting of Consultants on Women Workers' Problems (Geneva, 20-28 September 1965).[3] It took note of the report and requested the Director-General to take the views and suggestions of the consultants into account in planning and orienting the work of the Office and in formulating future programme proposals for the consideration of the Governing Body.

It further requested the Director-General to transmit the report, together with an account of the Governing Body's discussion, to the governments of member States and, through them, to employers' and workers' organisations and to the United Nations Commission on the Status of Women.

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[1] See *Official Bulletin*, Vol. XLVIII, No. 4, Oct. 1965, pp. 305-309.
[2] Ibid., paras. 23-28, p. 309.
[3] Ibid., pp. 310-315.

Report of the Permanent Agricultural Committee

(Seventh Session, Geneva, 22 November-3 December 1965)

The Permanent Agricultural Committee held its Seventh Session in Geneva from 22 November to 3 December 1965.[1]

The Governing Body—

(a) took note of the report and conclusions adopted by the Permanent Agricultural Committee at its Seventh Session;

(b) authorised the Director-General to communicate the report and conclusions of the Committee to the governments of member States; and

(c) authorised the Director-General to communicate the report and conclusions of the Committee to the United Nations Conference on Trade and Development and the Food and Agriculture Organisation of the United Nations—drawing their special attention to the Committee's recommendations as set forth in the conclusions concerning the stabilisation of the prices of agricultural products and the World Food Programme[2]—and to the other international organisations and bodies concerned.

Report of the Working Group on the Revision of the International Standard Classification of Occupations (I.S.C.O.)

(Geneva, 6-17 December 1965)

The Governing Body took note of the report of the Working Group on the Revision of the International Standard Classification of Occupations (I.S.C.O.).[3]

Record of the Preparatory Technical Conference on the Maximum Permissible Weight to Be Carried by One Worker

(Geneva, 25 January-4 February 1966)

When it examined, at its 163rd Session, the agenda of the 51st Session of the International Labour Conference (1967), the Governing Body decided that the sixth item on this agenda should be " Maximum permissible weight to be carried by one worker ", its exact scope to be decided by the Governing Body in the light of the conclusions of the Preparatory Technical Conference on the Maximum Permissible Weight to Be Carried by One Worker.[4] This conference was held in Geneva from 25 January to 4 February 1966.[5]

The Governing Body at its 164th Session adopted the following wording for the item, which it had placed on the agenda of the 51st (1967) Session of the International Labour Conference as item VI for single discussion:

Maximum permissible weight to be carried by one worker.

It decided that the report of the Preparatory Technical Conference on the Maximum Permissible Weight to Be Carried by One Worker and the text of the conclusions adopted by the Conference should be communicated to member States with a questionnaire, in accordance with the procedure provided for in article 38, paragraphs 1 and 4 *(a)*, of the Standing Orders of the Conference.

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[1] See *Official Bulletin*, Vol. XLIX, No. 1, Jan. 1966, pp. 31 and 144-151.

[2] Ibid., p. 151.

[3] Ibid., pp. 32-34.

[4] Ibid., p. 6.

[5] See below pp. 198 and 221-227.

Report of the Working Party on the Programme and Structure of the I.L.O.

The Working Party on the Programme and Structure of the I.L.O., which was appointed following a decision by the Governing Body at its 160th Session (November 1964) [1], held its Fourth Session on 8-11 February, 28 February and 1 March 1966. It adopted its Fourth Report on the role, composition and procedures of Industrial Committees and analogous bodies and of the regional conferences and regional advisory committees. It postponed its examination of the same questions as they related to the General Conference, the Governing Body and their committees.

The Governing Body—

(a) approved the conclusions of the Working Party's Fourth Report;

(b) decided to communicate the relevant parts of the report, together with the record of the views expressed on these matters in the course of the Working Party's proceedings, as recommended by the Working Party in its report, to the Committee on Industrial Committees;

(c) decided to communicate the report, as the Third Report of the Working Party, to the International Labour Conference at its 50th Session for discussion in connection with the Report of the Director-General (Part II);

(d) instructed the Director-General to make available to the Conference, as an annex to the report of the Working Party, a summary of communications received from governments and employers' and workers' organisations in respect of the proposals concerning the role, composition and procedures of Industrial Committees and analogous bodies, and the role, composition and procedures of the regional conferences and regional advisory committees.

Reports of the Committee on Freedom of Association

At its second sitting the Governing Body examined the reports of its Committee on Freedom of Association.

Eighty-sixth Report [2]

The Governing Body had before it the 86th Report of its Committee on Freedom of Association and adopted the recommendations contained therein.

Eighty-seventh Report [2]

The Governing Body also had before it the 87th Report of the Committee on Freedom of Association. It adopted the recommendations contained therein and, after a discussion on the case concerning Brazil, it also, on a proposal by the Workers' Vice-Chairman of the Governing Body, requested the Director-General to convey to the Brazilian Government the Governing Body's deep concern and to press for a speedy reply by the Government to the questions put by the Committee on Freedom of Association.

Eighty-eighth Report [2]

The Governing Body also had before it the Committee's 88th Report. There was a discussion on the case involving Burundi, following which the Governing Body

[1] See *Official Bulletin*, Vol. XLVIII, No. 1 Jan. 1965, pp. 11-12.

[2] For the text of this report see the Supplement to this issue.

adopted the recommendation made in the report and also, on a proposal by the Workers' Vice-Chairman, asked that any press release to be published by the I.L.O. should have regard to its debate on these cases and requested the Director-General to transmit the minutes of the discussion to the Government of Burundi and the Economic and Social Council at the same time as the 88th Report of the Committee on Freedom of Association.

Eighty-ninth Report

The Governing Body decided to examine the 89th Report of the Committee on Freedom of Association at its 165th Session.

REPORTS OF THE FINANCIAL AND ADMINISTRATIVE COMMITTEE

On the recommendation of its Financial and Administrative Committee the Governing Body decided to recommend the International Labour Conference to approve a net budget of United States $22,472,398 for the 49th financial period (1967).

The Governing Body approved a number of transfers within the 1965 budget. It accepted contributions and donations to the Endowment Fund of the International Institute for Labour Studies from governments and private sources; it also approved the budget estimates for the Institute for 1967 and included a fixed subsidy to the Institute within the I.L.O. budget.

After discussing the financing of meetings and other projects for which no allocation had been made in the 1966 budget the Governing Body decided that the cost of providing Arabic interpretation at the plenary sittings of the International Labour Conference in 1966 should be charged to item 25 (unforeseen expenditure) of the budget for that year. It was understood that the Director-General would bring the Governing Body's decision to the attention of the Administrative Committee on Co-ordination, pointing out the considerations on which it was based and suggesting that A.C.C. should consider its general approach to this problem. It was further understood that the Director-General would communicate A.C.C.'s position on this matter to the Financial and Administrative Committee and the Governing Body for consideration in connection with their examination of the possible provision of Arabic interpretation by the I.L.O. in future years.

The Governing Body took note of the statement of arrears of contributions as at 31 January 1966 and, on the basis of the report of the Working Party on the Working Capital Fund, requested the Director-General to express on its behalf to the governments of all member States serious concern at the continued failure of many governments to pay their annual contributions to the budget of the Organisation by the date on which they are due, i.e. by 1 January of the year to which the contributions relate, to request them to take all necessary steps to effect such payment promptly in future, and to report back to the Governing Body on the outcome; it also requested the employers' and workers' organisations in all member States to impress on governments the importance of promptly paying, or continuing to pay, their contributions to the I.L.O. budget.

The Governing Body also took note of various information in the Committee's reports on financial, administrative and personnel questions. It approved a number of amendments to the Staff Regulations and took note of a number of proposals concerning pensions.

On the recommendation of its Building Subcommittee the Governing Body took note of the sections of the report dealing with the agreement with the Property Foundation for International Organisations concerning the proposed new headquarters

building[1] and the appointment of a team of three architects. It also approved the composition of the Advisory Committee of Architects set up to advise the Director-General on the over-all plans for the proposed new headquarters building. The Governing Body endorsed the Director-General's request to the team of architects to continue the study of over-all plans for the new headquarters building, based on the assumption that over the period of 15 years ahead the headquarters staff might increase by one-third, one-half or two-thirds of the number of staff employed in Geneva in 1966.

The Governing Body decided to submit to the International Labour Conference a resolution extending for a further period of three years the term of office of Mr. André GRISEL (Switzerland) as a Judge of the Administrative Tribunal of the International Labour Organisation.

REPORT OF THE COMMITTEE ON STANDING ORDERS AND THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS

The Governing Body had before it the report of the Committee on Standing Orders and the Application of Conventions and Recommendations, on the basis of which it took the following decisions:

Application of Conventions and Recommendations

Choice of Conventions and Recommendations on Which Reports under Article 19 of the Constitution Are to Be Requested for 1967 and 1968.

The Governing Body requested governments to supply reports under article 19 of the Constitution on the following instruments:

In 1967:

Forced Labour Convention, 1930 (No. 29).

Abolition of Forced Labour Convention, 1957 (No. 105).

The reports on these Conventions would be requested on the basis of the report forms approved in 1960.

In 1968:

Protection of Workers' Health Recommendation, 1953 (No. 97).
Welfare Facilities Recommendation, 1956 (No. 102).
Occupational Health Services Recommendation, 1959 (No. 112).
Workers' Housing Recommendation, 1961 (No. 115).

Special Report by the Governing Body concerning the Application of Article 3, Paragraph 3 (b), *of the Radiation Protection Convention, 1960 (No. 115).*

The Governing Body approved the draft report on this subject and authorised its submission to the International Labour Conference at its 50th Session. It requested the Director-General to draw the attention of all the member States which had not yet ratified Convention No. 115 to the importance of its widespread ratification and application.

Standing Orders

Procedure in Regional Conferences.

The Governing Body decided to submit to the International Labour Conference, for adoption with a view to their inclusion in the Rules concerning the Powers,

[1] See *Official Bulletin*, Vol. XLIX, No. 1, Jan. 1966, p. 13.

Functions and Procedure of Regional Conferences, certain amendments concerning the resolutions procedure and a series of articles dealing with the autonomy of groups, officers of groups, official meetings, the procedure of voting at elections, non-official meetings and the procedure for the nomination of members of committees by the Government group.

Report of the International Organisations Committee

Industrial Development

A long discussion took place on the section of the report dealing with industrial development and the establishment of a United Nations Organisation for Industrial Development.

At the conclusion of its discussions the Governing Body took note of the action taken by the General Assembly for the establishment of a United Nations Organisation for Industrial Development and welcomed the intensification of activities to promote the industrialisation of developing countries, to which that organisation should make an important contribution.

The Governing Body decided to favour the development of close co-operation between the I.L.O. and the United Nations Organisation for Industrial Development and the establishment of suitable arrangements to ensure the fullest use of I.L.O. facilities and experience and the avoidance of wasteful duplication of activities between the two organisations. It decided to devote special attention to ways and means of enabling the I.L.O. further to develop the scope and effectiveness of the contribution it is making in its own fields of competence to the industrialisation of developing countries and invited the Director-General to pursue his efforts to establish and maintain close and effective liaison with the United Nations, and in particular the United Nations Organisation for Industrial Development and other organisations concerned, to promote the achievement of the objectives just mentioned.

The Governing Body requested the Director-General to transmit the record of its discussion to the Secretary-General of the United Nations, the Commissioner for Industrial Development, the Administrator of the United Nations Development Programme and all other interested parties in the United Nations.

Twentieth Session of the General Assembly

The Governing Body took note of the part of the report dealing with measures taken by the General Assembly at its 20th Session (New York, 21 September-21 December 1965).

Fifth Session of the Joint I.L.O.-W.H.O. Committee on Occupational Health

The Governing Body approved the convening of the Fifth Session of the Joint I.L.O.-W.H.O. Committee on Occupational Health during the second half of 1966, at a date to be determined in agreement with the World Health Organisation, to consider the following agenda:

I. Review of existing resources in the field of protection of workers' health in the developing countries.

II. Consideration of the basic needs and special problems of the developing countries in the field of occupational health.

III. Characteristics and functions of occupational health services in these countries.

IV. Practical guidance with respect to the organisation of such services, with special reference to the role of paramedical and auxiliary personnel.

The Governing Body decided that the I.L.O. should invite to the meeting experts from Cameroon, France, Guatemala, India, Nigeria and the United Kingdom, one of whom should be nominated in agreement with the Employers' group and one in agreement with the Workers' group, and noted that the Director-General would submit to it at a later session the names of the six experts to be invited by the I.L.O. It authorised the Director-General to invite the Permanent Commission and International Association on Occupational Health to send an observer to the meeting.

Report of the Committee on Industrial Committees

Tripartite Technical Meeting on Hotels, Restaurants and Similar Establishments: Effect to Be Given to the Conclusions of the Meeting

The Governing Body authorised the Director-General to communicate the reports, conclusions and resolutions adopted by the Tripartite Technical Meeting on Hotels, Restaurants and Similar Establishments [1] to governments, drawing their special attention to the reports and conclusions Nos. 1 and 2 [2], informing them that the Governing Body had not expressed any opinion on the contents thereof and inviting them to transmit these documents to the employers' and workers' organisations concerned.

Ratification of the Equal Remuneration Convention, 1951.

The Governing Body requested the Director-General to make a further appeal to member States to consider ratifying the Equal Remuneration Convention, 1951, if they have not already done so.

Development of Tourism and Related Industries.

The Governing Body requested the Director-General—

(a) to take such steps as he considered necessary in accordance with paragraph A of the operative part of resolution No. 3 [3];

(b) to communicate the proposals in subparagraphs *(a)*, *(b)* and *(c)* of paragraph A to the Secretary-General of the United Nations and the Executive Secretary of the United Nations Conference on Trade and Development [3]; and

(c) to draw the attention of the governments concerned, and through them that of the employers' and workers' organisations concerned, to the considerations set out in the five subparagraphs of paragraph B of the operative part of resolution No. 3.[4]

Freedom of Association and Trade Union Rights.

The Governing Body requested the Director-General to make a further appeal to member States to consider ratifying, if they have not already done so, the Freedom

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[1] For a note on the general discussion, the reports of the Subcommittees, and the conclusions and resolutions adopted by the Meeting see *Official Bulletin*, Vol. XLIX, No. 1, Jan. 1966, pp. 51-96.

[2] Ibid., pp. 61-66, 68-80 and 81-86.

[3] Ibid., p. 91.

[4] Ibid., pp. 91-92.

of Association and Protection of the Right to Organise Convention, 1948, and the Right to Organise and Collective Bargaining Convention, 1949, and to draw the attention of governments to the proposals in the operative paragraph of resolution No. 4.[1]

Discrimination.

The Governing Body requested the Director-General to draw the attention of governments to the proposal referred to in the operative paragraph of resolution No. 5 [2] and request them to transmit that proposal to the employers' and workers' organisations concerned.

Seasonal and Migrant Workers.

The Governing Body requested the Director-General—

(a) to draw the attention of governments to the proposals in subparagraph (1) of the operative paragraph of resolution No. 6 [3] and request them to transmit these proposals to the employers' and workers' organisations concerned; and

(b) to take account of the request made in subparagraph (2) of the operative paragraph of resolution No. 6 [3] in drawing up and preparing the work programmes of the Office.

Legal Protection of Foreign Workers.

The Governing Body requested the Director-General to urge governments to take all necessary steps to give effect to the proposals in the operative paragraph of resolution No. 7.[2]

Young Workers.

The Governing Body requested the Director-General to suggest to member States that they should consider ratifying the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, if they have not already done so, and that they should give effect to the Vocational Training Recommendation, 1962, and to draw the attention of governments to the proposals in subparagraph *(c)* of the operative paragraph of resolution No. 8.[4]

Hygiene in Hotels, Restaurants and Similar Establishments.

In connection with resolution No. 9 [5] the Governing Body requested the Director-General to suggest to member States that they should consider ratifying the Hygiene (Commerce and Offices) Convention, 1964, if they have not already done so, and that they should give effect, in so far as possible and to the extent that they have not already done so, to the provisions of the Hygiene (Commerce and Offices) Recommendation, 1964.

Invalidity, Old-Age and Survivors' Pensions.

The Governing Body requested the Director-General to draw the attention of governments to the proposals in the operative paragraph of resolution No. 10 [6] and

[1] See *Official Bulletin*, Vol. XLIX, No. 1, Jan. 1966, p. 92.
[2] Ibid., pp. 93-94.
[3] Ibid., p. 93.
[4] Ibid., p. 94.
[5] Ibid., pp. 94-95.
[6] Ibid., p. 95.

request them to draw the attention of the employers' and workers' organisations concerned to this resolution.

Future Action of the I.L.O. concerning Hotels, Restaurants and Similar Establishments.

The Governing Body—

(a) requested the Director-General to submit to it in due course proposals for convening further meetings on hotels, restaurants and similar establishments and to take account in so doing of the suggestions made concerning the programme of these meetings in subparagraph (1) of the operative paragraph of resolution No. 11 [1];

(b) invited the Director-General to bear in mind, when drawing up the work programmes of the Office, the importance of undertaking studies on the questions mentioned in clauses *(a)* to *(d)* of subparagraph (1) of the operative part of resolution No. 11.[1]

Vocational Training in Hotels, Restaurants and Similar Establishments.

The Governing Body—

(a) requested the Director-General to take all necessary steps to give effect to the proposals in subparagraphs *(a)*, *(c)* and *(d)* of the operative paragraph of resolution No. 12 [2];

(b) authorised the Director-General to communicate the text of the resolution in question to the Director of the International Centre for Advanced Technical and Vocational Training in Turin with a view to any action which the latter might take in accordance with the proposals in subparagraph *(b)* [3]; and

(c) requested the Director-General to take account of the suggestions in subparagraph *(d)* [4] when submitting programmes of I.L.O. meetings.

Metal Trades Committee : Effect to Be Given to the Conclusions of the Eighth Session

Role of the Industrial and Analogous Committees and Similar Meetings

The Holding of Smaller Tripartite Industrial Meetings of Various Kinds

Periodical Reports on the Effect Given by the Office to Requests of Industrial Committees : Textiles Committee

Activities of the United Nations System of Organisations in the Field of Industrial Development

The Governing Body took note of these sections of the report.

Invitations to Non-Governmental International Organisations

The Governing Body authorised the Director-General to invite the following non-governmental international organisations to be represented by observers at the following meetings:

Committee on Work on Plantations (Fifth Session).[4]

International Federation of Christian Agricultural Workers' Unions.
International Federation of Plantation, Agricultural and Allied Workers.

[1] See *Official Bulletin*, Vol. XLIX, No. 1, Jan. 1966, p. 95.
[2] Ibid., pp. 95-96.
[3] Ibid., p. 96.
[4] For the date and place of this meeting see below p. 194.

International Union of Food and Allied Workers' Associations.
Organisation of Employers' Federations and Employers in Developing Countries (O.E.F.).

Petroleum Committee (Seventh Session).[1]

International Federation of Chemical and General Workers' Unions.
International Federation of Christian Factory Workers' Unions.
International Federation of Petroleum and Chemical Workers.

Report of the Committee on Operational Programmes

I.L.O. Technical Assistance Programmes in 1965

Participation of Employers' and Workers' Organisations in I.L.O. Technical Co-operation Activities

The Governing Body took note of these sections of the report.

Agenda of the Next Meeting

The Governing Body decided that the agenda for the meeting of the Committee on Operational Programmes to be held in connection with the 167th Session of the Governing Body (November 1966) should be as follows:

I. Magnitude and balance of the programme of operational activities under the I.L.O. ordinary budget for 1968.

II. Management Development Programme.

III. Surveys to evaluate technical co-operation programmes in certain countries.

IV. Additional item: organisation of the work of the Committee on Operational Programmes.

Report of the Committee on Discrimination

The Governing Body had before it the report of its Committee on Discrimination, which was accompanied by an annex proposing the detailed terms of reference for the Meeting of Experts on Discrimination in Employment and Occupation and the measures which should be given priority. The Governing Body approved these terms of reference for the Meeting, which is due to be held in the second half of 1966[1], and noted the action programme of the I.L.O. against discrimination in employment as outlined in the documents appended to the report.

Composition and Agenda of Committees and of Various Meetings

Eleventh International Conference of Labour Statisticians

The Governing Body authorised the Director-General to convene the 11th International Conference of Labour Statisticians[1] for which it approved the following agenda:

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[1] For the date and place of this meeting see below p. 194.

I. Progress of labour statistics.
II. Statistics of labour cost.
III. Revision of the International Standard Classification of Occupations.
IV. Measurement of underemployment.

The following intergovernmental organisations will be invited to be represented at the Conference:

Organisation for Economic Co-operation and Development.
High Authority of the European Coal and Steel Community.
European Economic Community.
Statistical Office of the European Communities.
International Statistical Institute.
Inter-American Statistical Institute.

The Governing Body further asked the Director-General to invite the International Organisation of Employers to be represented by an observer and authorised him to extend a similar invitation to workers' organisations with consultative status which indicated a wish to be represented by an observer at the Conference.

Proposals concerning the Establishment of a Panel of Consultants on Occupational Safety and Health in Building, Civil Engineering and Public Works

The Governing Body decided to establish a Panel of Consultants on Occupational Safety and Health in Building, Civil Engineering and Public Works composed of not more than 36 consultants specialising in the various branches of the subject and including persons reflecting the views and experience of governments, employers' organisations and trade unions, it being understood that the consultants would relinquish their appointment on the Panel on ceasing to hold a position or to exercise a function justifying their maintenance as members of it.

The Governing Body further decided that the terms of reference of the Panel should be to assist in the preparation of manuals and codes of practice on safety in the construction industry (as requested by resolution No. 69 adopted by the Committee on Building, Civil Engineering and Public Works at its Seventh Session [2]) and to advise the Office in its work on occupational safety and health in building, civil engineering and public works generally.

It was understood that the Panel would normally be consulted by correspondence and would be called upon to co-operate in such other ways as might be practicable, but that selected members might be convened to meetings by the Governing Body as occasion required and as financial possibilities allowed.

The Governing Body appointed the following persons to the Panel of Consultants for a period of five years (the appointments reflecting the views of the Workers' members were to be placed before the 165th Session):

Members nominated after consultation with governments:

Mr. A. CHAVANEL (Switzerland), civil engineer; Chief, Accident Prevention Division, Swiss National Insurance Institution.

Mr. A. VON CHOSSY (Federal Republic of Germany), Director, Managing Director of the Bavarian Mutual Insurance Society for Accidents in the Construction

[1] For the date and place of this meeting see below p. 194.

[2] See *Official Bulletin*, Vol. XLVII, No. 3, July 1964, p. 232.

Industry; Chairman, Federal Working Groups on Scaffolding and Scaffolding Components; technical adviser to the Federal Ministry of Labour at committees of the Council of Europe and the European Economic Community.

Mr. CORNE (France), President of the Organisation for Safety in Building, Construction and Civil Engineering.

Mr. W. U. KENNEDY (United States), Assistant for Safety and Design of Construction, Office of the Chief of Engineers, United States Army.

Mr. I. A. KOLESNIKOV (U.S.S.R.), civil engineer; Chief of Labour Protection Department, Central Committee, Building and Building Materials Industry Workers' Trade Union.

Dr. N. P. V. LUNDGREN (Sweden), M.D., Director of the Institute of Work Physiology; member, Board of the International Ergonomics Association; member, Royal Academy of Agricultural and Forestry Sciences (Sweden); member, Permanent Commission and International Association on Occupational Health.

Mr. C. MAINWARING (United Kingdom), Diploma in Science, A.R.Sc. (London), Deputy Chief Inspector in charge of building and civil engineering section, H.M. Factory Inspectorate.

Mr. N. S. MANKIKER (India), B.Sc., B.E. (Civil), A.M.I.E., Chief Adviser Factories, Ministry of Labour and Employment; responsible for planning and development of the Central Labour Institute (Special Fund project), including safety, health and welfare centre.

Members nominated after consultation with the Employers' group of the Governing Body:

Mr. R. BECKER (Federal Republic of Germany), engineer; Employers' Vice-Chairman at the Seventh Session of the I.L.O. Building, Civil Engineering and Public Works Committee; member of various committees dealing with safety and health in the building industry.

Mr. R. BERRO CASTELLS (Uruguay), civil engineer; Professor of Civil Engineering and Building Construction; civil engineering contractor.

Mr. J. G. BUITINK (Netherlands), Director, Batavian Contracting Company, The Hague.

Mr. R. DERRON (Switzerland), engineer; member of the Accident Prevention Bureau of the Swiss Contractors' Association.

Mr. A. ERHAUSEL (Austria), engineer; Universal Construction Company, Vienna.

Mr. A. M. JØRGENSEN (Denmark), civil engineer; specialist in safety problems in the building industry; consultant on safety matters to the Building and Construction Employers' Confederation of Denmark.

Mr. B. P. KAPADIA (India), consultant, Hindustan Construction Company Ltd. (Bombay).

Mr. Lee E. KNACK (United States), Director of Labour Relations, Morrison-Knudsen Company Inc.; United States Employers' delegate to the Preparatory Technical Conference on the Maximum Permissible Weight to Be Carried by One Worker.

Mr. K. ODADA (Japan), Managing Director, Accident Prevention Association in Construction (Tokyo); Director, Central Accident Prevention Conference in Construction; member of Pneumoconiosis Council.

Mr. M. PARION (France), Head of Social Affairs Division, National Building Federation of France; Secretary-General, International Federation of Building and Public Works.

Mr. M. C. STAFFORD (Canada), professional engineer and past President of Toronto Construction Association; Chairman, Labour Relations Committee, Canadian Construction Association.

Mr. P. B. WHITEHOUSE (United Kingdom), Joint Managing Director, B. Whitehouse and Sons Ltd.; past President of the Birmingham Association of Building Trades Employers, member of the Council of the Midland Federation of Building Trades Employers; one of the founders of the Birmingham Safety Committee; past Chairman of the Birmingham and District Industrial Safety Group.

Substitutes :

Mr. P. MANALAC (Philippines), civil engineer; Director of the Chamber of Commerce of the Philippines; Managing Director of the Manalac Construction Company; Director of Filipinas Cement Corporation; President of the Philippine Association of Civil Engineers.

Mr. W. SCHAFER (Federal Republic of Germany), qualified engineer and building contractor; member of various committees dealing with safety and health in the building industry.

Mr. A. THIEFFRY (Belgium), Technical Adviser, Study Service of the National Building Confederation of Belgium.

Meeting of Experts on the Outline and Content of the Encyclopaedia of Occupational Health and Safety

The Governing Body authorised the Director-General to invite the following experts to attend the Meeting of Experts on the Outline and Content of the Encyclopaedia of Occupational Health and Safety [1]:

Professor Scipione CACCURI (Italy), Director, Occupational Health Institute, University of Naples, Vice-President, Permanent Commission and International Association on Occupational Health; President, Mediterranean Union for Occupational Health. Was in charge of the publication of the *Trattato di Medicina del Lavoro* in two volumes; collaborated in the publication of the *Encyclopédie médico-chirurgicale française* and has published more than 100 scientific works on various occupational health problems.

Professor Henri DESOILLE (France), Director, Paris Institute of Industrial Hygiene; Vice-President, Permanent Commission and International Association on Occupational Health. Published an occupational health course in three volumes and contributed to the preparation of a model schedule of industrial accidents and occupational diseases. Author of many publications on occupational health and industrial toxicology.

Professor Abdel Mogheeth EL KADEEM (United Arab Republic), Head of Department of Production Techniques, Faculty of Engineering, University of Alexandria; former consultant to the Department of Productivity and Vocational

[1] For the decisions about this Meeting taken at the 163rd Session of the Governing Body see *Official Bulletin*, Vol. XLIX, No. 1, Jan. 1966, pp. 19-20.

Training, United Arab Republic Ministry of Industry; expert in mechanical technological processes.

Professor Lars FRIBERG (Sweden), Professor of Public Health, University of Stockholm; Head of the Department of General Hygiene in the National Institute of Public Health; has written a number of articles and scientific works on general hygiene, occupational health and public health problems.

Dr. Paulo MONTEIRO MENDES (Brazil), Chairman of the Technical Committee on Occupational Safety and Health; Medical Officer, National Department of Social Services for Industry; member of the Permanent Commission and International Association on Occupational Health.

Dr. Robert MURRAY (United Kingdom), Medical Adviser, Trades Union Congress, London; member of the Association of Industrial Medical Officers; Medical Inspector, United Kingdom, from 1947 to 1956; with the I.L.O., Geneva, from 1956 to 1961; has published *Industrial Health Technology* and several scientific articles.

Mr. S. A. NICOLET (Switzerland), chemical engineer, Doctor of Physical Sciences; Assistant Manager of the Swiss National Accidents Insurance Fund, Lucerne; 19 years' experience in industry in Switzerland, France, the Federal Republic of Germany and Morocco; with the Swiss National Accident Insurance Fund since 1952.

Dr. George NOFER (Poland), Director, Occupational Health Institute, Lodz; member, Warsaw Faculty of Medicine; member, Permanent Commission and International Association on Occupational Health; Editor-in-Chief of *Medycyna Pracy* (a Polish scientific bi-monthly publication on occupational health); author of 51 works dealing with various occupational health problems.

Mr. M. QUEENER (United States), Safety and Health Director, Du Pont de Nemours, Wilmington, Delaware.

Professor M. N. RAO (India), Professor and Head of the Section of Physiological and Industrial Hygiene, All-India Institute of Hygiene and Public Health, Calcutta; member, World Health Organisation Expert Committee on Radiation; member, editorial panel of the *Indian Journal of Medical Research* and *Excerpta Medica*. Organised the first mass chest X-ray service in India (since 1951), the national tuberculosis survey, eastern zone (1955-58), the first medico-social programme in public health (operating since 1953) and the first programme for sanitary industrial waste disposal (1951).

Mr. Lawrence RISPLER (Canada), B.Sc., M.Sc.; Occupational Health Division, Department of National Health and Welfare, Ottawa; member of Canadian Standards Association and American Conference of Industrial Hygienists; has published numerous scientific works on industrial hygiene.

Professor Ubaldo ROLDÁN (Mexico), Chief, Occupational Health Service, Department of Industrial Safety, Ministry of Labour and Social Affairs; former President, Mexican Society of Industrial Physicians; has organised mass national occupational health congresses and published several scientific works concerning problems of industrial medicine and hygiene.

Professor Isaak Vasilievich ROSHCHIN (U.S.S.R.), Deputy Director for Science, Occupational Health and Industrial Diseases Institute of the U.S.S.R. Academy of Medical Science, Moscow; Doctor of Medicine specialising in occupational health; has published several scientific works on occupational health.

Proposals concerning the Composition of the Panel of Consultants on Safety and Health in Agriculture

The Governing Body decided that the Panel of Consultants on Safety and Health in Agriculture should be composed of not more than 40 consultants drawn from the main agricultural regions of the world, specialising in the various branches of the subject and including persons reflecting the views and experience of governments, employers' organisations and trade unions, appointed for a period of five years, it being understood that the consultants would relinquish their appointment on the Panel on ceasing to hold a position or to exercise a function justifying their maintenance as members of the Panel.

The Governing Body further decided that the terms of reference of the Panel should be to advise and assist the Office in its work on occupational safety and health in agriculture and to assist the Office, on request, by replying to specific questions.

It was understood that the Panel would normally be consulted by correspondence and would be called upon to co-operate in such other ways as might be practicable, but that selected members might be convened to meetings by the Governing Body as occasion required and as financial possibilities allowed.

The Governing Body appointed the following persons to the Panel for a period of five years (the appointments reflecting the views of the Workers' members were to be placed before the 165th Session):

Members nominated after consultation with governments:

Mr. N. ANDREEV (U.S.S.R.), Deputy Director for Scientific Research and Technology for Repair and Maintenance of Agricultural Machinery.

Mr. D. ANDREONI (Italy), D.Civ.Engin.; Technical Adviser to the International Social Security Association; official of the Italian National Accident Prevention Organisation.

Dr. HSU Shih-chü (China), M.D., M.P.H., Chief, Rural Health Division, Joint Commission on Rural Reconstruction; Honorary Professor of Rural Health, National Taiwan University Medical College.

Mr. D. P. KENNEDY (New Zealand), E.D., M.B., Ch.B. (New Zealand), D.P.H. (London), F.R.S.H., Director-General of Health; Deputy Chairman of Agricultural Chemicals Board; member of the New Zealand Milk Board and the Stock Remedies Board.

Mr. L. W. KNAPP, Jr. (United States), B.Sc., Associate Professor and Chief, Accident Prevention Section, Department of Preventive Medicine and Environmental Health, Institute of Agricultural Medicine, University of Iowa.

Professor L. I. MEDVED (U.S.S.R.), former Head of the All-Union Research Institute of Hygiene and Toxicology of Pesticides; former Director of the Kiev Institute of Occupational Health and Occupational Diseases (1952-64); former Minister of Health Protection of Ukraine (1949-52).

Mr. A. MEIBOOM (Israel), B.Sc. (Agriculture); Acting Chief Inspector of Labour; manager of mixed farming undertakings.

Mr. A. S. ØRSTED-MÜLLER (Denmark), M.Sc., Special Inspector for Safety and Health in Agriculture, Forestry and Horticulture, Directorate of Labour Inspection; Chairman, Danish Machinery Committee; member, Nordic Machinery Committee.

Professor J. PARNAS (Poland), President of the International Association for Agricultural Medicine; until 1964 Organiser and Director of the National Institute for Rural Medicine, Lublin; Member of the Commission on Working Conditions of the Council of Ministers.

Professor Gerhardt PREUSCHEN (Federal Republic of Germany), Director of the Max Planck Institute for Agricultural Work and Rural Technology, Bad Kreuznach.

Professor M. N. RAO (India), M.B.B.S., M.P.H., Dr.Ph., F.A.P.H.A., F.A.M.S., Professor and Head of the Section of Physiological and Industrial Hygiene, All-India Institute of Hygiene and Public Health, Calcutta; Chairman of the Industrial Health Advisory Committee of the Indian Council of Medical Research.

Professor Franklin H. TOP (United States), M.D., Director, Institute of Agricultural Medicine, State University of Iowa.

Professor Jean VACHER (France), Professor of Legal and Social Medicine, University of Tours; Founder of the French National Institute of Agricultural Medicine and the International Association of Agricultural Medicine; member of Occupational Diseases Committee, Ministry of Agriculture.

Mr. G. S. WILSON (United Kingdom), Chief Safety Inspector, Ministry of Agriculture, Fisheries and Food.

Members nominated after consultation with the Employers' group of the Governing Body :

Mr. Teófilo BARANAO (Argentina), agricultural engineer; Professor of Agricultural Machinery, University of Buenos Aires; Technical Adviser, Chamber of Manufacturers of Agricultural Machinery.

Mr. W. B. CAMP (United States), leading California agriculturist; Member of the Chamber of Commerce and Farm Bureau of California; former member of the United States Department of Agriculture.

Dr. L. V. R. FERNANDO (Ceylon), M.B., B.S., D.P.H. (London), D.I.H. (Toronto), Assistant Director of Ross Institute of Tropical Hygiene, London; Medical Officer for Planters' Association Estates Health Scheme.

Dr. Stuart HALL (Tanzania), M.B., B.Sc., D.H.P. (London), Principal of the Ross Institute of Tropical Hygiene (East African Branch); Honorary Lecturer in Preventive Medicine, Makerere Medical School, Kampala.

Mr. B. K. S. JAIN (India), M.Agr.Sc., B.Sc., Assistant Divisional Manager, Central (Agriculture) Voltas Ltd. (Bombay); member of Council of Indian Society of Agricultural Engineers; member of Advisory Board on Agricultural Implements.

Mr. Ernst LOFFEL (Federal Republic of Germany), farmer; Chairman of the Federation of Agricultural Accident Insurance Organisations; member of the Accident Prevention Council of Germany.

Mr. Giuseppe MISSERVILLE (Italy), Head of Social Affairs Division of the Agricultural Confederation of Italy.

Mr. Charles MUNROE (Canada), member of the dairy farming industry; widely experienced in the field of safety and health in agriculture.

Mr. VEREENOGUE (Malagasy Republic), President, Cotton Planters' Association of Madagascar.

Mr. R. W. WATSON (United Kingdom), Head of Labour Division and Secretary of Safety Committee of the National Farmers' Union; employer member of the Agricultural Wages Board.

Substitute :

Mr. BÚI-KHẮC-CHIÊN (Viet-Nam), Director of Rubber Plantation; Vice-President, National Employers' Association of Viet-Nam.

Fact-Finding and Conciliation Commission on Freedom of Association

The Governing Body appointed Mr. Jacques DUCOUX (France), Counsellor of State, to fill the vacancy on the Fact-Finding and Conciliation Commission on Freedom of Association created by the death of Mr. Henri Friol (France). It also appointed Mr. Ducoux as a member of the Panel of the Fact-Finding and Conciliation Commission on Freedom of Association to examine the case of Greece in place of Mr. Friol; the Panel is, therefore, now composed as follows:

Mr. Erik DREYER (Denmark), Chairman; Mr. César CHARLONE (Uruguay); Mr. Jacques DUCOUX (France).

Proposals concerning the Establishment of a Panel of Consultants on Safety in Mines

The Governing Body—

(a) approved the establishment of a Panel of Consultants on Safety in Mines composed in the first instance of 28 consultants selected from the various regions where mining of coal and other minerals is carried out on a substantial scale and including persons reflecting the views and experience of governments, employers' organisations and trade unions and appointed for a period of five years; and

(b) authorised the Director-General to undertake the consultations necessary for the selection of the members of the Panel and to submit his proposals for membership of the Panel to the Governing Body for approval at an early session.

Composition of the Joint Maritime Commission

The Governing Body appointed the following persons as members of the Joint Maritime Commission to fill the vacancies created by the retirement of Mr. J. Marchegay (France) and Mr. H. F. Reuterskiold (Sweden):

Mr. Fernand PEYROT (France), Assistant Director, Central Committee of French Shipowners, Paris.

Mr. Nils GRENANDER (Sweden), Director, Swedish Shipowners' Association, Gothenburg.

Proposals concerning the Convening of the Third Session of the Tripartite Subcommittee on Seafarers' Welfare of the Joint Maritime Commission

Composition.

The Governing Body appointed Mr. F. PEYROT (France) to replace Mr. J. Marchegay (France), who had retired from his membership of the Tripartite Subcommittee on Seafarers' Welfare.

Arrangements for the Third Session.

The Governing Body authorised the Director-General to convene the Third Session of the Tripartite Subcommittee on Seafarers' Welfare of the Joint Maritime Commission.[1]

The agenda was fixed as follows:

I. International co-operation in seafarers' welfare.

II. Recent developments in seafarers' welfare facilities, with special regard to the basic principles agreed at the Naples meeting of the Subcommittee in November 1959.

Committee of Social Security Experts

The Governing Body approved the appointment of the following persons as experts on social security in general [2]:

Mr. Ottó PÁRKÁNYI (Hungary), Chief of the Legislative Division, General Directorate of the Trades Union Council.

Mr. Oumar SOW (Mali), Director of the National Social Welfare Institute, former Director of the Cabinet of the Minister of Labour responsible for social security questions.

INTERNATIONAL INSTITUTE FOR LABOUR STUDIES

The Governing Body took note of the annual report of the Institute for 1965.

INTERNATIONAL CENTRE FOR ADVANCED TECHNICAL AND VOCATIONAL TRAINING

Pro memoria : No document was submitted to the Governing Body on this item on its agenda.

REPORT OF THE DIRECTOR-GENERAL

Obituary

The Governing Body asked the Director-General to convey its condolences to the French Government on the death of Mr. Henri Friol.[3] It took note with deep regret of the deaths in January 1966 of Alhaji Sir Abubakar Tafawa Balewa, Prime Minister of the Federation of Nigeria, and of Chief Festus Sam Okotie-Eboh, Federal Finance Minister and former Minister of Labour and Welfare of the Federation of Nigeria.

Composition of the Governing Body

The Governing Body noted that the Government of the Federal Government of Germany had appointed as its regular representative Mr. Franz HAENLEIN, Chief of Department in the Federal Ministry of Labour and Social Affairs, in succession to Mr. Claussen.

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[1] For the date of this meeting see below p. 194.

[2] For the composition of this Committee see *Official Bulletin* Vol. XLVIII, No. 2, Apr. 1965, p. 154; and ibid., Vol. XLIX, No. 1, Jan. 1966, pp. 20-23.

[3] See above p. 189.

The Director-General was asked to convey to Mr. Claussen the Governing Body's appreciation and best wishes for the future.

Progress of International Labour Legislation
Publications

Measures Envisaged with regard to Special Youth Training and Employment Programmes

Eleventh Progress Report on Action Taken as regards the Discrimination (Employment and Occupation) Convention, 1958

The Governing Body took note of these sections of the report and the supplementary reports in question.

Inclusion of an Item concerning Technical Co-operation in the Agenda of the 51st (1967) Session of the International Labour Conference

At its 163rd Session the Governing Body decided to include an item on technical co-operation in the agenda of the 51st (1967) Session of the International Labour Conference, it being understood that the Director-General would submit suggestions on this point early in 1966 in the light of the discussion due to take place in the Committee on Operational Programmes.[1]

At the 164th Session the Governing Body decided that the wording of the item on technical co-operation, which would be item VIII on the agenda of the 51st Session of the Conference, should be as follows: " The International Labour Organisation and technical co-operation ".

The Governing Body took a number of other decisions dealing with the report on the subject which will be submitted to the Conference and asked the Director-General to indicate in the memorandum on the 51st Session of the Conference to be addressed to member States that the Governing Body had recommended that the item should be considered by a special Conference committee and that it would be desirable to include in the delegations to this session of the Conference officials who were called upon to deal with technical co-operation questions concerning the I.L.O. and representatives of employers' and workers' organisations who were familiar with these questions.

Report by the Director-General concerning Action on the Resolution concerning Southern Rhodesia Adopted by the Governing Body at Its 163rd Session (November 1965) [2]

The Governing Body requested the Director-General to draw the attention of the Government of the United Kingdom to the desirability of making provision in the settlement of the Rhodesian problem to ensure respect for the fundamental human rights embodied in I.L.O. standards, including in particular—

(a) the full implementation of the obligations accepted on behalf of Southern Rhodesia under the Forced Labour Convention, 1930, and the Abolition of Forced Labour Convention, 1957, and more especially the elimination of forced or compulsory labour imposed as a means of political coercion or as a punishment for holding or expressing political or ideological views;

[1] See *Official Bulletin*, Vol. XLIX, No. 1, Jan. 1966, pp. 6 and 17.

[2] For details of this resolution see ibid., pp. 27-28.

(b) the full and free enjoyment by employers and workers of the right to associate, to organise and to bargain collectively with due regard to the obligations in the matter already accepted on behalf of Southern Rhodesia and to the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948, and the Right to Organise and Collective Bargaining Convention, 1949;

(c) the abolition of all forms of racial discrimination in the field of employment and occupation with due regard to the obligations accepted on behalf of Southern Rhodesia under the Social Policy (Non-Metropolitan Territories) Convention, 1947, and to the provisions of the Discrimination (Employment and Occupation) Convention, 1958.

The Governing Body placed it on record that the I.L.O. would welcome the resumption of active participation by Southern Rhodesia in the work of the Organisation as soon as a constitutional government pledged to the elimination of racial discrimination and to the upholding of other basic human rights and freedoms as embodied in I.L.O. standards had been established there.

The Governing Body further placed it on record that, as soon as a constitutional government pledged to the elimination of racial discrimination and to the upholding of other basic human rights and freedoms as embodied in I.L.O. standards had been established in Southern Rhodesia, the I.L.O. would be prepared to give every assistance within its power in the training of Rhodesians of all races for the assumption of responsibilities in administration, industry and industrial relations, more particularly through the facilities of the International Institute for Labour Studies and the International Centre for Advanced Technical and Vocational Training and all other appropriate facilities which were or might be operated by the I.L.O. under the United Nations Development Programme.

The Governing Body asked the Director-General to report further developments in the situation as might be appropriate.

Procedure for the Appointment of Committees by the Conference

The Governing Body appointed the following three persons to serve as the Appeals Board for the 50th (1966) Session of the Conference:

Mr. J. A. BARBOZA-CARNEIRO (Brazil).

Mr. H. H. KOCH (Denmark).

Mr. M. K. VELLODI (India).

The Director-General was authorised, in the event of any of the above-mentioned persons being unable to serve, to convene other members of the panel from which the Appeals Board is selected, as necessary, to ensure that the Appeals Board was duly constituted.[1]

Cancellation of the Registration of the Ratification by New Zealand of the Reduction of Hours of Work (Textiles) Convention, 1937 (No. 61)

The Governing Body took note of the action which the Director-General proposed to take with regard to the request by the Government of New Zealand that the registration of its ratification of the Reduction of Hours of Work (Textiles) Convention, 1937 (No. 61), should be cancelled.

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[1] See *Official Bulletin*, Vol. XLII, 1959, No. 6, p. 193; Vol. XLVIII, No. 2, Apr. 1965, p. 161.

Draft Recommendation concerning the Status of Teachers.

The Governing Body approved the following procedure for the I.L.O.-U.N.E.S.C.O. Intergovernmental Conference on the Status of Teachers to be held in the autumn of 1966 [1]:

(a) the Intergovernmental Conference should be convened by U.N.E.S.C.O. and should be held under its auspices;

(b) the I.L.O. should be represented at the Conference by a tripartite delegation of the Governing Body (composed of two representatives of each group, to be appointed later), the composition of which would reflect the I.L.O.'s keen interest in the question, and by the Director-General himself accompanied by officials of the technical service concerned. The Governing Body delegation would be entitled to participate fully in the deliberations of the Intergovernmental Conference and would be particularly careful to see that the provisions that related to primarily I.L.O. areas of activity appropriately reflected the views of the Organisation;

(c) the final decision on the action to be taken on the text emerging from the Intergovernmental Conference would be taken in the case of the I.L.O. by the Governing Body.

Requests by Non-Governmental International Organisations to Be Represented by Observers at the 50th (1966) Session of the International Labour Conference

The Governing Body invited the following organisations to be represented by observers at the 50th (1966) Session of the International Labour Conference, it being understood that it would be for the Selection Committee of the Conference to consider their requests to participate in the work of the committees dealing with the items on the agenda in which they had expressed an interest:

International Confederation of Executive Staffs.
International Council of Commerce Employers.
International Transport Workers' Confederation.
Organisation of Employers' Federations and Employers in Developing Countries.
Public Services International.
World Young Women's Christian Association.

Request for Regional Consultative Status.

The Governing Body decided to grant regional consultative status [2] in respect of the American region to the Inter-American Regional Organisation of Workers (O.R.I.T.) of the International Confederation of Free Trade Unions.

Admission to the I.L.O. Special List of Non-Governmental International Organisations.

The Governing Body took note of the fact that the Officers considered that it was no longer necessary for them to review applications for admission to the I.L.O. special list of non-governmental international organisations and that it would suffice in future for the Director-General to deal with applications of this kind, it being understood that he would carry out periodic revisions of the list and report to the Governing Body from time to time on the over-all position with regard thereto.

[1] See *Official Bulletin*, Vol. XLVIII, No. 3, July 1965, pp. 231-232.
[2] Ibid., Jan. 1965, p. 29.

Participation of Non-Metropolitan Territories as Observers in the 50th (1966) Session of the International Labour Conference

The Governing Body agreed that Mauritius should be invited through the United Kingdom Government to send a tripartite observer delegation to the 50th (1966) Session of the International Labour Conference.

Programme of Meetings

The Governing Body fixed the programme of meetings for the remainder of 1966 as follows:

Date	Title of meeting	Place
14-26 March	Committee of Experts on the Application of Conventions and Recommendations (36th Session)	Geneva
18-26 April	Meeting of Experts on the Outline and Content of the Encyclopaedia of Occupational Health and Safety	"
2-13 May	Committee on Work on Plantations (Fifth Session)	"
20-28 May	165th Session of the Governing Body and its committees	"
1-23 June	50th Session of the International Labour Conference	"
Following the Conference	166th Session of the Governing Body	"
12-23 September	Eighth Conference of American States Members of the I.L.O.	Ottawa
3-14 October	Petroleum Committee (Seventh Session)	Geneva
September-October (five days)	Tripartite Subcommittee on Seafarers' Welfare of the Joint Maritime Commission	—
18-28 October	Eleventh International Conference of Labour Statisticians	Geneva
31 October-4 November	Meeting on Discrimination in Employment and Occupation	"
7-18 November [1]	167th Session of the Governing Body and its committees	"
21 November-3 December	Inland Transport Committee (Eighth Session)	"
29 November-7 December [1]	Asian Advisory Committee (13th Session)	An Asian country

[1] Provisional dates.

Appointment of Governing Body Representatives on Various Bodies

Committee on Work on Plantations (Fifth Session, Geneva, 2-13 May 1966)

The Governing Body appointed the following delegation to the Fifth Session of the Committee on Work on Plantations:

Chairman and Government group representative :

Mr. WILSON (Liberia).

Employers' group :

Mr. PERERA (Malaysian).

Substitute :

Mr. KUNTSCHEN (Swiss).

Workers' group :

Mr. AHMAD (Pakistan).

Substitute :

To be nominated later.

DATE AND PLACE OF THE 165TH SESSION OF THE GOVERNING BODY

The Governing Body adopted the following programme of meetings for its 165th Session.

The standing committees of the Governing Body will meet from Friday, 20 May to Wednesday, 25 May 1966. The groups will meet on Thursday, 26 May. The Governing Body itself will meet on Friday, 27 and Saturday, 28 May.

DEPARTURE OF MR. E. BELL

The Governing Body was informed that Mr. E. Bell, Chief of the Workers' Relations Branch, who for the past ten years had handled matters affecting the Workers' group of the Governing Body, would shortly be leaving the Office. The Governing Body, through speakers of the three groups, paid tribute to the services rendered by Mr. Bell and conveyed to him its gratitude and best wishes.

Metal Trades Committee

(Eighth Session, Geneva, 6-17 December 1965)

The Eighth Session [1] of the Metal Trades Committee of the International Labour Organisation was held at the International Labour Office, Geneva, from 6 to 17 December 1965.

The agenda of the session, which had been fixed by the Governing Body of the International Labour Office at its 157th and 159th Sessions (November 1963 and June-July 1964), was as follows:

I. General Report, dealing particularly with—

(a) action taken in the various countries in the light of the conclusions adopted at previous sessions of the Committee;

(b) steps taken by the Office to follow up the studies and inquiries proposed by the Committee;

(c) recent events and developments in the metal trades.

II. International co-operation in dealing with manpower, social and labour problems in the metal trades in the developing countries.

III. The role of employers' and workers' organisations in programming and planning in the metal trades.

The International Labour Office had prepared a report on each of the above items.

In accordance with the decision of the Governing Body the Chairman of the Eighth Session was Mr. W. CLAUSSEN, representative of the Government of the Federal Republic of Germany on the Governing Body.

The Committee elected two Vice-Chairmen: Mr. M. BOURSIER (France) for the Employers' group and Mr. L. ECKERSTRÖM (Sweden) for the Workers' group.

The following 27 countries which are members of the Metal Trades Committee were represented at the Eighth Session:

Argentina.	France.	Peru.
Australia.	Federal Republic of Germany.	Sweden.
Austria.	India.	Switzerland.
Belgium.	Israel.	Ukraine.
Brazil.	Italy.	U.S.S.R.
Canada.	Japan.	United Kingdom.
Chile.	Mexico.	United States.
Denmark.	Netherlands.	Uruguay.
Finland.	Norway.	Yugoslavia.

[1] For the previous sessions see *Official Bulletin*, Vol. XXX, No. 2, 15 Sep. 1947, pp. 113-122; Vol. XXXI, No. 2, 15 Sep. 1948, pp. 115-126; Vol. XXXII, No. 4, 15 Dec. 1949, pp. 255-266; Vol. XXXV, No. 3, 20 Dec. 1952, pp. 146-167; Vol. XXXVII, No. 6, 20 Dec. 1954, pp. 187-209; Vol. XL, 1957, No. 4, pp. 219-257; and Vol. XLVI, No. 1, Jan. 1963, pp. 77-130.

In addition, Spain was represented at the meeting by an observer delegation.

The Governing Body was represented by the following delegation:

Government group : Mr. W. CLAUSSEN (Federal Republic of Germany).

Employers' group : Mr. A. G. FENNEMA (Netherlands).

Workers' group : Mr. R. FAUPL (United States).

During the meeting Mr. Faupl was replaced by Mr. H. BEERMANN (Federal Republic of Germany).

Representatives of the United Nations (Economic Commission for Europe, United Nations Conference on Trade and Development, and United Nations Centre for Industrial Development), the Organisation of American States, the Organisation for Economic Co-operation and Development and the League of Arab States attended the session.

In addition, observers from the following non-governmental international organisations were present at the session: International Confederation of Executive Staffs; International Confederation of Free Trade Unions [1]; International Federation of Christian Metalworkers' Unions; International Federation of Christian Trade Unions [1]; International Federation of Commercial, Clerical and Technical Employees; International Metalworkers' Federation; International Organisation of Employers [1]; and World Federation of Trade Unions.[1]

The Committee was divided into two subcommittees for the examination of the two technical items on its agenda: a Subcommittee on International Co-operation and a Subcommittee on Programming and Planning. The Committee also set up a Steering Committee and a Working Party to Consider the Effect Given to the Conclusions and Resolutions Adopted by the Metal Trades Committee at Its Previous Sessions.

The Committee held eight plenary sittings, of which six were devoted mainly to a general discussion of the problems before the session. At its seventh and eighth sittings the Committee adopted the reports and conclusions submitted by its two Subcommittees, together with six resolutions.[2]

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[1] Organisation with consultative status.

[2] The text of the reports, conclusions and resolutions adopted by the Committee will be published in a later issue of the *Official Bulletin* upon consideration by the Governing Body.

Preparatory Technical Conference on the Maximum Permissible Weight to Be Carried by One Worker

(Geneva, 25 January-4 February 1966)

In accordance with the decision of the Governing Body taken at its 162nd Session (May-June 1965) the Preparatory Technical Conference on the Maximum Permissible Weight to Be Carried by One Worker met in Geneva from 25 January to 4 February 1966.

Twenty-nine countries were represented by 110 delegates; four countries were represented by observers. Four intergovernmental organisations accepted the invitation to participate in the Conference, and six international non-governmental organisations sent observers.

The Conference appointed a Steering Committee, two ad hoc working parties to deal respectively with the Proposed Conclusions with a view to the adoption of a Convention and the Proposed Conclusions with a view to the adoption of a Recommendation, and a Drafting Committee.

The Conference adopted Proposed Conclusions with a view to the adoption of a Convention and Proposed Conclusions with a view to the adoption of a Recommendation.

The " Documents " section of this issue contains the text of the two sets of Proposed Conclusions and a summary of the discussions leading to their adoption.[1]

[1] See below pp. 221-226.

Membership of the International Labour Organisation

Communication from the Government of the Republic of South Africa

The Director-General received the following communication dated 11 March 1964 from the Government of the Republic of South Africa:

London, 11 March 1964.

Sir,

I have been instructed by the Minister of Foreign Affairs of the Republic of South Africa to convey to you the following statement from him on behalf of the South African Government:

The Government of the Republic of South Africa has decided to withdraw from the International Labour Organisation.

In reaching this decision it was influenced by an accumulation of hostile acts against South Africa, the more recent of which are set out hereunder.

1. The credentials of the South African Workers' delegate were invalidated at the 1963 Conference on the strength of a minority report by the Credentials Committee, which deprived South African workers of the full representation at the deliberations of an organisation established mainly for the benefit of the workers.

It has become obvious that the Republic cannot continue as a Member of an Organisation which is supposedly devoted to the interests of the worker but which suddenly, for purely political reasons, allows itself to be manoeuvred into a position in which the Workers' representative of South Africa is no longer acceptable. Since the organisation was established in 1919, South Africa, as one of its foundation Members, has been represented at all Conferences without any of its delegates being unseated.

2. This action against the South African Workers' delegate was immediately followed by the Governing Body of the Organisation deciding in June 1963, on the initiative and at the insistence of its Director-General, to exclude South Africa from membership of certain Industrial Committees of the Organisation, the effect of which has been to render entirely inoperative South Africa's participation in the activities of the Committees concerned.

3. Then further resolutions were adopted by the Governing Body at its meeting, held in Geneva from the 13th to the 17th February 1964, in pursuance of which the following steps, *inter alia*, are to be taken against South Africa:

(a) Any objection against the credentials of members of the South African delegation at the next Conference is to be dealt with as a matter of priority during the opening days of the Conference, quite clearly with the object of excluding South Africa from the Conference at the commencement of its proceedings.

(b) The submission to the next Conference of an amendment to the Constitution empowering a Conference to suspend from participation in its proceedings any member which has been found by the United Nations to follow a policy of racial discrimination, *apartheid* being quoted as the only example of such discrimination. Having regard to certain resolutions and a declaration adopted in the United Nations, the Government of the Republic can have little doubt, in the light of developments in the International Labour Organisation, but that any such amendment to the Constitution will inevitably lead to South Africa's being excluded from the Organisation. In view also of the vendetta of the Afro-Asian States, backed by the Communist States at the United Nations, such a resolution, although

based on false premises, is obviously intended to make South Africa's membership of the International Labour Organisation untenable.

(c) The next Conference will be asked also to approve a programme for the elimination of *apartheid* in labour matters in the Republic in the light of various Conventions previously adopted by the Organisation which have not been ratified by South Africa and the acceptance or ratification of which, in terms of the Constitution of the Organisation, is entirely a matter within the discretion of a member State. Many other countries have also not ratified the Conventions quoted against South Africa, while others again have ratified the Conventions but are not honouring the obligations thus undertaken without any consequences of the nature now faced by South Africa.

(d) The proposed programme of action against South Africa is to be supported by a Declaration calling upon the Republic to renounce the policy of separate development and to repeal all legislative, administrative and other measures inconsistent with the terms of the Declaration. This is a clear case of deliberate interference in a country's domestic affairs, although it is claimed, in this connection, that the policies pursued by the Government have ceased to be solely the domestic concern of the Republic. It is significant, however, that no action is being taken against countries where there has in fact been—and still is—a grave violation of the principles underlying the Constitution of the Organisation. It is noteworthy also that the Organisation is acting in complete disregard of the benevolence of the policies pursued in South Africa, the effect of which has been to place its developing peoples on a much higher level than anywhere else in Africa, particularly as far as labour matters are concerned.

It has now become abundantly clear that the International Labour Organisation will refuse to proceed with its proper task and duties, as a non-political international organisation, while South Africa remains a Member. It is obvious, also, that it is not intended to retain South Africa as a Member functioning fully within its rights. The time has, therefore, come, more particularly as a result of the recent meeting of the Governing Body, for the Republic of South Africa to decide whether it should retire of its own free will or allow itself to be forced out with the resultant harm this will bring to an organisation which has already lost so much of its status. The Republic has chosen to leave the Organisation now, so as to give it an opportunity of attempting to return to the objectives for which it was established, if that be possible after the unhappy and unnecessary incursion into political recrimination between, and persecution of, fellow Members.

In deciding to withdraw from the Organisation, South Africa considers itself justified in acting on the same unilateral basis adopted by the Organisation in its attempts to curtail or terminate South Africa's membership. In view of the denial to South Africa of its basic rights as a Member, the South African Government accordingly does not consider itself bound by the provisions of the Constitution, in terms of which two years' notice of termination of membership must be given to the Organisation, and as from the date of notification to the Director-General of South Africa's withdrawal, all obligations towards the Organisation will be regarded as having been terminated, including the obligation with regard to South Africa's financial contribution to the Organisation for the current year.

The Government is not unmindful of the fact that certain Government delegates, as well as some of the Employers' and Workers' representatives from various countries, have resisted attempts to force South Africa out of the Organisation, and it wishes to express its appreciation of the support thus received from representatives of the countries concerned. The Republic will continue to co-operate with those countries—in whatever manner may prove feasible—in the field of labour relations and in the interests of the workers in South Africa.

Yours faithfully,

(Signed) Carel DE WET.

On 19 March 1964 the Director-General sent to the Minister of Foreign Affairs of the Republic of South Africa the following reply to the above letter:

Sir,

I have the honour to acknowledge receipt of the statement on behalf of the South African Government conveyed to me on your instructions on 11 March 1964 by the Ambassador of the Republic of South Africa to the United Kingdom.

I have taken due note of the decision of the Government of the Republic of South Africa to withdraw from the International Labour Organisation.

Article 1, paragraph 5, of the Constitution of the International Labour Organisation provides as follows:

> No member of the International Labour Organisation may withdraw from the Organisation without giving notice of its intention so to do to the Director-General of the International Labour Office. Such notice shall take effect two years after the date of its reception by the Director-General subject to the Member having at that time fulfilled all financial obligations arising out of its membership. When a Member has ratified any international labour Convention, such withdrawal shall not affect the continued validity for the period provided for in the Convention of all obligations arising thereunder or relating thereto.

South Africa will accordingly, subject to having at that time fulfilled all financial obligations arising out of its membership, cease to be a Member of the International Labour Organisation on 11 March 1966.

Until that date the undertaking of the Government of South Africa, contained in the instrument of ratification of the Constitution of the International Labour Organisation as amended in 1946, signed by the Prime Minister of the Union of South Africa at Pretoria on 12 June 1947, " faithfully to perform and carry out " all the stipulations of the Constitution, remains binding upon the Government of the Republic of South Africa.

In accordance with the terms of the Constitution South Africa will continue thereafter to be bound by all obligations arising under or relating to Conventions to which she is a party for the periods provided for therein.

Your statement will be communicated, together with this reply, to the Members of the Organisation and to the Governing Body of the International Labour Office, and it will be for the Governing Body and the Conference to determine what action they would now wish to take in respect of the proposals which are pending before the Conference and the terms of your communication. It is, however, my duty as Director-General to make immediately the following observations concerning the terms of your communication.

The gravity of the questions at issue between the International Labour Organisation and the Republic of South Africa is sufficiently attested by the prominence which these questions have received in recent discussions and decisions of the General Assembly of the United Nations and the Security Council as well as of the International Labour Organisation.

Throughout the consideration of these grave questions the International Labour Organisation has been guided by two unequivocal principles.

The first of these principles is that " all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity ". This principle is described by article 1 of the Constitution of the Organisation as one of the objects for the promotion of which the International Labour Organisation exists.

The second principle is that of scrupulous respect for due process of law in all action taken to deal with the problems which have confronted the International Labour Organisation as the result of the issues which have arisen between South Africa and other Members of the Organisation which contend that South Africa has repudiated her solemn obligation to promote the equality of man.

The South African Government regards the action taken by the International Labour Organisation to uphold the first of these principles as " an accumulation of hostile acts " and, denying that the International Labour Organisation has acted by due process of law,

claims that it is justified, at a stage when these matters are still pending before the International Labour Conference, in terminating unilaterally its obligations under the Constitution of the Organisation without regard to the provisions of the Constitution governing withdrawal.

The South African Government is clearly not entitled to terminate by unilateral action the obligations of South Africa under the Constitution of the International Labour Organisation. I therefore formally reserve the rights of the International Labour Organisation and of all its Members in respect of the grave issues raised by the statement communicated to me on your instructions on behalf of the Government of the Republic of South Africa.

I respectfully request you to bring this communication to the notice of the representative organisations of employers and workers recognised for the purpose of article 3 of the Constitution which have for so many years co-operated in the work of the International Labour Organisation.

I have the honour, etc.,

(Signed) David A. MORSE.

Implementation of Instruments Adopted by the International Labour Conference [1]

Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1, 2 and 3), 1964 [2]

Ratifications or Acceptances

The following ratifications or acceptances of the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1, 2 and 3), 1964, have been communicated to the Director-General of the International Labour Office.

ARGENTINA

The acceptance by Argentina of the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1, 2 and 3), 1964, was received by the Director-General of the International Labour Office on 14 January 1966.

The text of the communication notifying acceptance of these Instruments is as follows:

(Translation)

Geneva, 11 January 1966.

The Permanent Mission of the Argentine Republic to the International Organisations in Geneva presents its compliments to the International Labour Organisation and has pleasure in providing it with a copy of Act No. 16838 which approves the amendments to the Constitution of the International Labour Organisation adopted at the 48th Session of the International Labour Conference.

The Permanent Mission assures the International Labour Organisation of its highest consideration.

Act No. 16838

THE SENATE AND CHAMBER OF DEPUTIES OF THE ARGENTINE PEOPLE,

Assembled in Congress, etc.,

Hereby approve the following statutory instrument:

Section 1

Approval is hereby given to the amendments to the Constitution of the International Labour Organisation adopted at the 48th Session of the International Labour Conference, 1964, which instruments can be known as follows: Constitution of the International Labour Organisation Instrument of Amendment (No. 1), 1964; Constitution of the International Labour Organisation Instrument of Amendment (No. 2), 1964; and Constitution of the International Labour Organisation Instrument of Amendment (No. 3), 1964.

Section 2

This Act shall be communicated to the Executive Branch.

Given in the Chamber of the Argentine Congress at Buenos Aires on the thirtieth day of October, nineteen hundred and sixty-five.

(Signed) C. PERETTE. A. MOR ROIG.
R. ARANCIBIA. E. T. OLIVER.

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[1] Report III (Part III), which has been laid before every session of the Conference since 1950, contains a summary of the information supplied by governments in accordance with article 19 of the Constitution of the International Labour Organisation on the measures taken by member States to bring Conventions and Recommendations before the competent authorities and on relevant action taken by these authorities.

[2] For the text of these Instruments of Amendment see *Official Bulletin*, Vol. XLVII, No. 3, July 1964, Supplement I, pp. 5-12.

Executive Branch Decree No. 11091 M.942

Buenos Aires, 6 December 1965.

Wherefore:

The foregoing shall be treated as the Law of the Nation, observed, published, communicated to the Directorate of National Archives and included in the national archives.

(Signed) ILLIA.
(Countersigned) M. A. ZAVALA ORTIZ.
F. SOLÁ.

CHAD

The acceptance by Chad of the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1 and 2), 1964, was received by the Director-General of the International Labour Office on 30 December 1965.

The text of the letter notifying acceptance of these two Instruments is as follows:

(Translation)

Fort-Lamy, 27 December 1965.

Sir,

I have the honour to inform you that the Government of the Republic of Chad has decided to accept Amendments Nos. 1 and 2 to the Constitution of the International Labour Organisation and undertakes to observe them faithfully.

With the assurance of my highest consideration, etc.,

(Signed) F. TOMBALBAYE,
President of the Republic.

DOMINICAN REPUBLIC

The ratification by the Dominican Republic of the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1, 2 and 3), 1964, was received by the Director-General of the International Labour Office on 15 December 1965.

The instrument of ratification of these texts is as follows:

(Translation)

Decision No. 661

THE TRIUMVIRATE,

In the Name of the Republic

Considering paragraph 14 of article 38 of the Constitution of the Republic;

Considering the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1, 2 and 3), 1964, approved by the 48th Session of the General Conference in Geneva with effect from 17 June 1964;

Considering that the Dominican Republic was represented at the said Conference by a delegation which was appointed by Decree No. 1041 dated 13 June 1964:

Hereby decrees:

Sole Section

Approval is given to the amendments to the Constitution of the International Labour Organisation embodied in Instruments Nos. 1, 2 and 3, approved by the General Conference of the Organisation at its 48th Session held in Geneva, Switzerland, with effect from 17 June 1964 and worded as follows:

[Here follows the text of the Instruments.]

Given and promulgated by the Triumvirate in the National Palace, Santo Domingo, National District, capital of the Dominican Republic, on the eleventh day of March, nineteen hundred and sixty-five, in the 122nd year of Independence and the 102nd year following the Restoration.

To be published in the Official Gazette in due form.

(Signed) Donald J. REID CABRAL,
Ramón CÁCERES TRONCOSO.

Santo Domingo, National District.
19 November 1965.

I, Rafael MENCIA LISTER, Deputy Minister in Charge of the Ministry of Foreign Affairs, certify that the present is a true copy of the Spanish text of Decision No. 661 dated 12 March 1965 approving the amendments to the Constitution of the International Labour Organisation embodied in Instruments Nos. 1, 2 and 3, approved by the General Conference of the Organisation at its 48th Session held in Geneva, Switzerland, with effect from 17 June 1964, which is lodged in the archives of this Ministry.

(Signed) Rafael MENCIA LISTER,
Deputy Minister in Charge of the Ministry of Foreign Affairs.

IRAQ

The ratification by Iraq of the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1, 2 and 3), 1964, was received by the Director-General of the International Labour Office on 20 January 1966.

The text of the communication notifying ratification of these Instruments is as follows:

Baghdad, 10 January 1966.

Dear Mr. Morse,

With my letter No. 39182 dated 7.12.1965, I had the honour to inform you that Instruments Nos. 1, 2 and 3 for the Amendment of the Constitution of the International Labour Organisation for 1964 were ratified by Law No. 165 for 1965, copies of which were enclosed in my letter abovementioned.

I have the honour to inform you that the aforesaid Law has been published in the Official Gazette *(Al-Waqayi Al-Iraqiya)* No. 1204 dated 8.12.65. Please be kind enough to take the necessary steps in accordance with the respective articles of the Instruments in question concerning registration of ratification.

I avail this opportunity to renew the assurance of my highest consideration.

Yours faithfully,

(Signed) Faris Nasser AL-HASSAN,
Minister of Labour and Social Affairs.

MALTA

The acceptance by Malta of the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1 and 3), 1964, was received by the Director-General of the International Labour Office on 18 February 1966.

The text of the letter notifying acceptance of these two Instruments is as follows:

Valletta, 15 February 1966.

Sir,

I have the honour to refer to your communication ACD 1-1403-012 dated 15th January, 1965, concerning three Instruments for the Amendment of the Constitution of the International Labour Organisation, 1964, adopted by the International Labour Conference at its 48th Session, and to inform you that the Malta Government hereby accepts Instruments of Amendment Nos. 1 and 3 but does not accept Instrument of Amendment No. 2.

I have the honour to be, etc.,

(Signed) G. BORG OLIVIER.

NIGER

The acceptance by Niger of the Constitution of the International Labour Organisation Instrument of Amendment (No. 1), 1964, was received by the Director-General of the International Labour Office on 10 January 1966.

The text of the letter notifying acceptance of this Instrument is as follows:

(Translation)

Niamey, 6 January 1966.

Sir,

In reply to your letter No. ILC 49-500-7 dated 9 August 1965, in which you invited the Government of Niger to consider the possibility of ratifying or accepting Amendment No. 1 to the Constitution of the International Labour Organisation, adopted at the 48th Session of the Conference in 1964, whereby article 35 of the Constitution is deleted and replaced by additional provisions in article 19, I have the honour to inform you that—" having seen and examined the said amendment, We hereby approve and accept it as a whole and in each of its several parts ".

With the assurance of my highest consideration.

Yours faithfully,

(Signed) Diori HAMANI,
President of the Republic.

TUNISIA

The acceptance by Tunisia of the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1, 2 and 3), 1964, was received by the Director-General of the International Labour Office on 27 January 1966.

The text of the communication notifying acceptance of these Instruments is as follows:

(Translation)

Geneva, 27 January 1966.

The Permanent Mission of Tunisia to the European Office of the United Nations and the Specialised Agencies presents its compliments to the Director-General of the International Labour Office and has the honour to notify him of the acceptance by the Government of the Tunisian Republic of the three Instruments of Amendment to the Constitution of the International Labour Organisation adopted by the International Labour Conference at its 48th Session in Geneva.

1. The addition to article 19 of a ninth paragraph concerning the application of international labour Conventions to peoples which have not yet attained a full measure of self-government, and the deletion of article 35 (Geneva, 6 July 1964).

2. The insertion after the present paragraph 5 of article 1 of a paragraph concerning the exclusion from the I.L.O. of any Member which has been excluded from the United Nations or the suspension from the exercise of the rights and privileges involved in membership of the I.L.O. of any Member which has been suspended from the exercise of the rights and privileges involved in membership of the United Nations (Geneva, 9 July 1964).

3. Insertion at the end of the Constitution of the I.L.O. of a new article concerning the suspension from participation in the International Labour Conference of any Member of the I.L.O. which has been found by the United Nations to be flagrantly and persistently pursuing by its legislation a declared policy of racial discrimination such as *apartheid* (Geneva, 9 July 1964).

The Permanent Mission of Tunisia takes this opportunity of assuring the Director-General of the International Labour Office of its highest consideration.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

The ratification by the United Kingdom of the Constitution of the International Labour Organisation Instrument of Amendment (No. 3), 1964, was received by the Director-General of the International Labour Office on 16 February 1966.

The text of the instrument of ratification is in terms similar to those of the instrument of ratification of the Constitution of the International Labour Organisation Instrument of Amendment (No. 1), 1964.[1]

[1] See *Official Bulletin*, Vol. XLVIII, No. 4, Oct. 1965, p. 323.

Ratifications of and Cancellation of Registration of Ratifications of International Labour Conventions and Declarations concerning the Application of Conventions to Non-Metropolitan Territories

[Note. *The publication of information concerning the ratification and application of international labour Conventions does not imply any expression of views by the International Labour Office on the legal status of the State having communicated a ratification or declaration, or on its authority over the territories in respect of which such ratification or declaration is made ; in certain cases these may present problems on which the I.L.O. is not competent to express an opinion.*].

AUSTRALIA

Declarations concerning the Workmen's Compensation (Agriculture) Convention, 1921 (No. 12).

The Director-General of the International Labour Office registered, on 31 January 1966, the following declarations, communicated under article 35 of the Constitution of the International Labour Organisation, concerning the application to certain non-metropolitan territories of the following Convention:

Convention No. 12.

Applicable without modification: New Guinea, Papua.
Decision reserved: Norfolk Island.
Inapplicable: Nauru.

REPUBLIC OF CHINA

Ratification of the Guarding of Machinery Convention, 1963 (No. 119).

The ratification by the Republic of China of Convention No. 119 was registered by the Director-General of the International Labour Office on 22 February 1966.

The text of the instrument of ratification of this Convention is as follows:

(Translation)

In accordance with the constitutional procedures of the Republic of China, I hereby ratify the Guarding of Machinery Convention, 1963, adopted by the Conference of the International Labour Organisation at its 47th Session on 25 June 1963 at Geneva.

In accordance with Article 5 of the Convention, the provisions of Article 2 shall be exempted from application for three years from the coming into force of the Convention in respect of the Republic of China.

In witness whereof, I have signed this Instrument of Ratification and have affixed hereto the national seal.

Done at Taipei this twelfth day of the first month of the fifty-fifth year of the Republic of China corresponding to the twelfth day of January of the year one thousand nine hundred and sixty-six.

(Signed) CHIANG Kai-shek,
President of the Republic of China.

(Countersigned) SHEN Chang-huan,
Minister of Foreign Affairs.

COSTA RICA

Ratification of the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117); the Hygiene (Commerce and Offices) Convention, 1964 (No. 120); and the Employment Policy Convention, 1964 (No. 122).

The ratification by Costa Rica of Conventions Nos. 117, 120 and 122 was registered by the Director-General of the International Labour Office on 27 January 1966.

The text of the instrument of ratification of these Conventions is as follows:

(Translation)

I, Francisco J. ORLICH,
President of the Republic of Costa Rica,

Whereas the legislative assembly of the Republic in Decrees Nos. 3636, 3639 and 3640 of 10 December 1965 has approved the Convention concerning basic aims and standards of social policy, 1962, the Convention concerning hygiene in commerce and offices, 1964, and the Convention concerning employment policy, 1964, adopted by the International Labour Conference, and

Considering that the Government of the Republic, in accordance with the international obligations arising out of its adhesion to the Constitution of the International Labour Organisation, considers it eminently beneficial to the regulation of labour matters in the country that there should be international legal instruments governing the basic aims and standards of social policy, hygiene in commerce and offices and employment policy,

Hereby, in accordance with paragraph 10 of article 140 of the Political Constitution of the Republic;

Resolve that they shall be accepted and ratified, and treated henceforth as the law of the nation, and undertake that they shall be observed as a matter of national honour.

In faith whereof I sign the present Instrument of Ratification with my own hand, affix the Seal of the Nation hereto and cause the Minister of Foreign Affairs to append his signature.

Done in the Presidential Palace, San José, on the 14th day of January 1966.

(Signed) F. J. ORLICH.
(Countersigned) Mario GÓMEZ,
Minister of Foreign Affairs.

JAMAICA

Ratification of the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117).

The ratification by Jamaica of Convention No. 117 was registered by the Director-General of the International Labour Office on 4 January 1966.

The letter from the Minister of External Affairs, which constitutes the instrument of ratification of this Convention, is as follows:

Kingston, 10 December 1965.

Sir,

I have the honour to communicate to you hereby in pursuance of article 19, paragraph 5 *(d)*, of the Constitution of the International Labour Organisation, the formal ratification by Jamaica of the Basic Aims and Standards of Social Policy Convention (No. 117), which was adopted by the International Labour Conference at its 46th Session on 22nd June, 1962.

I have the honour, to be, etc.,

(Signed) D. B. SANGSTER,
Acting Prime Minister.

JORDAN

Ratification of the Employment Policy Convention, 1964 (No. 122).

The ratification by Jordan of Convention No. 122 was registered by the Director-General of the International Labour Office on 10 March 1966.

The text of the communication from the Minister of Foreign Affairs, which constitutes the instrument of ratification of this Convention, is as follows:

Amman.

Sir,

I have the honour to inform you that the Government of the Hashemite Kingdom of Jordan, having considered the Employment Policy Convention, 1964 (No. 122), hereby confirm and ratify the same and undertake in accordance with article 19, paragraph 5 *(d)*, of the Constitution of the International Labour Organisation faithfully to perform and carry out all the stipulations therein contained.

The Royal Decree approving the ratification of this Convention as published in the Official Gazette of 26 December 1965 (No. 1891) has already been communicated to you.

With the expression of my highest consideration.

(Signed) [illegible]
Minister of Foreign Affairs.

NETHERLANDS

Ratification of the Unemployment Provision Convention, 1934 (No. 44).

The ratification by the Netherlands of Convention No. 44 was registered by the Director-General of the International Labour Office on 17 January 1966.

The text of the instrument of ratification of this Convention is as follows:

(Translation)

We, JULIANA,

By the Grace of God, Queen of the Netherlands, Princess of Orange-Nassau, etc., etc., etc.

To all to whom these presents may come, greeting !

Having seen and considered the Convention ensuring benefit or allowances to the involuntarily unemployed (as amended by the Final Articles Revision Convention, 1946, and the Final Articles Revision Convention, 1961) adopted in Geneva on 23 June 1934 by the General Conference of the International Labour Organisation at its 18th Session, the text of which is as follows:

[Here follows the text of the Convention.]

We approve by these presents for the Kingdom in Europe in all of the provisions therein contained the Convention reproduced above, declare that it is accepted, ratified and confirmed and promise that it shall be inviolably observed.

In faith whereof We have delivered these presents signed by Our hand and have caused Our Royal Seal to be affixed thereto.

Done at Soestdijk, this thirtieth day of December in the year of grace nineteen hundred and sixty-five.

(Signed) JULIANA.
(Countersigned) J. M. A. H. LUNS.

NEW ZEALAND

Cancellation of the Registration of the Ratification of the Reduction of Hours of Work (Textiles) Convention, 1937 (No. 61).

By letter dated 26 January 1966 addressed to the Director-General of the International Labour Office the Secretary of External Affairs of New Zealand transmitted a communication giving notice of the New Zealand Government's decision to terminate its engagement relating to the Reduction of Hours of Work (Textiles) Convention, 1937 (No. 61).

The text of the letter from the Secretary of External Affairs is as follows:

Wellington, 26 January 1966.

Sir,

I have the honour, by the direction of the Minister of External Affairs, to enclose a communication giving notice of the New Zealand Government's decision to terminate its engagement to be bound by the provisions of the Reduction of Hours of Work (Textiles) Convention, 1937 (Convention No. 61), which was adopted by the International Labour Conference on 22 June 1937, in the course of its 23rd Session.

I am to inform you that at the time of ratification the Government was satisfied that the principles embodied in the Convention were already in operation in the textiles industry by reason of various awards of the Court of Arbitration. It was also contemplated that such administrative measures as might prove necessary should be taken both to reinforce the awards and to ensure compliance with the provisions of the Convention, particularly those limiting the working of overtime. It has, however, become increasingly apparent that the overtime limits laid down in the Convention no longer correspond to present-day needs and conditions in the textiles industry in New Zealand.

I am also to explain that the Government, in reaching its decision, has been influenced by the fact that this Convention, in the 29 years since its adoption, has not entered into force. The New Zealand Government, bearing in mind that its own ratification has stood alone for 28 years, has reluctantly concluded that the Convention is unlikely to prove a serviceable international agreement, or to make a genuine contribution to the International Labour Code. In these circumstances it has seemed that the interests of the Organisation will best be served by retracting the only endorsement which this Convention has received.

The Minister will be grateful if you will in due course inform him of the action taken to give effect to the Government's decision.

I have the honour to be, etc.,

(Signed) A. D. McINTOSH,
Secretary of External Affairs.

The text of the communication from the Minister of External Affairs of New Zealand informing the Director-General of the decision taken by his Government to terminate its engagement relating to the Reduction of Hours of Work (Textiles) Convention, 1937 (No. 61), is as follows:

Wellington, 26 January 1966.

Sir,

On 22 June 1937, in the course of its 23rd Session, the General Conference of the International Labour Organisation adopted a Convention (No. 61) concerning the reduction of hours of work in the textile industry. This Convention, which was to be cited as the Reduction of Hours of Work (Textiles) Convention, 1937, was to come into force 12 months after the date on which the ratifications of two Members had been registered with the Secretary-General of the League of Nations—whose functions in this regard have since been entrusted to the Director-General of the International Labour Office.

In accordance with the procedure contemplated in the Convention, the formal ratification of the Government of New Zealand was communicated for registration, and was registered on 29 March 1938. The Convention has not however been ratified by any other Member, and therefore remains ineffectual.

In the circumstances the Government of New Zealand has decided to terminate its engagement to be bound by the provisions of the Reduction of Hours of Work (Textiles) Convention, 1937, and desires that the registration of its instrument of ratification be cancelled.

I shall be glad, therefore, if you will see that registration of the instrument is cancelled accordingly.

(Signed) Keith HOLYOAKE,
Minister of External Affairs.

The Director-General of the International Labour Office informed the Governing Body at its 164th Session, held in February-March 1966, of his intention to cancel, at the request of the Government of New Zealand, the registration of the ratification by New Zealand of Convention No. 61.

The text of the document in which the Governing Body was informed of the Director-General's intention is as follows:

Cancellation of the Registration of the Ratification by New Zealand of the Reduction of Hours of Work (Textiles) Convention, 1937 (No. 61)

1. At its 23rd Session in 1937 the Conference adopted the Reduction of Hours of Work (Textiles) Convention. New Zealand is the only State which has ratified this Convention, its ratification having been registered on 29 March 1938. In accordance with Article 17, paragraph 2, the Convention comes into force when ratified by two member States; it has therefore not yet entered into force.

2. On 26 January 1966 the Minister of External Affairs of New Zealand communicated to the Director-General of the International Labour Office a letter in which he stated that, since the Convention had not been ratified by any other Member and therefore remained ineffectual, the Government of New Zealand had decided to terminate its engagement to be bound by the Convention and requested that the registration of its ratification should be cancelled. In a letter bearing the same date the Secretary of External Affairs of New Zealand stated:

[The text of this letter is reproduced on p. 210.]

3. The request of the Government of New Zealand does not involve the denunciation of this Convention. Denunciation could, in fact, take place only after its entry into force. If this Convention had come into force some time after its ratification by New Zealand more than 27 years ago, New Zealand would have had an opportunity of denouncing the Convention ten years after its entry into force, in conformity with its terms. In the present circumstances, however, as New Zealand cannot denounce the Convention, it has requested that the registration of its ratification be cancelled.

4. In the special circumstances of the case, and in the light of the very long period of time which has elapsed since New Zealand ratified the Convention and the fact that there has been no other ratification, it would appear that the request of the Government of New Zealand should be granted.

5. The Director-General therefore proposes to accede to the request made by the Government and to cancel the registration of the ratification by New Zealand of the Reduction of Hours of Work (Textiles) Convention, 1937.

6. It is recalled that the Director-General in 1954 had occasion to accede to a similar request made by the Government of New Zealand and to cancel the registration of the ratification by New Zealand of the Reduction of Hours of Work (Public Works) Convention, 1936 (No. 51), for similar reasons. At that time the Director-General had brought the matter to the attention of the Governing Body which, at its 127th Session (November 1954), had taken note of the action which the Director-General proposed to take.

7. The Governing Body is accordingly requested to take note of the action which the Director-General proposes to take with regard to the request of the Government of New Zealand as indicated in paragraph 5 above.

The Governing Body took note of the above document on 4 March 1966.

By letter dated 7 March 1966 the Director-General of the International Labour Office communicated to the Government of New Zealand his decision to cancel the registration of the Convention.

The text of the letter from the Director-General is as follows:

Geneva, 7 March 1966.

Sir,

I have the honour to acknowledge the receipt of your communication of 26 January 1966 giving notice of the New Zealand Government's decision to terminate its engagement to be bound by the provisions of the Reduction of Hours of Work (Textiles) Convention, 1937 (No. 61).

As pointed out by you, the formal ratification of the Convention by the Government of New Zealand was registered about 28 years ago and no other State Member of the I.L.O. has since ratified the Convention. In view of the long period of time which has thus elapsed since the ratification by New Zealand of the Convention, and the fact that the ratification constitutes the sole ratification of the Convention, I have decided to cancel the registration of the ratification of the Convention by New Zealand.

The Governing Body was informed of my intention to take this action and I am enclosing herewith a copy of the note submitted for this purpose to its 164th Session (Geneva, February-March 1966).

In accordance with usual practice, this correspondence will be published in the *Official Bulletin.*

I have the honour to be, etc.,

For the Director-General:
(Signed) C. W. JENKS,
Deputy Director-General.

The cancellation was registered by the Director-General on 4 March 1966.

PARAGUAY

Ratification of the Hours of Work (Industry) Convention, 1919 (No. 1); the Weekly Rest (Industry) Convention, 1921 (No. 14); the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30); the Holidays with Pay Convention, 1936 (No. 52); the Minimum Age (Industry) Convention (Revised), 1937 (No. 59); the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60); the Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77); the Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78); the Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79); the Night Work (Women) Convention (Revised), 1948 (No. 89); the Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90); the Protection of Wages Convention, 1949 (No. 95); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Holidays with Pay (Agriculture) Convention, 1952 (No. 101); and the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106).

The ratification by Paraguay of Conventions Nos. 1, 14, 30, 52, 59, 60, 77, 78, 79, 89, 90, 95, 98, 101 and 106 was registered by the Director-General of the International Labour Office on 21 March 1966.

The text of the instrument of ratification of Convention No. 1 is as follows:

(Translation)

I, Alfredo STROESSNER,

President of the Republic of Paraguay,

To all who may see these presents make known:

That during the General Conference of the International Labour Organisation held at Washington there was adopted on the 29th day of October 1919 the Convention limiting the hours of work in industrial undertakings to eight in the day and forty-eight in the week,

And that, the said Convention having been approved and ratified by Act No. 946, approved by the Honourable House of Representatives on the tenth day of July in the year one thousand nine hundred and sixty-four and promulgated by the Executive on the fifteenth day of the same month and year,

By these presents I do accept, confirm and ratify the said Convention in all its parts, engaging and binding myself in the name of the Nation faithfully to observe it and have it implemented.

In faith whereof, I do sign the present Instrument of Ratification, sealed with the Seal of the Republic and countersigned by the Minister, Secretary of State in the Department of External Relations, Dr. Raúl SAPENA PASTOR, in the city of Asunción, Capital of the Republic of Paraguay, on the third day of November in the year one thousand nine hundred and sixty-five.

(Signed) Alfredo STROESSNER.

(Countersigned) Raúl SAPENA PASTOR.

The text of the instruments of ratification of Conventions Nos. 14, 30, 52, 59, 60, 77, 78, 79, 89, 90, 95, 98, 101 and 106 is in similar terms.

SWITZERLAND

Ratification of the Hygiene (Commerce and Offices) Convention, 1964 (No. 120).

The ratification by Switzerland of Convention No. 120 was registered by the Director-General of the International Labour Office on 18 February 1966.

The text of the instrument of ratification of this Convention is as follows:

(Translation)

THE SWISS FEDERAL COUNCIL,

Having seen and examined the Convention concerning hygiene in commerce and offices (No. 120) adopted subject to ratification in Geneva on 8 July 1964 by the General Conference of the Inter-

national Labour Organisation and approved by the Federal Chambers on 20 September 1965,

Declares that the said Convention is ratified and undertakes on behalf of the Swiss Confederation to observe it faithfully and at all times in so far as is in its power.

In faith whereof the present instrument of ratification is hereby signed by the President and the Chancellor of the Swiss Confederation and the Federal seal is affixed hereto.

Done at Berne on the seventh day of February nineteen hundred and sixty-six (7 February 1966).

For the Swiss Federal Council:
(Signed) SCHAFFNER,
President of the Confederation.
(Signed) Ch. OSER,
Chancellor of the Confederation.

TUNISIA

Ratification of the Employment Policy Convention, 1964 (No. 122).

The ratification by Tunisia of Convention No. 122 was registered by the Director-General of the International Labour Office on 17 February 1966.

The text of the instrument of ratification of this Convention is as follows:

(Translation)

We, Habib BOURGUIBA,
President of the Tunisian Republic,

Having seen and examined the Convention concerning employment policy (No. 122) which was adopted in Geneva on 9 July 1964 by the General Conference of the International Labour Organisation and is worded as follows:

[Here follows the text of the Convention.]

Hereby approve the provisions of the Convention reproduced above, declare that it has been ratified in accordance with the Constitution by virtue of Act No. 65-44 of 21 December 1965 and promise that it will be conscientiously observed.

In faith whereof We have signed these presents and have ordered the Seal of the Tunisian Republic to be affixed hereto.

Done at Tunis, 5 February 1966.

(Signed) BOURGUIBA.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Declarations concerning the Workmen's Compensation (Accidents) Convention, 1925 (No. 17); the Seamen's Articles of Agreement Convention, 1926 (No. 22); the Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32); the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35); the Old-Age Insurance (Agriculture) Convention, 1933 (No. 36); the Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37); the Invalidity Insurance (Agriculture) Convention, 1933 (No. 38); the Survivors' Insurance (Industry, etc.) Convention, 1933 (No. 39); the Survivors' Insurance (Agriculture) Convention, 1933 (No. 40); the Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42); the Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99); and the Radiation Protection Convention, 1960 (No. 115).

The Director-General of the International Labour Office registered, on the dates indicated below, the following declarations, communicated under article 35 of the Constitution of the International Labour Organisation, concerning the application to certain non-metropolitan territories of the international labour Conventions mentioned below:

Convention No. 17.

Applicable with the following modifications: Fiji [1]—7 January 1966: *Article 10 :* The expenses to be defrayed by the employer in respect of the supply, and, subject to the approval of a medical practitioner, the maintenance, repairs and renewal of any artificial appliance or apparatus for a period of up to five years dating from the time of the accident is limited to an amount not exceeding £100 in all; *Article 11 :* Excluded.

Convention No. 22.

Applicable without modification: Barbados—1 February 1966.

Conventions Nos. 32, 35, 36, 37, 38, 39 and 40.

Decision reserved: British Virgin Islands—28 February 1966.

Convention No. 42.

Applicable with the following modifications: Bermuda [2]—28 February 1966: *Article 2 :* Excluded from the schedule of diseases: Poisoning by mercury, its amalgams and compounds and their sequelae; silicosis with or without pulmonary tuberculosis; phosphorus poisoning by phosphorus or its compounds, and its sequelae; arsenic poisoning by arsenic or its compounds, and its sequelae; pathological manifestations due to—*(a)* radium and other radioactive substances and *(b)* X-rays; primary epitheliomatous cancer of the skin.

Convention No. 99.

Applicable without modification: Grenada [3]—1 February 1966.

Convention No. 115.

Applicable without modification: British Guiana—28 February 1966.

YUGOSLAVIA

Ratification of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109).

The ratification by Yugoslavia of Convention No. 109 was registered by the Director-General of the International Labour Office on 14 January 1966.

The text of the instrument of ratification of this Convention is similar to that of the instrument of ratification of the Final Articles Revision Convention, 1961 (No. 116).[4]

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[1] This declaration supersedes the declaration of application with modifications of 27 March 1950.

[2] This declaration supersedes the declaration of decision reserved of 13 April 1964.

[3] This declaration supersedes the declaration of decision reserved of 29 December 1958.

[4] See *Official Bulletin*, Vol. XLVIII, No. 3, July 1965, p. 255.

Office Publications and Documents

International Labour Review

The following, in addition to the regular section "Information" and the Bibliography, are the contents of recent issues of the *International Labour Review*.

February 1966 :

Future demand for vocational skills of different levels, by S. Wickham.
Women's employment in Ceylon, by Imogen Kannangara.
Manpower problems and policies in Peru, by Benjamín Samamé.
Disabled persons' co-operatives in the Czechoslovak Socialist Republic, by Rudolf Tyl.
Size and characteristics of wage employment in Africa: some statistical estimates, by Kailas C. Doctor and Hans Gallis.

March 1966 :

Fair employment practices legislation and enforcement in the United States, by John E. Means.
Practical aspects of the organisation of manpower utilisation and education schemes in the developing countries, by E. Costa.
Wage differentials in developing countries: a survey of findings, by Koji Taira.

Legislative Series

The November-December 1965 issue of the *Legislative Series* contains texts promulgated in 1963-65 dealing with the following subjects.

Labour legislation :

Basutoland 1 (1964): Trade unions.
Belgium 1 (1965): Work rules.
Ethiopia 1 (1964): Minimum labour conditions.
Ivory Coast 1 (1965): Contracts of employment; 2 (1965): Employment records; 3 (1965): Labour disputes.
Jordan 1 (1965): Labour Code (amendments).
Malagasy Republic 1 (1964): Employment service; 2 (1964): Labour Code (amendments).
Southern Rhodesia 1 (1964): Industrial conciliation (amendments).
United Arab Republic 2 (1964): Labour disputes.
United States 2 (1964): Discrimination; 1 (1965): Equal opportunity.

Social security legislation :

Iceland 1 (1963): National insurance.
Iraq 1 (1964): Social security.
Mauritania 1 (1965): Old-age, invalidity and survivors' pensions.
Netherlands 2 (1964): Sickness funds.
Tanzania 1 (1964): National provident fund.

The January-February 1966 issue contains texts promulgated in 1964-65 dealing with the following subjects:

Labour legislation :

India 1 (1965): Industrial disputes.
Luxembourg 1 (1965): Collective agreements.

Switzerland 1 (1965): Vocational training.
Uganda 1 (1964): Industrial disputes.
Yugoslavia 3 (1965): Protection of labour.

Social security legislation :

Cyprus 1 (1964): Social insurance.

These issues also contain the usual lists of recent labour legislation.

Bulletin of Labour Statistics

The *Bulletin of Labour Statistics* contains the usual data on employment, unemployment, wages, hours of work and consumer prices.[1]

Documents of the International Labour Conference (49th Session)

In connection with the 49th Session of the Conference (June 1965) the Office published the following document.

Record of Proceedings [2]

The *Record of Proceedings* of the 49th Session of the International Labour Conference is divided as follows: Introduction, reproducing the letter addressed by the Director-General of the International Labour Office to the governments of member States regarding the convocation of the Conference, the agenda, the place and date of the session and the composition and attendance of delegations, and enclosing a memorandum giving further details; First Part, setting out the list of members of delegations, etc., comprising the names of all persons who took part in the Conference, classified according to the functions they performed; Second Part, containing a verbatim report of the proceedings in plenary sitting; and Third Part, consisting of Appendices, including the reports and documents submitted by the various Conference committees and the texts (Conventions, Recommendations, resolutions, etc.) adopted by the Conference. The *Record of Proceedings* terminates with an alphabetical index to the Second and Third Parts.

Reports Prepared for the International Labour Conference (50th Session)

In preparation for the 50th Session of the International Labour Conference (June 1966) the Office has published the following reports.

Report of the Director-General (Part I) [3]

This year the Director-General has chosen as the subject for his Report " Industrialisation and Labour ". It is directed primarily at the problems of industrialisation as they arise in the developing countries, drawing attention to various social and labour problems which directly influence both the course and the speed of industrialisation, and in respect of which appropriate action by the I.L.O. may contribute in a positive way to accelerating the realisation of the aspirations of the industrialising countries.

Chapter I deals with industrialisation and labour policy, Chapter II with human resources policy as an aid to industrialisation, Chapter III with social adjustment in industrialisation, and Chapter IV with the I.L.O.'s contribution to industrialisation.

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[1] *Bulletin of Labour Statistics*, 1st quarter, 1966 (Geneva, I.L.O., 1966). 97 pp. Price: 90 cents; 6s. 3d.

[2] *Record of Proceedings*, International Labour Conference, 49th Session, Geneva, 1965 (Geneva, I.L.O., 1965). LXIX + 767 pp. Price: $12; £4 4s.

[3] *Report of the Director-General*, Report I (Part I), International Labour Conference, 50th Session, Geneva, 1966 (Geneva, I.L.O., 1966). 94 pp. Price: $1; 7s.

Report of the Director-General (Part II) [1]

Part II of the Report of the Director-General—which also constitutes the 20th Report of the International Labour Organisation to the United Nations—covers primarily the activities of the I.L.O. during 1965. The matters covered fall under the following headings: major developments; conditions of work and life; development of human resources; development of social institutions; and concerted action in specific fields. The action taken on the resolutions adopted by the International Labour Conference at its 45th (1961) to 49th (1965) Sessions is summarised in an appendix.

The Role of Co-operatives in the Economic and Social Development of Developing Countries [2]

The first part of the present report, prepared on the basis of replies from 82 governments, reproduces the essential points in their observations and in every case the observations relating directly to the provisions of the text submitted to them for examination in Report IV (1) [3]; it also contains comments on those observations. The second part contains the English and French versions of the proposed Recommendation as amended in the light of the observations made by governments and for the reasons set out in the Office commentary.

Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning Old-age, Invalidity and Survivors' Pensions [4]

The present report has been prepared on the basis of the replies received from 66 governments to the preliminary report [5]; the substance of these replies is reproduced in Chapter I, while Chapter II contains a commentary on them and presents Proposed Conclusions.

Questions concerning Fishermen [6]

In accordance with article 38 of the Standing Orders of the International Labour Conference the International Labour Office prepared and transmitted to the governments of member States a report [7] containing the record of the Preparatory Technical Conference on Fishermen's Questions (Geneva, 18-28 October 1965), together with the texts of the Conclusions adopted by that Conference as a basis for the discussion by the International Labour Conference at its 50th (1966) Session with a view to the adoption of international instruments. The Conclusions deal with three questions: accommodation on board fishing vessels; vocational training of fishermen; and fishermen's certificates of competency. The report also contained a questionnaire.

The first part of the present report contains general observations made by certain governments and an analysis of their replies to the questionnaire. The second part contains the English and French versions of the proposed Conventions and the proposed Recommendation.

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[1] *Activities of the I.L.O., 1965*, Report I (Part II), International Labour Conference, 50th Session, Geneva, 1966 (Geneva, I.L.O., 1966). 93 pp. Price: $1; 7s.

[2] *The Role of Co-operatives in the Economic and Social Development of Developing Countries*, Report IV (2), International Labour Conference, 50th Session, Geneva, 1966 (Geneva, I.L.O., 1966). 55 pp. Price: 75 cents; 5s. 3d.

[3] See *Official Bulletin*, Vol. XLVIII, No. 3, July 1965, p. 260.

[4] *Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning Old-age, Invalidity and Survivors' Pensions*, Report V (2), International Labour Conference, 50th Session, Geneva, 1966 (Geneva, I.L.O., 1966). 209 pp. Price: $2.25; 15s. 6d.

[5] See *Official Bulletin*, Vol. XLVIII, No. 3, July 1965, pp. 260-261.

[6] *Questions concerning Fishermen :* (a) *Accommodation on Board Fishing Vessels ;* (b) *Vocational Training of Fishermen ;* (c) *Fishermen's Certificates of Competency*, Report VI (2), International Labour Conference, 50th Session, Geneva, 1966 (Geneva, I.L.O., 1966). 95 pp. Price: $1; 7s.

[7] See *Official Bulletin*, Vol. XLIX, No. 1, Jan. 1966, p. 47.

Second Special Report of the Director-General on the Application of the Declaration concerning the Policy of "Apartheid" of the Republic of South Africa [1]

The present report [2] is the second of a series of special reports to be submitted every year for consideration by the International Labour Conference in accordance with operative paragraph 6 of the Declaration concerning the Policy of *Apartheid* of the Republic of South Africa, adopted unanimously by the Conference at its 48th Session.

Chapter I discusses separate development and trends in practice and theory; Chapter II deals with *apartheid* labour policies and the South African economy; Chapter III recounts developments in the United Nations and in the I.L.O. in regard to the situation in South Africa; and Chapter IV puts forward proposals for the future.

How to Read a Balance Sheet [3]

This programmed manual has its origin in a sector of the technical assistance work of the I.L.O. designed to assist economic and social progress in the less industrialised countries by spreading knowledge of sound management techniques. It is designed so as to present the subject in a way in which it can be most easily and effectively mastered by a wide variety of persons with limited time for personal study, including not only managers of enterprises, but also trade union officials and persons concerned with public affairs at the local or national level. The method chosen offers many of the benefits of expert teaching and enables the individual to learn at his own pace and to make use of any spell of free time.

The programme first teaches the structure and language of a balance sheet and then goes on to illustrate some of the ways in which it can be used to assess a company's position. It provides basic information about the structure of the enterprise's resources and its responsibilities to and relations with owners and other bodies or persons. The manual uses a limited number of terms, but has a short glossary of alternative terms that the reader may subsequently encounter when he is looking at balance sheets.

Mimeographed Documents

I.L.O. Technical Assistance Mission Reports [4]

Latin America :

Informe del Seminario latinoamericano sobre administración de mano de obra en el desarrollo económico y social (Report of the Latin American Seminar on Labour Administration in Economic and Social Development) (Lima, 1 February-12 March 1965) (OIT/OTA/LAT/R.6).

Algeria :

L'éducation ouvrière (Workers' education) (OIT/OTA/Algérie/R.5).

Argentina :

El proyecto Río Bermejo (The Río Bermejo project) (OIT/TAP/Argentina/R.10).

Cameroon :

L'éducation et la formation dans le mouvement coopératif (Education and training in the co-operative movement) (OIT/TAP/Cameroun/R.9).

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[1] *Second Special Report of the Director-General on the Application of the Declaration concerning the Policy of "Apartheid" of the Republic of South Africa*, International Labour Conference, 50th Session, Geneva, 1966 (Geneva, I.L.O., 1966). 34 pp. Price: 50 cents; 3s. 6d.

[2] For a review of the first report see *Official Bulletin*, Vol. XLVIII, No. 3, July 1965, p. 260.

[3] *How to Read a Balance Sheet* (Geneva, I.L.O., 1966). 124 pp. Price: $1; 7s.

[4] Limited quantities of these documents are available; copies are available from the I.L.O., Geneva.

Central African Republic :

L'assurance pension (Pension insurance) (OIT/TAP/Centrafricaine/R.3).

Costa Rica :

Un programa de información sobre el empleo (Employment information programme) (OIT/TAP/Costa Rica/R.1).

Israel :

Manpower assessment and planning (ILO/TAP/Israel/R.20).

Jordan :

The organisation of a manpower assessment and planning programme (ILO/TAP/Jordan/R.7).

Kenya :

The development of vocational training (ILO/TAP/KENYA/R.1).

Malagasy Republic :

L'éducation, la formation et la vulgarisation coopératives (Co-operative education, training and extension) (OIT/TAP/Malgache/R.2).

Malaysia :

Printing trades training (ILO/TAP/Malaysia/R.18).

Paraguay :

La situación financiera del Instituto de Previsión Social (The financial situation of the Social Welfare Institute) (OIT/OTA/Paraguay/R.5).

Peru :

Organización y funcionamiento administrativos del Seguro Social del Empleado (Administrative organisation and operation of the Employees' Social Insurance Scheme) (OIT/OTA/Peru/R.9).

Sudan :

The establishment of an employment market information programme (ILO/OTA/Sudan/R.9).

Swaziland :

Manpower assessment (ILO/TAP/Swaziland/R.1).

Tanzania :

The development of vocational training (ILO/TAP/Tanzania/R.1).

Thailand :

Manpower assessment and planning (ILO/TAP/Thailand/R.25).
Internal migration (ILO/OTA/Thailand/R.26).

Tunisia :

L'évaluation et la planification de la main-d'œuvre (Manpower assessment and planning) (OIT/TAP/Tunisie/R.10).

L'état actuel et les perspectives d'évolution de la législation en matière d'accidents du travail et de maladies professionnelles (The present situation with regard to employment injury legislation and the prospects for its development) (OIT/TAP/Tunisie/R.11).

Etudes actuarielles concernant l'introduction d'un régime général d'assurance invalidité-vieillesse et survivants (Actuarial studies relating to the introduction of a general old-age, disablement and survivors' insurance scheme) (OIT/TAP/Tunisie/R.12).

Venezuela :

La organización de los servicios médicos del seguro social (Organisation of medical services under the social security scheme) (OIT/TF/Venezuela/R.5).

DOCUMENTS

Preparatory Technical Conference on the Maximum Permissible Weight to Be Carried by One Worker

(Geneva, 25 January-4 February 1966)

Note on the General Discussion and Text of the Proposed Conclusions with a view to the Adoption of a Convention and a Recommendation

The Governing Body has on several occasions since its 152nd Session (June 1962) given consideration to the question of the maximum permissible weight to be carried by one worker as a topic for possible inclusion in the agenda of the International Labour Conference. At its 160th Session (November 1964), when examining the Director-General's proposals concerning the date, place and agenda of the 50th (1966) Session of the Conference, it decided not to include this topic in the agenda of that session, it being understood that consideration would be given, in connection with the discussions on the draft budget for 1966, to the possibility of convening during that year a preparatory technical conference on the subject. Subsequently, at its 163rd Session (November 1965), it decided to place the question of the maximum permissible weight to be carried by one worker on the agenda of the 51st (1967) Session of the International Labour Conference, the exact scope of the item to be determined in the light of the conclusions of the Preparatory Technical Conference.

In accordance with these decisions the Preparatory Technical Conference met in Geneva from 25 January to 4 February 1966. Its agenda was as follows: Maximum permissible weight to be carried by one worker.

States Members were invited to send tripartite delegations. Twenty-nine countries were represented by 110 delegates; four countries were represented by observers. Four intergovernmental organisations accepted the invitation to participate in the Conference, and six international non-governmental organisations sent observers.

The Governing Body was represented by a delegation composed of Mr. R. PURPURA (Italy) for the Government group, Mr. M. MONTT BALMACEDA (Chilean) for the Employers' group, and Mr. G. WEISSENBERG (Austrian) for the Workers' group.

The Conference unanimously elected as President Mr. DRACHMANN (Government delegate, Denmark) and, in accordance with the proposals made by the three groups, appointed as Vice-Presidents the following delegates:

Government group : Mr. ZELENÝ (Czechoslovakia).

Employers' group : Mr. VIVIANI (Italy).

Workers' group : Mr. DEKEYZER (Belgium).

Mr. H. BLANCO MELO (Government delegate, Mexico) was appointed Reporter.

This note contains a summary of the discussion in plenary sitting and reproduces the texts of the Proposed Conclusions with a view to the adoption of a Convention

and the Proposed Conclusions with a view to the adoption of a Recommendation concerning the maximum permissible weight to be carried by one worker.

DISCUSSION IN PLENARY SITTING

Opening Speeches

The Secretary-General, Mr. H. A. Majid, after declaring the Conference open, stressed the importance of the question under consideration. He pointed out that the manual transport of loads was one of the most common causes of occupational accidents at work and led to a great many chronic medical disorders; governments were adopting an increasing number of provisions to regulate the carrying of loads. The matter was of interest to a great many workers and had been raised several times in the Industrial Committees of the I.L.O.

General Discussion

The Conference had before it two reports prepared by the Office. Report I contained an analysis of the problem, the report of the Meeting of Experts on the Maximum Permissible Weight to Be Carried by One Worker, which had been convened by the Governing Body in 1964, an outline of national law and practice, and a questionnaire on the points proposed for discussion. Report II contained replies of governments to the questionnaire and their comments, an analysis of their replies and the Proposed Conclusions. The Conference also had before it for consideration a document containing the replies from some other governments, which it had not been possible to include in Report II.

During the general discussion some speakers stressed that the manual carrying of loads was a particularly arduous form of work and mentioned the risks of fatigue, accident and physical deterioration involved. They also pointed out that those risks led to economic losses and had considerable social repercussions. It was therefore desirable to introduce standardisation at the international level in order to make sure that such work was carried out in safe conditions. Some other speakers stressed the great difficulty of defining the principle of maximum weight because of the many factors involved. It seemed impossible to fix a maximum weight which would at the same time take all those factors into account and be universally applicable in all countries and in all circumstances.

Lengthy discussions took place as to whether the various points in the Proposed Conclusions should be considered with a view to recommending the adoption of a Convention, either with or without a supplementary Recommendation, or whether those points should be considered only with a view to adopting a Recommendation. The Workers' members of the Conference, and some Government members, stressed the advantages to be gained by adopting a Convention, which would permit uniform standards concerning maximum weight to be applied in all countries and enable the health and safety of workers to be more effectively safeguarded. The Employers' members, and some Government members, held that it was impossible in practice to implement rigid standards in this field, owing to the wide variety of conditions obtaining in different countries and to certain features peculiar to the manual transport of loads; they argued that it would be more realistic for the Conference to confine itself to considering the adoption of a Recommendation.

In order to accelerate the work of the Conference, the Chairmen of the Employers' and Workers' groups asked for the Conference's permission to re-examine within their groups points on which their opinions differed, with a view to finding common ground and facilitating the discussion on the nature of the instruments and on other points of the Proposed Conclusions. Following this re-examination, two amendments were submitted, one by the Employers' group and the other by the Workers' group, both of which defined the character of the instruments to be examined and specified their contents.

Proposed Conclusions with a view to the Adoption of a Convention concerning the Maximum Permissible Weight to Be Carried by One Worker

The document submitted by the Workers' group, which called for the adoption of a Convention supplemented by a Recommendation, was adopted after a record vote. The Conference then appointed an ad hoc working party to discuss the contents of a proposed

Convention on the basis of the document submitted by the Workers' group. The proposals of the Working Party, as amended by the Conference, were then adopted.

During the adoption of the Proposed Conclusions by the Conference the Employers' group said that they would vote against the Proposed Conclusions with a view to the adoption of a Convention because they felt that the principles contained therein were too general for inclusion in a Convention. If the text submitted by the Workers' group were adopted, the result would be a text which would be so vague as to undermine the very concept of Conventions as it was now understood, a concept which they were concerned to maintain. As regards the Proposed Conclusions with a view to the adoption of a Recommendation they would abstain from voting because they considered that certain points of the Proposed Conclusions were unrealistic; they hoped, however, that the necessary modifications could be made before the 51st Session of the International Labour Conference.

The Conference adopted the Proposed Conclusions with a view to the adoption of a Convention concerning the maximum permissible weight to be carried by one worker by 35 votes to 17, with 8 abstentions.

Proposed Conclusions with a view to the Adoption of a Recommendation concerning the Maximum Permissible Weight to Be Carried by One Worker

The Conference decided to set up an ad hoc working party to examine the various amendments submitted to the Proposed Conclusions with a view to the adoption of a Recommendation and to submit to the Conference an amended text in which the suggestions contained in these amendments were taken into account as far as possible.

The Working Party had discussed in particular whether it was appropriate to specify maximum permissible weights for the various categories of workers in accordance with the relevant points in the Proposed Conclusions. In the light of the objections raised in this connection in the general discussion, as well as in view of the many amendments submitted, the Working Party considered that it was difficult to make concrete proposals on so controversial a question. It considered, however, that whereas for young workers and women very many factors had to be taken into account which it was difficult to bring under a common denominator, this question could be discussed without such difficulty in the case of adult male workers. The Working Party considered that, if agreement could be reached on specifying a maximum weight for men, this would provide a useful standard of reference for determining maximum weights for women and young workers, and decided to suggest that the maximum for men should be fixed at 50 kilogrammes.

Subject to certain modifications and to reservations by some governments concerning the provisions applicable to pregnant women, which they considered too vague, the Conference adopted, by 38 votes to 0, with 22 abstentions, the Working Party's text of the Proposed Conclusions with a view to the adoption of a Recommendation concerning the maximum permissible weight to be carried by one worker.

PROPOSED CONCLUSIONS ADOPTED

1. International instruments concerning the maximum permissible weight to be carried by one worker should be adopted.

2. The instruments should take the form of a Convention supplemented by a Recommendation.

Proposed Conclusions with a view to the Adoption of a Convention concerning the Maximum Permissible Weight to Be Carried by One Worker

3. For the purpose of the instrument, the term " manual transport of loads " should mean any transport in which the weight of the load is wholly borne by the worker; it should cover the lifting and putting down of loads.

4. For the purpose of the instrument, the term " regular manual transport of loads " should mean any activity which is continuously or principally devoted to the manual transport of loads, or which normally includes the manual transport of loads, even intermittently.

5. No worker should be required, authorised or permitted to engage in the manual transport of a load which by reason of its weight is likely to jeopardise his health or safety.

6. In order to reduce or facilitate the lifting, carrying and putting down of manually transported loads, suitable technical devices should be used as much as possible.

7. In the application of the instrument, Members should take account of the conditions, such as climate, altitude and topography, in which the work is to be performed.

8. The assignment of young persons and women to regular manual transport of loads other than light loads should be limited. Maximum loads required of young persons and women should be of a substantially lesser weight than those assigned to adult male workers.

9. Each Member should take appropriate steps to ensure that any worker assigned to regular manual transport of loads other than light loads shall, prior to taking up these duties, receive adequate training in working techniques, with a view to safeguarding health and preventing accidents.

10. Each Member should, by laws or regulations or any other method consistent with national practice and conditions, and in consultation with the most representative organisations of employers and workers concerned, take such steps as may be necessary to give effect to the provisions of the instrument.

Proposed Conclusions with a view to the Adoption of a Recommendation concerning the Maximum Permissible Weight to Be Carried by One Worker

I. Definition and Scope

11. For the purpose of the instrument, the term " manual transport of loads " should mean any transport in which the weight of the load is wholly borne by the worker; it should cover the lifting and putting down of loads.

12. For the purpose of the instrument, the term " regular manual transport of loads " should mean any activity which is continuously or principally devoted to the manual transport of loads, or which normally includes the manual transport of loads, even intermittently.

13. Except as otherwise provided in the text, the instrument should apply both to regular and to occasional manual transport of loads other than light loads.

14. The instrument should apply to all branches of economic activity.

II. General Principle

15. No worker should be required, authorised or permitted to engage in the manual transport of a load which by reason of its weight is likely to jeopardise his health or safety.

III. Training and Instructions

16. (1) Any worker assigned to regular manual transport of loads should, prior to taking up his duties, receive adequate training or instruction in working techniques, with a view to safeguarding health and preventing accidents.

(2) Such training or instruction should include methods of lifting, carrying, putting down, unloading and stacking of different types of loads, and should be given by suitably qualified persons; wherever appropriate, recourse could be had to persons or institutions approved by the competent authority after consultation with the most representative organisations of employers and workers concerned.

17. Any worker occasionally assigned to manual transport of loads should be given appropriate instructions by a competent person on the manner in which such operations may be safely carried out.

IV. Medical Examinations

18. A medical examination for fitness for employment should be required before assignment to regular manual transport of loads, as far as practicable and appropriate.

19. Further medical examinations should be made from time to time as necessary.

20. Regulations concerning the examinations provided for in Points 18 and 19 should be determined by the competent authority after consultation with the most representative organisations of employers and workers concerned.

21. The examination provided for in Point 18 should be certified. Such certification should attest fitness for employment but should not contain medical data.

V. Technical Devices and Packaging

22. In order to reduce or facilitate the lifting, carrying and putting down of manually transported loads, suitable technical devices should be used as much as possible.

23. The packaging of loads which may be transported manually should be compact and of suitable material and, as far as possible, equipped with devices for holding and so designed as not to create risk of injury; for example, it should not have sharp edges, projections or rough surfaces.

VI. Maximum Weight

24. (1) In the application of the instrument, Members should take account of the environmental conditions, such as climate, altitude, topography, etc., in which the work is to be performed.

(2) Members should also take account of other conditions which may influence the health and safety of the worker.

A. Men Workers

25. Where the maximum permissible weight to be carried by one adult male worker is more than 50 kilogrammes, measures should be taken as speedily as possible to reduce it to that level.

B. Young Workers

26. The provisions of the instrument relating to young workers should apply to persons under 18 years of age.

27. The assignment of young workers to manual transport of loads should be limited to the greatest possible extent.

28. Maximum loads required of young workers should be of a substantially lesser weight than those assigned to adult male workers.

29. Where the minimum age for assignment to manual transport of loads is less than 16 years, measures should be taken as speedily as possible to raise it to that level.

30. The minimum age for assignment to regular manual transport of loads should be raised, with a view to attaining a minimum age of 18 years.

31. Where young workers are assigned to regular manual transport of loads, provision should be made—

(a) as appropriate, to reduce the time spent on actual lifting, carrying and putting down of loads by such workers;

(b) to prohibit the assignment of such workers to particular tasks comprised in manual transport of loads which are especially arduous.

C. *Women Workers*

32. The assignment of women to manual transport of loads should be limited.

33. Maximum loads required of women should be of a substantially lesser weight than those assigned to adult male workers.

34. No woman should be assigned to manual transport of loads during a pregnancy which has been medically determined or during the ten weeks following confinement.

35. Where women workers are assigned to regular manual transport of loads, provision should be made—

(a) as appropriate, to reduce the time spent on actual lifting, carrying and putting down of loads by such workers;

(b) to prohibit the assignment of such workers to particular tasks comprised in manual transport of loads which are especially arduous.

VII. Other Measures to Protect Health and Safety

36. After receiving medical opinion and in consultation with the most representative organisations of employers and workers concerned, the competent authority, bearing in mind all the relevant conditions of the work, should make efforts to ensure that the exertion required in a working day or shift of workers manually transporting loads is not likely to jeopardise the health or safety of such workers.

37. Workers engaged in manual transport of loads should be supplied with such suitable devices and equipment as may be necessary to safeguard their health and safety.

VIII. Miscellaneous Provisions

38. The training or instruction and the medical examination provided for in the instrument should not involve the worker in any expense.

39. The competent authority should actively promote scientific research, including ergonomics, concerning the manual transport of loads with the object, *inter alia*, of—

(a) determining the relationship, if any, between occupational diseases and disorders and manual transport of loads; and

(b) minimising the hazards to health and safety of workers engaged in the manual transport of loads.

40. Where methods of transportation of goods by pulling and pushing are prevalent which impose physical strains analogous to those involved in the manual transport of loads, the competent authority should give consideration to the application to such work of such provisions of the instrument as may be appropriate.

41. Each Member should, by laws or regulations or any other method consistent with national practice and conditions, and in consultation with the most representative organisations of employers and workers concerned, take such steps as may be necessary to give effect to the provisions of the instrument.

42. Members should be allowed to permit exceptions to the application of particular provisions of the instrument after consultation with the national inspection service and with the most representative organisations of employers and workers concerned, where the circumstances of the work or the nature of the loads require such exceptions; for every exception or category of exceptions the limits of the derogation should be specified.

43. Each Member should, in accordance with national practice, specify the person or persons on whom the obligation rests for compliance with the provisions of the instrument, as well as the authority responsible for the supervision of the application of the provisions of the instrument.

Report by the Director-General concerning Action on the Resolution concerning Southern Rhodesia Adopted by the Governing Body at Its 163rd Session (November 1965)

1. In the course of its 163rd Session, on 19 November 1965, the Governing Body adopted a resolution on Southern Rhodesia, the operative paragraph of which requested the Director-General—

(a) to inform the Secretary-General of the United Nations that the International Labour Organisation will do everything in its power to contribute in its own sphere to such action as may be decided upon by the Security Council;

(b) to refrain from having any official or unofficial contacts, direct or indirect, with the illegal régime in Southern Rhodesia;

(c) to keep abreast of developments in the situation and to report to the Governing Body at its next session.

2. In accordance with clause *(a)* of this operative paragraph the resolution was communicated to the Secretary-General of the United Nations on 19 November 1965, and was circulated the same day as Security Council document S/6957.

3. In pursuance of clause *(b)* of the operative paragraph of the resolution the Director-General on 26 November 1965 issued an instruction to all members of the staff of the Office to ensure that there should be no official or unofficial contacts, direct or indirect, by correspondence or otherwise, with the illegal régime in Southern Rhodesia. There have been no official or unofficial contacts, direct or indirect, between the I.L.O. and the illegal régime in Southern Rhodesia since the adoption of the resolution.

4. The present report is intended, in accordance with clause *(c)* of the operative paragraph of the resolution, to keep the Governing Body informed of developments in the situation in so far as they may affect action by the I.L.O. Parts I to III review the past association of Southern Rhodesia in the work of the I.L.O., dealing respectively with representation at I.L.O. meetings, the applicability and implementation of international labour Conventions, and technical co-operation. Part IV reviews developments concerning the territory in other international organisations. In Part V certain proposals are made regarding the principles to govern further action by the I.L.O. on the question of Southern Rhodesia.

Part I. Representation of Southern Rhodesia at I.L.O. Meetings

5. Southern Rhodesia is not represented as of right at any I.L.O. meetings.

6. On the invitation of the Governing Body, made at the request of the Government of the United Kingdom as the responsible member State, a tripartite observer delegation from the Federation of Rhodesia and Nyasaland participated in the 42nd to 47th Sessions of the Conference (1958-63).

7. After the dissolution of the Federation the Governing Body, on the recommendation of the United Kingdom Government, invited Southern Rhodesia, through the United Kingdom Government, to send a tripartite observer delegation to the 48th (1964) Session of the Conference. Such a delegation was present at that Conference.

8. The Federation of Rhodesia and Nyasaland was invited by the Governing Body to participate in the First African Regional Conference at Lagos in 1960, and took part in that

Conference. Southern Rhodesia was not invited to participate in the Second African Regional Conference at Addis Ababa in 1964.

9. The Government of the Federation of Rhodesia and Nyasaland was a member of the African Advisory Committee from 1959 to 1964, and was represented at the First and Second Sessions of that Committee in 1959 and 1962. The Government of Southern Rhodesia has never been a member of the African Advisory Committee and no person from Southern Rhodesia is now either an Employers' or Workers' member or substitute member of the Committee.

10. In March 1965 the Governing Body, at its 161st Session, rejected by 25 votes to 10, with 9 abstentions, a proposal that Southern Rhodesia should be invited, through the United Kingdom Government, to send a tripartite observer delegation to the 49th (1965) Session of the Conference.

11. No other question relating to Southern Rhodesia's participation in I.L.O. meetings remains outstanding in present circumstances.

Part II. Applicability and Implementation of International Labour Conventions in Southern Rhodesia

I. *Declarations concerning the Applicability of Conventions*

Status of Southern Rhodesia in regard to I.L.O. Conventions.

12. As a non-metropolitan territory for whose international relations the United Kingdom is responsible, Southern Rhodesia has been subject to the provisions of article 35 of the Constitution of the International Labour Organisation concerning the application of ratified Conventions to such territories, as well as to the special provisions on the same question included in certain Conventions. As Southern Rhodesia has since 1923 enjoyed self-governing powers over most of the matters dealt with in I.L.O. Conventions, it has been the practice of the United Kingdom Government to make any declarations concerning the acceptance of the obligations of Conventions on behalf of the territory with the agreement of the Government of Southern Rhodesia.

Conventions Accepted without Modification.

13. The following Conventions have been accepted on behalf of Southern Rhodesia, the respective declarations having been registered on the dates indicated:

Convention	Declaration registered
Forced Labour Convention, 1930 (No. 29)	20 March 1933
Recruiting of Indigenous Workers Convention, 1936 (No. 50)	11 March 1940
Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82)	27 March 1950
Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84)	,,
Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85)	,,
Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86)	,,
Abolition of Forced Labour Convention, 1957 (No. 105)	7 July 1959

In addition, the following Conventions were the subject of declarations of acceptance without modification pursuant to the Labour Standards (Non-Metropolitan Territories) Convention, 1947 (No. 83); however, as the latter Convention has not received the number of ratifications necessary for its entry into force, these declarations also have not yet taken effect:

Convention	Declaration registered
Weekly Rest (Industry) Convention, 1921 (No. 14)	27 March 1950
Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)	,,
Underground Work (Women) Convention, 1935 (No. 45)	,,

Conventions Accepted with Modifications.

14. One declaration of acceptance subject to modifications is at present in force, in respect of the Labour Inspection Convention, 1947 (No. 81) [1], registered on 11 April 1960. Three other Conventions were the subject of declarations of this kind made under the Labour Standards (Non-Metropolitan Territories) Convention, 1947 (No. 83), and are therefore not yet in force:

Convention	Declaration registered
Maternity Protection Convention, 1919 (No. 3) [2]	27 March 1950
Workmen's Compensation (Accidents) Convention, 1925 (No. 17) [3] . . .	,,
Minimum Age (Industry) Convention (Revised), 1936 (No. 59) [4]	,,

Declarations in respect of Conventions Not Accepted.

15. A number of declarations has been made in respect of Conventions ratified by the United Kingdom or listed in the Labour Standards (Non-Metropolitan Territories) Convention, 1947, indicating non-acceptance of their provisions by Southern Rhodesia. Thirteen maritime Conventions and a Convention on safety in dock work have been declared inapplicable, Southern Rhodesia having no seaboard. Declarations indicating that a decision was reserved have been made in respect of 31 other Conventions. These include three instruments in the field of freedom of association [5], four Conventions concerning minimum wages and the protection of wages [6], five Conventions relating to the employment of women and young persons [7], two Conventions concerning employment services [8], two Conventions in the field

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[1] The modifications regarding the Labour Inspection Convention, 1947, were as follows:

Article 6: The inspection staff is augmented by officials appointed by the Central Authority on the recommendation of the Joint Council of Employers and Employees of the industry concerned, and paid from Joint Council funds.

Article 12 (1) (c) (iv): There is no authority at present under which this requirement can be met, but legislation which will remedy this is to be enacted.

In addition, Part II of the Convention, concerning labour inspection in commerce, has been excluded.

[2] The modification regarding the Maternity Protection Convention, 1919, was as follows:

The provisions of this Convention will be applied with the *exclusion of Article 3* (c).

[3] The modification regarding the Workmen's Compensation (Accidents) Convention, 1925, was as follows:

The provisions of this Convention will be applied with the *exclusion of private domestic servants in Article 2.*

[4] The modifications regarding the Minimum Age (Industry) Convention (Revised), 1937, were as follows:

The provisions of this Convention will be applied save that, *as regards Article 2,* " fifteen years " will be modified to " twelve years "; *as regards Article 4,* " eighteen years " will be modified to " sixteen years "; and there is no registration of African births in the colony.

[5] Right of Association (Agriculture) Convention, 1921 (No. 11); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

[6] Minimum Wage-Fixing Machinery Convention, 1928 (No. 26); Minimum Wage Fixing Machinery (Agriculture) Convention, 1951 (No. 99); Labour Clauses (Public Contracts) Convention, 1949 (No. 94); Protection of Wages Convention, 1949 (No. 95).

[7] Minimum Age (Industry) Convention, 1919 (No. 5); Minimum Age (Agriculture) Convention, 1921 (No. 10); Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77); Night Work (Women) Convention (Revised), 1948 (No. 89); Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90).

[8] Unemployment Convention, 1919 (No. 2); Employment Service Convention, 1948 (No. 88).

of occupational safety [1], a Convention on paid holidays in agriculture [2], 12 Conventions in the field of social security [3], a Convention on labour statistics [4] and a Convention on migration for employment.[5] A decision has been reserved in the case of all Conventions dealing specifically with agricultural workers which have been the subject of declarations; they relate to the right of association, minimum age, minimum wages, holidays with pay, workmen's compensation and sickness, old-age, invalidity and survivors' insurance.

II. *Implementation of Conventions*

A. *Standards relating to Basic Human Rights.*

Conventions concerning Forced Labour.

16. As already noted, both the Forced Labour Convention, 1930, and the Abolition of Forced Labour Convention, 1957, have been accepted on behalf of Southern Rhodesia. As regards the former, except for certain emergency legislation in force during the Second World War and repealed shortly after its end, the reports supplied in accordance with article 22 of the I.L.O. Constitution have stated that no forced or compulsory labour existed in the territory. On the other hand, since the submission of the first report on the 1957 Convention, for the period 1958-60, the Committee of Experts on the Application of Conventions and Recommendations has made a series of comments regarding the implementation of this instrument, in the first instance in the form of requests addressed directly to the Government (1961, 1963) and subsequently in the form of observations published in its reports (1964, 1965). The subject-matter of these comments is analysed below.[6]

Forced Labour for Political Purposes.

17. The Abolition of Forced Labour Convention, 1957, prohibits the use of any form of forced or compulsory labour (including, as noted by the Committee of Experts, prison labour) as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. The Committee of Experts has referred to various provisions of the Law and Order (Maintenance) Act, the African Affairs Act and the Unlawful Organisations Act as involving or liable to involve forced or compulsory labour contrary to this provision, particularly in regard to the following matters:

(a) The Committee noted that, under the Law and Order (Maintenance) Act, the authorities might prohibit particular publications or all publications by particular persons or associations if, in their opinion, such publications were likely to be contrary to the interests of public safety or security; any person who printed, published, disseminated, etc., any such publication was liable to imprisonment (involving, by virtue of the prisons legislation, an obligation to perform labour). While noting the statement of the Southern Rhodesian Government that these provisions would be invoked only in the interests of safety and security, the Committee observed that they made it possible to prohibit particular persons or associations, subject to penalties involving compulsory labour, from publishing any views,

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[1] Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27); Radiation Protection Convention, 1960 (No. 115).

[2] Holidays with Pay (Agriculture) Convention, 1952 (No. 101).

[3] Workmen's Compensation (Agriculture) Convention, 1921 (No. 12); Sickness Insurance (Industry) Convention, 1927 (No. 24); Sickness Insurance (Agriculture) Convention, 1927 (No. 25); Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35); Old-Age Insurance (Agriculture) Convention, 1933 (No. 36); Invalidity Insurance (Industry, etc.) Convention, 1933 (No. 37); Invalidity Insurance (Agriculture) Convention, 1933 (No. 38); Survivors' Insurance (Industry, etc.) Convention, 1933 (No. 39); Survivors' Insurance (Agriculture) Convention, 1933 (No. 40); Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42); Unemployment Provision Convention, 1934 (No. 44); Social Security (Minimum Standards) Convention, 1952 (No. 102).

[4] Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63).

[5] Migration for Employment Convention (Revised), 1949 (No. 97).

[6] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 48th Session, Geneva, 1964 (Geneva, I.L.O., 1964), pp. 184-187, and idem, 49th Session, Geneva, 1965 (Geneva, I.L.O., 1965), pp. 151-153.

thus including political views or views opposed to the established political, social or economic system. Referring to a particular instance of the exercise of these powers, the Committee further observed that, from the available information on the practical application of these provisions, it appeared that in certain cases the expression of views of this kind had been held likely to be contrary to the interests of public safety or security.

(b) The Committee noted that, under the Law and Order (Maintenance) Act and the African Affairs Act, various authorities (the competent Minister, district commissioners, police officers, etc.) had extensive powers to restrict not only public, but also private meetings and gatherings and to prohibit individual persons from attending or addressing meetings or gatherings, subject to penalties involving an obligation to perform labour. The Southern Rhodesian Government stated that these provisions were designed for the maintenance of law and order and would not be used to prevent the expression of bona fide political views or views ideologically opposed to the established political, social or economic system. The Committee of Experts however observed that, as any prohibitions imposed by such administrative action on holding, attending or addressing meetings were of general scope, they would cover also peaceable political activity and, in the case of the last two prohibitions, the expression of any views. In so far as these prohibitions were enforced by penalties involving compulsory labour, they appeared to be incompatible with the Convention.

(c) The Committee noted that, under the Law and Order (Maintenance) Act and the African Affairs Act, the authorities might restrict the movement of particular persons and control the entry of persons into reserves or other tribal areas, subject to penalties involving an obligation to perform labour. It considered that these provisions also might lend themselves to application in a manner contrary to the Convention.

(d) The Committee noted that, under the Unlawful Organisations Act, organisations might be declared unlawful by the executive within wide discretionary powers whose exercise was expressly exempted from judicial review. The Committee noted further that, among the offences created in this connection (which were subject to penalties involving compulsory labour), some were defined in very wide terms. In these circumstances it considered that the Act lent itself to application in a manner contrary to the Convention.

(e) The Committee noted that the Law and Order (Maintenance) Act contained an extensive definition of subversion, which differed materially from the standard definition in the sedition laws of other United Kingdom territories, on which the earlier sedition laws of Southern Rhodesia had also been based. In the light of detailed information concerning the practical application of these provisions supplied by the Government in answer to a request from the Committee, the latter observed that they appeared in fact to have been applied to cases of incitement to violence. The Committee expressed the hope that the legislation might be amended to limit its application specifically to cases of this kind and thus avoid all possibility of its being used to punish the expression of political views or views ideologically opposed to the established political, social or economic system.

18. In its report for 1963-64 the Government of Southern Rhodesia set out in detail the considerations which, in its view, prevented the legislative provisions mentioned by the Committee of Experts from contravening the Convention. The Committee noted that in this report the Government in general expressed the belief that the Committee's observations were concerned with the possibility of the laws referred to being applied in breach of the Convention, and that it maintained that, whatever the possibilities of misapplication, they were in fact applied justly and in accordance with the spirit and letter of the Convention; the Government also indicated that it had been found impracticable to redraft the legislation in terms which would exclude all possibility of its being applied in breach of the Convention. The Committee pointed out that the legislative provisions referred to in its previous observations were of two kinds. On the one hand, there were provisions which, whatever the manner of their application, created liability to compulsory labour (that is, penal labour) in circumstances which fell within the Convention (e.g. prohibitions of all publications by particular persons or associations would cover the expression of all views, and general prohibitions to attend or address meetings or gatherings would cover even peaceable political activities). The second kind of provisions referred to by the Committee involved such extensive discretionary powers for the executive and administrative authorities or such

extensive definitions of criminal offences that there existed not a mere possibility but a definite danger of their being applied in a manner contrary to the Convention (e.g. powers of the police to enter any premises, including private premises, at which three or more persons were gathered and to forbid persons from addressing the gathering, the banning of organisations by the executive under wide discretionary powers, and the extensive definition of offences under the Unlawful Organisations Act). Summarising the difficulties in the present case in ensuring the application of the Convention, the Committee observed that they arose—*(a)* from the approach adopted in the legislation of protecting security by general preventive measures by the executive or administrative authorities rather than by prescribing punishment for clearly defined offences against public order, *(b)* from the extensive definitions of various offences created by this legislation, and *(c)* from the fact that penalties through which the legislation was enforced involved an obligation to perform labour.

Forced Labour for Economic Purposes.

19. The Committee noted that, under the African Land Husbandry Act and the African Affairs Act, Africans might be called up for employment by the Government for up to 90 days a year on the conservation of natural resources or the promotion of good husbandry, and that, under the Natural Resources Acts, orders might be issued to Africans relating to the method of cultivation and utilisation of land or the crops to be grown thereon. In its report for 1961-63 the Southern Rhodesian Government indicated that the latter legislation had been amended so as to permit the issue of orders only for soil conservation measures by users or occupiers of any land, to the exclusion of directives as to crops and methods of cultivation. It also stated that the provisions of the African Land Husbandry Act and the African Affairs Act for the call-up of Natives were no longer used and that their repeal was contemplated. This information was noted with interest by the Committee of Experts in 1964. The Committee has also called for detailed information concerning the practical application of the Vagrancy Act.

Forced Labour as a Means of Labour Discipline.

20. The Committee noted that certain provisions of the African Labour Regulation Act, the Masters and Servants Act and the Africans (Registration and Identification) Act, in providing for the punishment of various breaches of contracts or discipline by employees with imprisonment (involving an obligation to perform labour), permitted forced or compulsory labour as a means of labour discipline. The Government of Southern Rhodesia indicated in its report for 1959-61 that it was examining the possibility of amending these provisions. In the last report received, for the period ending 30 June 1964, it stated that this matter was still under consideration.

Forced Labour as a Means of Discrimination.

21. The Committee noted that certain legislation permitted call-up for employment or the imposition of penalties involving an obligation to perform labour in respect of one group of the population, defined in terms of race, and thus appeared to permit a form of compulsory labour as a means of racial discrimination. Apart from some of the legislation mentioned in paragraph 19 above, the Committee referred to provisions concerning the registration, identification, control of movement, etc., of Africans in the Africans (Registration and Identification) Act and the African Affairs Act. The Southern Rhodesian Government stated in its report for the period ending 30 June 1964 that it was proposed to replace the former Act by legislation of general application to all races, and to repeal and replace the section of the African Affairs Act in question to clarify its scope and purpose.

Freedom of Association.

22. As noted above, while the general Conventions in the field of freedom of association have not been accepted on behalf of Southern Rhodesia, a declaration of application without modification of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), was made in 1950. This Convention came into force on 1 July 1953. The first report)

on its application in Southern Rhodesia was received in 1956. It stated that, under customary law and practice, there was no restriction on the right of association for lawful purposes; the Industrial Conciliation Act, 1945, which provided for the registration of employers' organisations and workers' unions and established machinery for the settlement of industrial disputes, did not apply to African workers; a Bill to provide for the registration of African trade unions had been rejected by a Select Committee of the Southern Rhodesian Parliament, which had recommended the amendment of the Industrial Conciliation Act to provide for the inclusion of African workers and the formation and registration of non-racial trade unions and employers' organisations. The report also indicated that machinery for the regulation of wages and working conditions of African industrial workers and for the settlement of disputes affecting them was contained in the Native Labour Boards Act, 1947, as amended. In a report for 1956-57 it was stated that a Bill on the lines mentioned in the previous report was then before the Legislative Assembly, that no restriction was placed on the right of association for lawful purposes of African workers, that it was the Government's policy to encourage works committees and similar associations, and that the Native Labour Boards Act already made it unlawful for an employer to make employment of any Native dependent on his not being or becoming a member of a Native organisation representing Natives employed in any industry.

23. The Committee of Experts on the Application of Conventions and Recommendations, from 1957 onwards, noted the proposed legislative changes.[1] In a direct request addressed to the Government in 1959 it also noted that the Industrial Conciliation Act, 1945, did not apply to agriculture and did not provide for appeals to the courts against a decision by the Chief Industrial Officer refusing or cancelling registration of an organisation, and inquired whether the new legislation would extend to agricultural workers and provide for such appeal to the courts.

24. A new, non-racial Industrial Conciliation Act (replacing the Act of 1945 and the Native Labour Boards Act) was adopted in 1959, and brought into effect on 1 January 1960. The Committee of Experts in 1961 noted with satisfaction that the new Act permitted the establishment and registration of multi-racial trade unions, as well as the establishment of multi-racial industrial councils. At the same time the Committee noted with regret that the Act did not apply to " persons in respect of their employment in farming operations (including forestry) or any domestic servants in private households ", and pointed out that the right to associate for all lawful purposes had, under the Convention, to be guaranteed to all employed persons.[2] In the Conference Committee on the Application of Conventions and Recommendations the same year, a Government representative stated that the exclusion of certain categories of workers from the Industrial Conciliation Act did not mean that they were prohibited from forming trade unions; agricultural workers and domestic servants enjoyed the right of association under common law; their inclusion within the scope of the Industrial Conciliation Act would be further considered in the light of the Committee's observations.[3]

25. In a direct request addressed to the Government in 1961 the Committee of Experts took up two further points arising out of the 1959 Act. It noted that, in case of refusal by the Industrial Registrar to register a trade union or to approve an alteration of its constitution on the ground of public interest, an appeal could be made only to the Minister (whereas refusal on any other ground was subject to appeal to the Industrial Court). The Committee pointed out that the right of association could be effectively guaranteed only if there was a right of appeal to the courts. The Committee further noted that registration of a trade union might be refused if an existing trade union in the area was considered sufficiently representative of the interests concerned, and that registration of an existing trade union

[1] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 40th Session, Geneva, 1957 (Geneva, I.L.O., 1957), p. 121, and idem, 42nd Session, Geneva, 1958 (Geneva, I.L.O., 1958), p. 82.

[2] Ibid., 45th Session, Geneva, 1961 (Geneva, I.L.O., 1961), p. 122.

[3] See *Record of Proceedings*, idem (Geneva, I.L.O., 1962), p. 765.

might be cancelled if the Registrar was satisfied that a newly established trade union which had applied for registration was more representative of the interests concerned. The Committee asked for information in all subsequent reports on recourse to these powers.

26. The Industrial Conciliation Act was amended in December 1964 so as to provide for an appeal to the Industrial Court against refusal or cancellation of registration of a trade union in all cases. This amendment was noted with satisfaction by the Committee of Experts.[1] As regards the powers to refuse registration where a sufficiently representative organisation already exists or to cancel registration in favour of a more representative union the Government stated in a report for 1960-62 that these powers had not been used in any case.

27. As regards the extension of the Industrial Conciliation Act to farm workers and domestic servants the Government of Southern Rhodesia stated in its report for 1962-64 that their inclusion in conciliation machinery " is a difficult problem which more advanced countries than Rhodesia have not solved and the Government has not been able, so far, to frame suitable amending legislation. The Government is, however, seeking information from countries outside Europe (such as Canada and the United States of America) as to their approach to the problem." In 1965 the Committee of Experts expressed its regret that, although the Act had been extensively amended in 1964, no measures had been taken to extend its scope to the above-mentioned categories of workers, and once more recalled that the Convention provides for the right to associate for all lawful purposes to be guaranteed to all employed persons.[1]

Complaints Alleging Violation of Trade Union Rights.

28. Apart from the examination by the supervisory bodies concerned of the application by Southern Rhodesia of the Right of Association (Non-Metropolitan Territories) Convention, 1947, five complaints alleging violations of trade union rights in Southern Rhodesia have been brought before the Governing Body Committee on Freedom of Association. The first two were communicated in March 1954 and January 1961 respectively by the World Federation of Trade Unions, the third was submitted in a series of communications between May and December 1962 by the Southern Rhodesia African Trades Union Congress and the International Confederation of Free Trade Unions, the fourth was presented in March 1964 by the Southern Rhodesia African Trades Union Congress, and the fifth in a series of documents between September 1964 and April 1965 by the International Confederation of Free Trade Unions, the International Federation of Industrial Organisations and General Workers' Unions and the World Federation of Trade Unions. The first four complaints have been the subject of reports by the Committee on Freedom of Association, whose conclusions are summarised below. Examination of the fifth complaint (which relates to the detention or restriction, without trial, of a number of trade union leaders) is still pending, and no report on this case has yet been submitted by the Committee.

Complaint Submitted in 1954 by the World Federation of Trade Unions (Case No. 103).[2]

29. This complaint raised allegations in regard to the following matters:

(a) It was alleged that a strike in February 1954 had been declared illegal pursuant to the masters and servants laws. The Committee noted that under this legislation absence without leave rendered an employee liable to penal sanctions, with the effect of making illegal any strike by workers under contract. It indicated that certain restrictions on the right to strike in essential services might be legitimate, but drew attention to the importance of ensuring adequate guarantees in such cases to safeguard to the full the interests of the workers. The Committee noted that the strike in question had been called without warning before any attempt at settlement, and that the strikers appeared to have been neither prosecuted nor dismissed, but offered the choice between termination of their contracts or

[1] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 49th Session, Geneva, 1965 (Geneva, I.L.O., 1965), p. 146.

[2] See 15th Report of the Committee on Freedom of Association, paras. 186-213.

returning to work, and that the dispute had subsequently been settled. Certain incidental matters in connection with the same strike were not considered to call for further examination.

(b) The complaint called for measures to ensure to African workers the full right to organise in officially recognised trade unions and the right to put forward the legitimate demands of the workers and to bargain collectively. The Government indicated, in reply, that legislation had been introduced to make provision for the enrolment and registration of Native industrial workers' unions. The Committee noted that the proposed legislation appeared to guarantee the right of Native industrial workers to associate for all lawful purposes and that a union registered under it would have the function, *inter alia*, of negotiating with employers in regard to conditions of employment. The Committee, however, noted that under the Bill a union might be registered only where the Registrar was satisfied that no other union was enrolled for the same industry in the particular area, and drew attention to the fact that such a provision would be inconsistent with the principle that workers, without distinction whatsoever, should have the right freely to join organisations of their own choosing. As noted previously [1], the proposed legislation was not enacted; instead a new, non-racial Industrial Conciliation Act was adopted in 1959.

Complaint Submitted in 1961 by the World Federation of Trade Unions (Case No. 251).[2]

30. When the Committee on Freedom of Association first examined this complaint, it decided that several allegations did not call for further examination. On the other hand, it pursued the examination of allegations concerning the following three matters:

(a) *Detention or restriction of movements of trade union leaders.* It was alleged that, following the declaration of a state of emergency in Southern Rhodesia in February 1959, more than 30 trade union leaders had been detained, with the aim of crippling the trade unions, that about 20 of them were still in detention in January 1961, and that other trade union leaders were subject to restriction orders. The Government of Southern Rhodesia, in commenting on this allegation, declared that the detention of the persons concerned was due entirely to their subversive activities and not to the fact that they were trade union leaders. In April 1962 it was stated that no persons were then under detention, but that two of the persons named in the complaint were still subject to restriction orders. In March 1963 the Government stated that the last of these persons had been released from restriction, and the Committee thereupon decided not to pursue its examination of this aspect of the case.[3] In the course of examination of this allegation it drew attention to certain matters of principle, in particular that all detained persons should have the right to receive a fair trial at the earliest possible moment and that the restriction of a trade union officer's movements was inconsistent with the normal enjoyment of the right of association and with the exercise of the right to carry on trade union activities and functions and should, like actual detention, be accompanied by adequate judicial safeguards applied within a reasonable period.[4]

(b) *Organising rights of agricultural workers, domestic servants, and government employees.* This allegation related to the exclusion of the categories of workers concerned from the scope of the Industrial Conciliation Act, 1959. The Government of Southern Rhodesia, in commenting on the allegation, stated that agricultural and domestic servants were not debarred or prohibited by law from forming trade unions, that established civil servants could form their own employees' association, which was recognised by the Government for negotiating purposes, but could not form unions which registered under the 1959 Act, and that unestablished civil servants could belong to unions registered under the Act. The Committee on Freedom of Association has referred to the observations made by the Committee of Experts on the Application of Conventions and Recommendations on the exclusion of agricultural workers and domestic servants from the Industrial Conciliation Act [5], and has noted the

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[1] See paras. 22 and 24 above.

[2] See 58th Report of the Committee on Freedom of Association, paras. 590-621; 62nd Report, paras. 144-177; 66th Report, paras. 400-446; 70th Report, paras. 43-54; 74th Report, paras. 157-162; 78th Report, paras. 111-116; 81st Report, paras. 67-70; 83rd Report, paras. 90-111.

[3] See 70th Report, para. 54.

[4] See 66th Report, para. 446 *(a)* (iii).

[5] See paras. 24 and 27 above.

considerable advantages of trade unions registered under the Act (corporate status, participation in industrial councils and in the statutory mediation and arbitration procedures, guaranteed protection against victimisation, immunities in respect of acts connected with lawful strikes, etc.). The Committee has accordingly drawn attention to the obligation assumed by the Government under Article 2 of the Right of Association (Non-Metropolitan Territories) Convention, 1947, to guarantee the right to associate for all lawful purposes to all employed persons.[1]

(c) *Registration of trade unions under the Industrial Conciliation Act, 1959.* The complaint raised two issues under this heading. One related to the fact that, in regard to certain decisions of the Industrial Registrar, an appeal lay to the Minister and not to the courts. This point had also been the subject of comment by the Committee of Experts on the Application of Conventions and Recommendations and, as noted above [2], found a satisfactory solution through the amendment of the Act in 1964. The other allegation related to the fact that, under the Act, registration of an organisation has to be refused unless the Registrar is satisfied, *inter alia*, that its constitution does not contain provisions which are contrary to any law or are calculated to hinder the attainment of the objects of any law or are not in the interests of the effective functioning of the trade union or employers' organisation concerned or are contrary to the public interest, and that the organisation is a responsible body and reasonably capable of taking part in the negotiation of matters of mutual interest between employer and employee in accordance with the provisions of that Act. The Committee on Freedom of Association has pointed out that, although an appeal lies to the courts against refusal of registration under these provisions, it is left to the Registrar to form his own judgment as to the fulfilment of the particular requirements mentioned in them. It has drawn attention to earlier observations by the Committee of Experts on the Application of Conventions and Recommendations that, in such cases, " the existence of a procedure of appeal to the courts does not appear to be a sufficient guarantee; in effect this does not alter the nature of the powers conferred on the authorities responsible for effecting registration, and the judges hearing such an appeal . . . would only be able to ensure that the legislation had been correctly applied ". It has accordingly recommended that the Industrial Conciliation Act be amended to define clearly the precise conditions which trade unions must fulfil to be entitled to registration and to prescribe specific statutory criteria for the purpose of deciding whether such conditions are fulfilled or not. Although the Act was the subject of extensive amendments in 1964, no action was taken with regard to this recommendation.[3]

Complaints by the Southern Rhodesia African Trades Union Congress and the International Confederation of Free Trade Unions (Case No. 298).[4]

31. Some of the allegations made by the complaining organisations related to points already under examination in the previously mentioned case (namely, the exclusion of certain categories of workers from the Industrial Conciliation Act and the absence of a right of appeal to the courts against decisions of the Industrial Registrar in certain cases [5]), and the Committee did not therefore consider it necessary to go into them again. On its first examination of the case, the Committee also concluded that certain other allegations did not call for further examination. On the other hand, the Committee pursued its examination of the following matters:

(a) *Restrictions on trade union activities under the Law and Order (Maintenance) Act and the Unlawful Organisations Act.* It was alleged that these Acts were being used to suppress trade union activities. Reference was made to provisions concerning the prohibition of public processions, gatherings or meetings, the banning from or restriction to given areas of certain persons, penalties for incitement to strike in essential services, powers of the police to enter premises, the prohibition of certain publications, articles and state-

[1] See 83rd Report, para. 111 *(b)* (ii).

[2] See para. 26 above. The amendments were also noted by the Committee on Freedom of Association in its 83rd Report, para. 96.

[3] See 83rd Report, paras. 97-101.

[4] See 66th Report, paras. 510-550; 70th Report, paras. 327-376; 74th Report, paras. 25-57.

[5] See para. 30 *(b)* and *(c)* above.

ments, the recording of proceedings of public gatherings and the proscription of organisations. A specific allegation concerned the arrest of the General Secretary of the Southern Rhodesia African Trades Union Congress when addressing strikers. The Government of Southern Rhodesia, in commenting on these allegations, stated that the Acts in question were intended to preserve public order and were not directed against bona fide trade union activities; the trade union leader mentioned had been arrested because of subversive statements, and had been convicted by the courts of a charge relating to these statements. The Committee on Freedom of Association noted that this case was the only specific instance of the application of the legislation in question which had been cited in the complaints. It considered that the statement which had led to a conviction on a charge of subversion seemed clearly to go beyond what a trade union leader, like any other person, might make in a public address without incurring penal sanctions, and that the application of the legislation in question in this particular instance therefore did not constitute an infringement of trade union rights. It indicated, however, that this conclusion was without prejudice to the possibility of its having to take cognisance in future of allegations regarding the application of the security legislation in question to trade unions or their members.[1] Allegations of this nature have in fact been made in the fifth case concerning Southern Rhodesia now pending before the Committee on Freedom of Association.

(b) *Restrictions on the right to hold trade union meetings.* These allegations related to police control over trade union meetings. Following amendment of the relevant legislation—the Law and Order (Maintenance) Act—in 1963, and the receipt of the Southern Rhodesian Government's comments, the Committee noted that, in the case of meetings attended by less than 200 persons, it seemed that trade unions were not required to obtain prior authorisation, and that the power of the authorities to call for advance notification of the agenda of such meetings and the names of the intended speakers seemed to be a mere formality, since it did not imply that other matters might not be discussed or other persons allowed to speak. The Committee noted that meetings attended by more than 200 persons were automatically classified as public meetings, at which the police were empowered to be present and to record the proceedings. The Committee pointed out that the right of trade unions to hold meetings freely on their own premises, without the need for prior authorisation and without control by the public authorities, constituted a fundamental element in freedom of association and that the presence of police officers at trade union meetings might be considered as interference, from which the public authorities should refrain, with the right of trade unions to hold meetings in freedom. Lastly, the Committee noted that, on Sundays and holidays, only meetings held by unregistered trade unions were subject to supervision when attended by more than 200 persons, the Government having stated that the object of this provision was to encourage trade unions to apply for registration. The Committee observed that, while it was legitimate for registration in certain circumstances to involve advantages in regard to certain matters in the field of industrial relations, it should not in normal circumstances involve discrimination of such a character as to render non-registered organisations subject to special measures of police supervision which might restrict the exercise of freedom of association. The hope was accordingly expressed that the remaining restrictions on the holding of trade union meetings and the distinctions between registered and non-registered trade unions would soon be removed.[2]

(c) *Incidents in a strike called in May 1962.* It was alleged that, following a strike on 14 May 1962, the army and police maltreated the strikers, shooting occurred which caused several deaths and many casualties, and more than 3,000 strikers were dismissed from employment. The Government of Southern Rhodesia stated that a 24-hour general stoppage had been called as a warning shot for better wages for African workers, that when a prearranged pattern of intimidation and assault appeared the police were ordered to protect workers going to work, and that it became necessary to use force against those molesting returning workers and threatening life and property; this situation resulted in the death of two and the wounding of ten others. Dismissals had been decided by employers, who estimated that not more than 150 strikers had actually lost their employment, several workers already having been reinstated. The Committee noted that, according to the Government

[1] See 70th Report, paras. 343-345.

[2] See 74th Report, paras. 38-46.

itself, the proclaimed reason for the strike was a warning for better wages for African workers, and the allegation could therefore not be dismissed on the ground that the strike was not in furtherance of a trade dispute. It recalled that, in cases in which the dispersal of public assemblies, etc., by the police, on grounds of public order or similar grounds, had involved loss of life, it had attached special importance to the circumstances being fully investigated by an immediate and independent special inquiry and to the regular legal procedure being followed to determine the justification and responsibility for the action taken by the police. It requested the Government to indicate whether such an inquiry had been instituted in the present case. The Government subsequently stated that magistrates had conducted inquests on the two persons killed, that verdicts of death due to gunshot wounds were brought in, and that the record of the inquests had been communicated to the Attorney-General, who had decided that no criminal proceedings should ensue. The Government, however, refused to comply with the Committee's request for copies of the records of the inquests.[1]

(d) *Preventive detention.* These allegations related to the arrest, detention or restriction of eight officers of the Southern Rhodesia African Trades Union Congress. When they were considered by the Committee, none of these persons were subject to preventive detention or a restriction order; two of them were on bail pending appeal against convictions of having incited workers to continue an unlawful strike. The Committee was subsequently informed that on appeal the convictions and sentences had been set aside.[2]

Complaint by the Southern Rhodesia African Trades Union Congress (Case No. 380).[2]

32. This complaint arose out of a strike. The Committee noted that the strike appeared to have been called illegally (the workers not having first submitted their claim either to the management or to the appropriate industrial council), that police intervention had been due to acts of violence, and that an agreement appeared to have been concluded subsequently between the company and the workers concerned which met the latter's demands. The Committee, in these circumstances, considered it unnecessary to examine the case further.

Discrimination in Employment and Occupation.

33. As already noted, the Social Policy (Non-Metropolitan Territories) Convention, 1947, was accepted on behalf of Southern Rhodesia in 1950. Under Article 18 of this Convention it should be an aim of policy to abolish all discrimination among workers on grounds of race, colour, sex, belief, tribal association or trade union affiliation in respect of labour legislation and agreements; admission to employment; conditions of engagement and promotion; opportunities for vocational training; conditions of work; health, safety and welfare measures; discipline; participation in collective bargaining; and wage rates. No declaration has been made concerning the applicability to Southern Rhodesia of the Discrimination (Employment and Occupation) Convention, 1958, this Convention not having been ratified by the responsible member State, the United Kingdom. However, in 1962 reports on this Convention and the supplementary Recommendation were supplied in respect of Southern Rhodesia under article 19 of the I.L.O. Constitution (reports on unratified Conventions and on Recommendations). The information given with reference to the above-mentioned standards is summarised in the following paragraphs.

Application of the Non-Discrimination Provisions of the Social Policy (Non-Metropolitan Territories) Convention, 1947.

34. This Convention came into force in 1955. The first report on its application in Southern Rhodesia, for the period 1955-56, stated that it was an aim of policy to have no discrimination other than on grounds of sex. In answer to a request for more detailed information made by the Committee of Experts on the Application of Conventions and Recommendations the Government of Southern Rhodesia stated in its report for 1957-58

[1] See 70th Report, paras. 356-365; 74th Report, paras. 50-52.

[2] See 70th Report, paras. 366-375; 74th Report, paras. 53-56.

[3] See 79th Report, paras. 61-71.

that there was no discrimination on grounds of belief, tribal association or trade union affiliation in respect of the matters mentioned in Article 18 of the Convention, that it remained an aim of policy to abolish all discrimination among workers on grounds of race, colour and sex, but that it was not practicable to draw up a programme of the measures it was proposed to take. As an indication of the advances being made, the report referred to the Bill to extend the Industrial Conciliation Act to Africans.[1] Discrimination in wage rates by reason of race, colour or sex was stated to be largely due to the production of work of less value; as the value of work increased, wages were advanced. The Committee of Experts, in a direct request addressed to the Government in 1959, noted this information and asked for further indications of the nature and extent of existing discrimination, in legislation or practice, and the measures contemplated to reduce or abolish such discrimination, even if no comprehensive programme could be established in this connection. Subsequent reports brought out the following developments:

(a) *Elimination of racially discriminatory legislation.* The Government of Southern Rhodesia reported the enactment in 1959 of a non-discriminatory Industrial Conciliation Act [2] and a non-racial Apprenticeship Act, and the amendment in 1960 of the Public Services Act to remove restrictions on the employment of non-Europeans in the public service. The Committee of Experts in 1960 also noted the adoption the previous year of a non-racial Workmen's Compensation Act in place of previous racially discriminatory legislation. The Government originally referred to difficulties in drafting non-racial labour legislation arising out of certain I.L.O. Conventions for the protection of indigenous workers, but—following certain explanations by the Committee of Experts—indicated in its report for 1959-60 that a non-racial General Employment Bill had been drafted.[3] In 1964 the Committee of Experts noted with regret that the Government's report for 1961-63 did not refer to this Bill, which was to repeal the Native Labour Regulations Act in accordance with the Government's stated policy of eliminating discrimination between the races from all legislation relating to workers.[4] In the report for the period ending 30 June 1965 the Government merely stated that the Bill was still under consideration.

(b) *Practice.* In answer to the Committee of Experts' request for more detailed information concerning the nature and extent of existing discrimination the Government of Southern Rhodesia in its report for 1958-59 gave the following indications concerning practice. It stated that, while there was no legislation which discriminated in the admission to private employment or as regards promotion, in many occupations Europeans were preferred. While there was no discrimination as regards vocational training opportunities, there were more training centres for Europeans than for non-Europeans; centres for the latter were, however, being increased. Africans received free medical treatment from government medical officers and in government hospitals, whereas non-Africans had to pay. Non-Africans received higher scales of public relief; but against this Africans had the advantage of many free services not available to Europeans.

(c) *Education and training.* The Southern Rhodesian Government had indicated in its earlier reports that free primary and secondary education was provided to all non-African children, attendance being compulsory from 7 to 15 years of age; for Africans education was not compulsory, but the number of schools and teachers was being increased. In its report for the period ending 30 June 1963 the Government stated that in the lower primary school (i.e. five years of education) 95.1 per cent. of African children of school-going age were then attending school. In the report for the period ending 30 June 1965, it was stated that the policy for African education was universal basic literacy (that is, five years' lower primary education) and, within the financial resources available, the expansion of facilities to permit a further three years' upper primary education. The report added that the time was not yet

[1] See paras. 22 and 24 above.

[2] See para. 24 above.

[3] It may be noted that the implementation of the Conventions referred to has not proved an obstacle to the adoption of racially non-discriminatory legislation in various countries of the same region, for example Tanganyika (1955), Swaziland (1962), Bechuanaland (1963), Malawi (1964) and Basutoland (1964).

[4] See *Report of the Committee of Experts on the Application of Conventions and Recommendations*, 1964, op. cit., p. 178.

appropriate for prescribing a minimum school-leaving age for African children. As regards training, the report for 1959-61 stated that facilities for technical training of African apprentices were still in the early stages of development; there were facilities for training African apprentices in the building and motor industries, and it was hoped that in the near future facilities would be available in certain other industries. In the report for 1961-63 it was stated that facilities for training African apprentices were now identical to those for training European apprentices.

Reports on the Discrimination (Employment and Occupation) Convention and Recommendation, 1958.

35. These reports were received in December 1962. In the report on the Recommendation it was stated: "It is the Government's declared policy to abolish all forms of race discrimination, and the legislation required for this is receiving consideration." The report on the Convention referred to legislative action already taken in the field of employment and occupation—non-racial laws concerning industrial conciliation, apprenticeship and workmen's compensation, and the amendment in 1960 of the Public Services Act. The remaining racially discriminatory labour legislation (the Native Labour Regulations Act and the Native Juveniles Employment Act) was listed for total repeal in the General Employment Bill, which it was intended to introduce during the first session of Parliament in 1963. In 1961 the Federal Government and the Governments of Northern Rhodesia and Southern Rhodesia had issued a press statement that they had agreed in principle that courses in technical and commercial education should be open to students of all races, and since then this new policy had been implemented in Southern Rhodesia. The Native Affairs Act (though originally meant to provide special protection and assistance) would also be repealed in terms of the Government's declared policy of removing discriminatory legislation. The only form of discrimination existing to any appreciable extent in Southern Rhodesia was discrimination on the basis of sex. The Government intended to accept the Convention, with a modification as regards sex discrimination, as soon as the General Employment Bill had been passed by Parliament.[1] Since 1962 no further reports on the Discrimination (Employment and Occupation) Convention and Recommendation, 1958, have been called for under article 19 of the I.L.O. Constitution. As noted above, the General Employment Bill has not yet been enacted.

B. *Standards of a Technical Nature.*

36. The remaining standards which have been accepted in respect of Southern Rhodesia fall into three groups: two Conventions relating to indigenous workers, the provisions of the Social Policy (Non-Metropolitan Territories) Convention, 1947, other than those relating to the abolition of discrimination (which have already been considered), and two Conventions concerning labour inspection. The implementation of these standards is reviewed below.

Indigenous Workers.

37. The two Conventions accepted in respect of Southern Rhodesia are the Recruiting of Indigenous Workers Convention, 1936, and the Contracts of Employment (Indigenous Workers) Convention, 1947.[2] The first of these Conventions, which has been implemented through the African Labour Regulations Act and regulations issued under it, has not given rise to any comments by the Committee of Experts on the Application of Conventions and Recommendations. On the other hand, the Convention of 1947, which lays down the maximum periods of service which may be provided for in contracts of employment and which

[1] See *Summary of Reports on Unratified Conventions and on Recommendations (Article 19 of the Constitution)*, Report III (Part II), International Labour Conference, 47th Session, Geneva, 1963 (Geneva, I.L.O., 1963), pp. 65-66.

[2] Although the United Kingdom has also ratified the Contracts of Employment (Indigenous Workers) Convention, 1939—providing for the administrative control of long-term contracts—and the Penal Sanctions (Indigenous Workers) Convention, 1939, neither has been the subject of any declaration concerning its applicability to Southern Rhodesia.

was accepted in respect of Southern Rhodesia in 1950, did give rise to observations from the time of the submission of the first report in 1954. This report indicated that the maximum period of written contracts, under the Masters and Servants Act, was three years (whereas under the Convention it is one, two or three years, depending on whether the contract involves a long and expensive journey and on whether the worker is accompanied by his family). The Government added that, under the Migrant Workers Act, migrant workers not accompanied by their families had to return to their country of origin every two years. It also stated that new legislation was proposed to implement the Convention more fully.[1] In 1958 a Government representative informed the Conference Committee on the Application of Conventions and Recommendations that the General Employment Bill which it was proposed to submit to the Legislative Assembly at a suitable date would ensure the application of the various provisions of the Convention.[2] However, no progress was reported on this matter, and in 1963 the Committee of Experts noted that, on the contrary, the Migrant Workers' Act had been repealed in 1960.[3] In 1964 the Workers' and Employers' members of the Conference Committee expressed their concern at the undue delay in implementing the Convention and stated that, if the legislation was not brought into line with the Convention by the following year, Southern Rhodesia should be included in the list of cases of serious difficulties in implementing obligations under I.L.O. Conventions to which the Committee draws the special attention of the Conference in its report.[4] The Government's report for the period ending 30 June 1965 stated that legislation covering the requirements of the Convention had been passed by Parliament.[5]

Social Policy (Non-Metropolitan Territories) Convention, 1947.

38. Apart from the provisions providing for the abolition of discrimination, already considered [6], the Committee of Experts has commented on the application of provisions dealing with the protection of wages (Article 15) and provisions regarding the prescription of a school-leaving age and a minimum age for employment (Article 19). The former related to the issue of statements of wage payments to workers, for which, according to the Government, provision was to be made in the General Employment Bill. The differences between Europeans and non-Europeans in regard to compulsory education, and the Government's statements regarding its policies in this matter, have already been mentioned. As regards the minimum age for employment the Government has indicated, in answer to the Committee's comments, that under existing legislation no child under 12 years of age may be employed.

Labour Inspection.

39. As already noted, the Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947, was accepted in respect of Southern Rhodesia in 1950, the Labour Inspection Convention, 1947 (though with certain modifications), in 1960. The matters which have been the subject of comments by the Committee of Experts are the following:

(a) With respect to the first-mentioned Convention the Committee noted that labour inspectors were not empowered to take samples (a point covered by a modification in respect of the corresponding requirement of the Labour Inspection Convention). In the latest report received in respect of the latter Convention, for the period ending 30 June 1965, it has been stated that legislation (the Factories and Works Amendment Act, 1965) had been passed to meet this requirement.

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[1] See *Summary of Reports on Ratified Conventions (Articles 22 and 35 of the Convention)*, Report III (Part I), International Labour Conference, 38th Session, Geneva, 1955 (Geneva, I.L.O., 1955), p. 422.

[2] See *Record of Proceedings*, International Labour Conference, 42nd Session, Geneva, 1958 (Geneva, I.L.O., 1959), p. 694.

[3] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)* Report III (Part IV), International Labour Conference, 47th Session, Geneva, 1963 (Geneva, I.L.O., 1963), p. 140.

[4] See *Record of Proceedings*, International Labour Conference, 48th Session, Geneva, 1964 (Geneva, I.L.O., 1965), pp. 682-683.

[5] The legislation in question is the Masters and Servants Amendment Act, No. 32 of 1965, which prescribes maximum periods for contracts of service corresponding to those provided for in the Convention.

[6] See para. 34 above.

(b) The Committee noted in a direct request addressed to the Government in 1961 that, under the African Labour Regulations Act, the duties of inspectors of African labourers included inquiries into all breaches of discipline and other minor contraventions of regulations by African labourers and the arrest of Africans reasonably suspected of contravening any regulations.[1] As these inspectors were considered to be labour inspectors within the Convention, the Committee observed that the duties mentioned were liable to interfere with the effective discharge of their primary duties. In reply the Government indicated in its report for the period ending 30 June 1961 that the above-mentioned duties had not been carried out by inspectors for more than 25 years, and that they had administrative instructions not to apply the provisions concerned; the latter would be repealed in the draft General Employment Bill.[4] In the report for the period ending 30 June 1965 the Government stated that the relevant provisions would be reviewed when the African Labour Regulations Act was next amended.

(c) The Committee has noted that, in addition to general labour inspectors, the Factories and Works Act empowers the competent Minister, with the approval of a local authority or an industrial council, to appoint a person employed by such authority or council as an inspector under the Act, but that such appointment may be summarily revoked at any time, whereas under Article 6 of the Convention inspection officials should be assured of stability of employment. In its report for 1961-63 the Government indicated that there were then no inspectors of the above kind. The Committee thereupon suggested that the particular provision for this type of appointment might be repealed.[3] The Government, in its report for the period ending 30 June 1965, stated that it was unable to agree to this suggestion.

CONCLUSION

40. Fourteen I.L.O. Conventions have been the subject of declarations of acceptance on behalf of Southern Rhodesia. Eight of these declarations have entered into force. The instruments so accepted include standards in the three main human rights fields within the competence of the I.L.O.: the two Conventions dealing with forced labour, the Convention dealing with the right of association in non-metropolitan territories, and the provisions for the abolition of discrimination in employment contained in the Convention on social policy in non-metropolitan territories. As regards the implementation of the standards concerned, the following conclusions emerge from the preceding review:

(a) As regards the Conventions on forced labour, certain changes were made in 1963 in legislation concerning the control of agriculture, to remove earlier powers which appeared to permit the imposition of compulsory cultivation on Africans, and the Government in 1964 stated its intention to repeal certain other provisions permitting the call-up of Africans for the purposes of conservation of natural resources and the promotion of good husbandry. However, the application of the Abolition of Forced Labour Convention, 1957, has given rise to serious criticism by the Committee of Experts on the Application of Conventions and Recommendations, particularly as regards the effect of security legislation in imposing penalties involving compulsory labour as a means of political coercion or as a punishment for the expression of views, as regards the imposition of penal sanctions as a means of labour discipline, and as regards the application of certain restrictions and penalties on a racially discriminatory basis.

(b) In the field of freedom of association, an important step forward was taken in 1959 with the extension of the industrial conciliation legislation to workers of all races. In 1964

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[1] See para. 20 above as to penal sanctions for breaches of contracts or discipline by employees.

[3] See *Summary of Reports on Ratified Conventions (Articles 22 and 35 of the Constitution)*, Report III (Part I), International Labour Conference, 46th Session, Geneva, 1962 (Geneva, I.L.O., 1962), p. 323, and *Report of the Committee of Experts on the Application of Conventions and Recommendations*, 1964, op. cit. p. 175.

[4] See *Report of the Committee of Experts on the Application of Conventions and Recommendations*, 1964, op. cit., p. 175.

this legislation was further amended to take account of comments by I.L.O. supervisory bodies. However, a major limitation on the right to organise and to bargain collectively is constituted by the exclusion of agricultural workers and domestic servants from the Industrial Conciliation Act. Moreover, a considerable discretion is left to the Registrar in accepting the registration of an organisation, in the place of precise statutory criteria defining the conditions for registration. Various complaints brought before the Governing Body Committee on Freedom of Association have referred, in addition to these matters, to restrictions imposed under security legislation on trade union activities and to cases of detention or the restriction of movement of trade union leaders, without adequate judicial safeguards.

(c) As regards the elimination of discrimination, important legislative changes occurred in the period 1959-60, with the enactment of racially non-discriminatory industrial conciliation, apprenticeship and workmen's compensation legislation and the removal of restrictions on the employment of non-Europeans in the public services. The Government of Southern Rhodesia in 1962, in a report to the I.L.O., stated that its declared policy was to abolish all forms of race discrimination, and that the necessary legislation was receiving consideration. However, a General Employment Bill, which was intended to replace certain remaining racially discriminatory labour laws and to whose proposed enactment the Government referred as far back as 1957, has not yet been passed. Major distinctions between Europeans and Africans have also been noted as regards the educational system and facilities.

(d) As regards Conventions laying down standards of a technical nature, Acts adopted in 1965 were intended to meet long-standing deficiencies in the implementation of the Contracts of Employment (Indigenous Workers) Convention, 1947, and to extend the powers of labour inspectors in accordance with the relevant I.L.O. standards. However, several technical discrepancies remain as regards the Labour Inspection Convention, 1947, as also certain shortcomings in regard to the provisions of the Social Policy (Non-Metropolitan Territories) Convention, 1947 (particularly as regards the development of educational facilities and the prescription of a school-leaving age for Africans, apart from the further measures to eliminate discrimination from labour legislation mentioned earlier).

Part III. Technical Co-operation

41. Expert assistance to Southern Rhodesia has been limited to two missions in the field of social security. One of these was undertaken by an official of the Office from 16 February to 8 March 1964, the second by an expert recruited for the purpose from 26 November 1964 to 27 January 1965. The missions were financed by the Working Capital and Reserve Fund of the Expanded Programme of Technical Assistance in response to a request from the Southern Rhodesian Government through the United Kingdom Government. The first mission was of an exploratory nature and the second consisted of assistance in drafting the legislation, preparing the administrative organisation and procedures and assisting in the general preparation for the launching of the scheme.

42. Study grants have been awarded to enable five nominees of the Southern Rhodesian Government to participate, respectively, in seminars on co-operation in 1955 and 1963, a seminar on labour administration in 1962, and two training courses in labour administration in 1964. No fellowships have been granted to Southern Rhodesians.

43. Until the adoption by the Governing Body of its resolution on Southern Rhodesia in November 1965 the I.L.O. provided such technical assistance as the Southern Rhodesian Government had requested.

44. No project was in course of implementation when the Governing Body adopted its resolution on Southern Rhodesia in November 1965. Prior to the establishment of the illegal régime it had been intended to discuss with the appropriate Southern Rhodesian authorities a programme of technical assistance under the Expanded Programme of Technical Assistance for the 1967-68 biennium.

PART IV. DEVELOPMENTS CONCERNING SOUTHERN RHODESIA IN OTHER INTERNATIONAL ORGANISATIONS

I. *United Nations*

Action by the General Assembly.

45. Immediately after the unilateral declaration of independence, on 11 November 1965, the General Assembly adopted a resolution [1], by 107 votes to 2, with 1 abstention, by which it condemned the unilateral declaration of independence made by the racialist minority in Southern Rhodesia, invited the United Kingdom to implement immediately the relevant resolutions adopted by the General Assembly and the Security Council in order to put an end to the rebellion by the unlawful authority in Southern Rhodesia, and recommended the Security Council to consider this situation as a matter of urgency.

Condemnation of the Unilateral Declaration of Independence by the Security Council.

46. An urgent meeting of the Security Council to consider the situation in Southern Rhodesia was convened and met on 12 November 1965. The Council first agreed on the proposal that it should immediately take a preliminary measure in condemning the unilateral declaration of independence of Southern Rhodesia, and adopted, the same day, by 10 votes to none, with 1 abstention, the following resolution [2]:

The Security Council—

1. Decides to condemn the unilateral declaration of independence made by a racist minority in Southern Rhodesia;

2. Decides to call upon all States not to recognise this illegal racist minority régime in Southern Rhodesia and to refrain from rendering any assistance to this illegal régime.

There voted for the resolution: Bolivia, China, Ivory Coast, Jordan, Malaysia, Netherlands, the U.S.S.R., the United Kingdom, the United States and Uruguay. No negative vote was cast and France abstained.

Further Action by the Security Council.

47. Immediately after the adoption of the resolution condemning the unilateral declaration of independence, the Security Council returned to the consideration of measures designed to resolve the Southern Rhodesia question, and, in the course of seven sittings held between 12 and 20 November 1965, debated two draft resolutions submitted by the United Kingdom and the Ivory Coast respectively. The Council invited, at their request, the representatives of Algeria, India, Pakistan, Ghana, Zambia, Sierra Leone, Senegal, Mali, Tanzania, Nigeria, Guinea, Ethiopia, Mauritania, Gambia, Jamaica, Somalia and Sudan to take part, without the right to vote, in the discussion of the question, while South Africa and Portugal declined the Council's invitation to take part in the debate. The representatives of Bolivia and Uruguay put forward a draft resolution designed to reflect the various points of view expressed in the Council, which was adopted, on 20 November 1965, by 10 votes to none, with one abstention. There voted for the resolution: Bolivia, China, Ivory Coast, Jordan, Malaysia, Netherlands, the U.S.S.R., the United Kingdom, the United States and Uruguay. No negative vote was cast and France abstained.

48. The text of the resolution adopted by the Security Council [3] is as follows:

The Security Council,

Deeply concerned about the situation in Southern Rhodesia,

Considering that the illegal authorities in Southern Rhodesia have proclaimed independence and that the Government of the United Kingdom of Great Britain and Northern Ireland, as the administering Power, looks upon this as an act of rebellion,

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[1] Resolution 2024 (XX).

[2] Resolution 216 (1965).

[3] Resolution 217 (1965).

Noting that the Government of the United Kingdom has taken certain measures to meet the situation and that to be effective these measures should correspond to the gravity of the situation,

1. Determines that the situation resulting from the proclamation of independence by the illegal authorities in Southern Rhodesia is extremely grave, that the Government of the United Kingdom of Great Britain and Northern Ireland should put an end to it and that its continuance in time constitutes a threat to international peace and security;

2. Reaffirms its resolution 216 (1965) of 12 November 1965 and General Assembly resolution 1514 (XV) of 14 December 1960;

3. Condemns the usurpation of power by a racist settler minority in Southern Rhodesia and regards the declaration of independence by it as having no legal validity;

4. Calls upon the Government of the United Kingdom to quell this rebellion of the racist minority;

5. Further calls upon the Government of the United Kingdom to take all other appropriate measures which would prove effective in eliminating the authority of the usurpers and in bringing the minority régime in Southern Rhodesia to an immediate end;

6. Calls upon all States not to recognise this illegal authority and not to entertain any diplomatic or other relations with this illegal authority;

7. Calls upon the Government of the United Kingdom, as the working of the Constitution of 1961 has broken down, to take immediate measures in order to allow the people of Southern Rhodesia to determine their own future consistent with the objectives of General Assembly resolution 1514 (XV);

8. Calls upon all States to refrain from any action which would assist and encourage the illegal régime and, in particular, to desist from providing it with arms, equipment and military material, and to do their utmost in order to break all economic relations with Southern Rhodesia, including an embargo on oil and petroleum products;

9. Calls upon the Government of the United Kingdom to enforce urgently and with vigour all the measures it has announced, as well as those mentioned in paragraph 8 above;

10. Calls upon the Organisation of African Unity to do all in its power to assist in the implementation of the present resolution, in conformity with Chapter VIII of the Charter of the United Nations;

11. Decides to keep the question under review in order to examine what other measures it may deem necessary to take.

II. *Specialised Agencies and International Atomic Energy Agency*

Food and Agriculture Organisation of the United Nations.

49. An application for associate membership of Southern Rhodesia in the Food and Agriculture Organisation of the United Nations, submitted by the United Kingdom Government, was to have been acted upon by the 13th Session of the F.A.O. Conference, but, on 17 November 1965, the United Kingdom Government informed the Director-General of F.A.O. that in present circumstances the Government did not wish to proceed at the forthcoming 13th Session of the Conference with the application for associate membership for Southern Rhodesia. On 20 November 1965 the Director-General of F.A.O. circulated the communication of the United Kingdom Government as a Conference document. The Conference took no action on the application for associate membership for Southern Rhodesia.

United Nations Educational, Scientific and Cultural Organisation.

50. At the request of the United Kingdom Government, the Director-General of the United Nations Educational, Scientific and Cultural Organisation has made appropriate arrangements to suspend official communications with Southern Rhodesia.

World Health Organisation.

51. On 16 November 1965 the United Kingdom Government informed the Director-General of the World Health Organisation that the declaration purporting to declare Southern Rhodesia independent made by Mr. Smith on 11 November was an illegal act and

ineffective in law, that Mr. Smith and the other Ministers in the former Southern Rhodesia Government had been dismissed, and that they were now private persons and could not legally exercise the functions of Government. It was further indicated that the United Kingdom Government had withdrawn the authority of the representatives of Southern Rhodesia who had been appointed by the former Government to represent Southern Rhodesia at W.H.O., to which Southern Rhodesia had been admitted as associate member. The communication also stated that no further communication should be held by W.H.O. with the illegal régime in Salisbury, and requested the Director-General to bring it to the attention of all member Governments without delay. On 29 November 1965 the Director-General of W.H.O. communicated, as requested, the letter of the United Kingdom Government to all Members and associate Members of W.H.O., and informed them that all official communications between W.H.O. and the territory had been suspended with effect from 11 November 1965.

International Bank for Reconstruction and Development.

52. The International Bank for Reconstruction and Development has special responsibilities arising from two important loans guaranteed by the United Kingdom and, for half each, by Southern Rhodesia and Zambia, to the Central African Power Corporation, which operates the Kariba Dam and the power station located on the Southern Rhodesian side of Lake Kariba. In these circumstances the Bank has a special concern with the present situation in regard to the installations and operations of the Central African Power Corporation, based on the Kariba Dam.

International Telecommunication Union.

53. The Secretary-General of the International Telecommunication Union has received from the United Kingdom Government a communication stating its position regarding the unilateral declaration of independence and indicating that no further communication should be held with the illegal régime in Salisbury, and this communication has been circulated to all members of I.T.U.

World Meteorological Organisation.

54. On 16 November 1965 the United Kingdom Government addressed a communication in terms similar to that sent to the Director-General of the World Health Organisation to the Secretary-General of the World Meteorological Organisation, of which Southern Rhodesia had become a Member under Article 3 *(d)* of the World Meteorological Convention, following a declaration by the United Kingdom Government providing for the application of the Convention to Southern Rhodesia. On 17 November 1965 the Secretary-General of W.M.O. circulated, as requested, the communication of the United Kingdom Government to the governments of all the Members of W.M.O. Communications intended for Southern Rhodesia are being forwarded to the United Kingdom Foreign Office in London.

III. *United Nations Development Programme*

55. In the course of the last session of the Technical Assistance Committee, the question of the application of the Security Council Resolution of 20 November 1965 to assistance to Southern Rhodesia within the framework of the Expanded Technical Programme of Assistance was raised, and the report of the Committee to the Economic and Social Council records satisfaction over the Executive Chairman's statement that no further action was to be taken on contingency authorisations for Southern Rhodesia, and that, since the passage of the Security Council Resolution, the participating organisations of E.P.T.A. and the executing agencies of the Special Fund had been requested to withdraw to Zambia all experts serving in Southern Rhodesia pending clarification of the political situation in Southern Rhodesia.

56. It is understood that all staff serving under both E.P.T.A. and the Special Fund have been withdrawn from Southern Rhodesia. There were no I.L.O. staff involved.

Part V. Further I.L.O. Action

57. The history of Southern Rhodesia's relations with the I.L.O. can be briefly recapitulated as follows.

58. From 1958 until 1963 Southern Rhodesia (as part of the Federation of Rhodesia and Nyasaland) was represented in an observer delegation to the International Labour Conference and participated in the African Regional Conference and the African Advisory Committee. Southern Rhodesia was represented by an observer delegation at the 48th (1964) Session of the Conference. All of these arrangements had ceased to be operative prior to 11 November 1965.

59. The labour legislation of Southern Rhodesia corresponds on a number of points to international labour Conventions accepted by the United Kingdom on behalf of Southern Rhodesia.

60. The obligations accepted by the United Kingdom on behalf of Southern Rhodesia include obligations relating to freedom from forced labour, freedom of association, and freedom from discrimination in respect of employment and occupation, and obligations under Conventions of a more technical nature. They do not include the obligations of the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, or the Discrimination (Employment and Occupation) Convention, 1958.

61. At various stages positive steps have been taken, within the framework of the I.L.O. procedures relating to the application of Conventions on freedom of association, to give fuller effect to the obligations accepted. Of particular signification was the adoption in the period 1959-60 of a series of non-racial labour laws in pursuance of the declared policy of the Southern Rhodesia Government of that time to abolish all forms of racial discrimination. These laws remain in force.

62. In 1963 the Government of Southern Rhodesia informed the International Labour Office of its intention to accept the Discrimination (Employment and Occupation) Convention, 1958, with a modification under article 35 of the Constitution in respect of sex discrimination, as soon as a proposed General Employment Bill had been passed by Parliament, to adopt measures to give further effect to the provisions of the Convention, and to abolish all forms of race discrimination. This information was submitted to the International Labour Conference. No action has been taken to give effect to the intention then stated.

63. A number of important questions relating to the implementation of obligations under Conventions accepted by the United Kingdom on behalf of Southern Rhodesia, and recommendations made by the Governing Body in freedom of association cases, remain outstanding.

64. Southern Rhodesia has sought little technical co-operation from the I.L.O.; no I.L.O. technical co-operation project was in course of execution on 11 November 1965; discussions concerning a future programme which were in contemplation at that time have not now taken place.

65. It is in the light of this history that the Governing Body is now called upon to consider what further action by the I.L.O. would be helpful and appropriate.

66. The international aspect of the political problem of Southern Rhodesia is a matter for the United Nations. The Secretary-General of the United Nations was informed on 19 November 1965 of the decision taken on that day by the Governing Body that the International Labour Organisation will do everything in its power to contribute in its own sphere to such action as may be decided upon by the Security Council; the Security Council was so informed on the same day.

67. There are, nevertheless, aspects of the problem which fall clearly within the sphere of the I.L.O.

68. *The Governing Body may now think it appropriate to draw the attention of the Government of the United Kingdom to the desirability of making provision in the settlement of the Rhodesian problem to ensure respect for the fundamental human rights embodied in I.L.O. standards, including in particular—*

(a) *the full implementation of the obligations accepted on behalf of Southern Rhodesia under the Forced Labour Convention, 1930, and the Abolition of Forced Labour Convention, 1957, and more especially the elimination of forced or compulsory labour imposed as a means of political coercion or as a punishment for holding or expressing political or ideological views ;*

(b) *the full and free enjoyment by employers and workers of the right to associate, to organise and to bargain collectively, with due regard to the obligations in the matter already accepted on behalf of Southern Rhodesia and to the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948, and the Right to Organise and Collective Bargaining Convention, 1949 ;*

(c) *the abolition of all forms of race discrimination in the field of employment and occupation with due regard to the obligations accepted on behalf of Southern Rhodesia under the Social Policy (Non-Metropolitan Territories) Convention, 1947, and to the provisions of the Discrimination (Employment and Occupation) Convention, 1958.*

69. *The Governing Body may also think it appropriate to place it on record that the I.L.O. will welcome the resumption of active participation by Southern Rhodesia in the work of the Organisation as soon as a constitutional government pledged to upholding basic human rights and freedoms embodied in I.L.O. standards has been established there.*[1]

70. *The Governing Body may likewise think it appropriate to place it on record that, as soon as a constitutional government pledged to upholding basic human rights and freedoms embodied in I.L.O. standards has been established in Southern Rhodesia, the I.L.O. will be prepared to give every assistance within its power in the training of Rhodesians of all races for the assumption of responsibilities in administration, industry and industrial relations, more particularly through the facilities of the International Institute for Labour Studies and the International Centre for Advanced Technical and Vocational Training and all other appropriate facilities which are or may be operated by the I.L.O. under the United Nations Development Programme.*[1]

71. *The Governing Body may wish the Director-General to report further developments in the situation to the Governing Body as may be appropriate.*

Geneva, 9 February 1966.

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[1] The Governing Body adopted the text of this paragraph on the understanding that the words " *to upholding basic human rights and freedoms embodied in I.L.O. standards* " would be replaced by " *to the elimination of racial discrimination and to the upholding of other basic human rights and freedoms as embodied in I.L.O. standards* ".

INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

Vol. XLIX, No. 3 *July 1966*

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Supplements

Supplement I to the present issue reproduces the text of the Conventions, Recommendations, resolutions and additional texts adopted by the International Labour Conference at its 50th Session.

Supplement II contains the 89th to 92nd Reports of the Governing Body Committee on Freedom of Association.

In addition, a special supplement contains the Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning the Trade Union Situation in Greece.

INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

Vol. XLIX, No. 3 *July 1966*

INFORMATION

50th Session of the International Labour Conference [1]

(Geneva, 1-22 June 1966)

The 50th Session of the General Conference of the International Labour Organisation was held at Geneva from 1 to 22 June 1966.

Composition and Agenda

One hundred and six of the 115 States Members of the Organisation were represented at the session, which was attended by 208 Government delegates, 102 Employers' delegates and 104 Workers' delegates, accompanied by 770 advisers. Sixty-three Ministers of Labour were among those attending or visiting the Conference. Observers were sent by one territory, and there were 158 representatives of intergovernmental and non-governmental international organisations. The proceedings of the Conference were followed by over 1,300 persons.

The agenda was as follows:

I. Report of the Director-General.
II. Financial and budgetary questions.
III. Information and reports on the application of Conventions and Recommendations.
IV. The role of co-operatives in the economic and social development of developing countries (second discussion).
V. Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning old-age, invalidity and survivors' pensions (first discussion).
VI. Questions concerning fishermen (single discussion):
   (a) Accommodation on board fishing vessels;
   (b) Vocational training of fishermen;
   (c) Fishermen's certificates of competency.

[1] The texts of the instruments and resolutions adopted by the Conference appear in Supplement I to the present number.

In due course the International Labour Office will publish the *Record of Proceedings* of the 50th Session of the Conference. This will include the text of a communication addressed to the governments of member States concerning the agenda of the Conference and the memorandum appended thereto. It will contain lists of members of delegations, committees and Conference officers, the stenographic record of the discussions in plenary sitting, and appendices containing the reports of committees and the texts adopted by the Conference.

VII. Examination of grievances and communications within the undertaking (first discussion).

The Conference also had before it for information a report adopted by the Governing Body of the International Labour Office which dealt in particular with co-operation between the I.L.O. and the United Nations Organisation for Industrial Development with a view to the intensification of industrial development [1], and the second and third reports of the Working Party on the Programme and Structure of the I.L.O.

Election of President and Vice-Presidents and Establishment of Committees

After the Chairman of the Governing Body, Mr. Oumar Baba Diarra, had made the opening speech, the Conference elected as its President Mr. Leon Chajn (Government delegate, Poland). It also elected three Vice-Presidents: Mr. Roberto A. Billinghurst (Government delegate, Argentina) as Government Vice-President; Mr. Félix Martínez Espino (Employers' delegate, Venezuela) as Employers' Vice-President; and Mr. Mahmoud ben Ezzedine (Workers' delegate, Tunisia) as Workers' Vice-President.

The Conference set up a Selection Committee, which elected Mr. Henry Hauck (Government delegate, France) as its Chairman. This Committee made recommendations, which were approved by the Conference, on the composition of the Credentials Committee, Drafting Committee, Finance Committee of Government Representatives, Committee on the Application of Conventions and Recommendations, and on the establishment of a Standing Orders Committee, a Resolutions Committee and a Committee on each of items IV to VII of the agenda.

The Conference then took note of the report of the board which deals with appeals from delegates against their non-inclusion in the voting membership of a Committee of the Conference. In accordance with the determinations of the Appeals Board the Employers' delegates of Bulgaria, Byelorussia, Cuba, Czechoslovakia, Hungary, Poland, Rumania, Ukraine, the U.S.S.R. and Yugoslavia were placed in the voting sections of various Committees.

Items on the Agenda

Report of the Director-General

A total of 209 speakers took part in the debate on the Director-General's Report concerning industrialisation and labour.

In his reply the Director-General, after reviewing the achievements of the Conference during its past 50 sessions, said that the gap separating the rich nations from the poor was a major threat to peace. Industrialisation was an important means of closing this gap; here the I.L.O. must play its part in ensuring that industrialisation was accompanied by a constructive social policy which protected the worker against exploitation, gave him the opportunity to achieve a decent standard of living, and guaranteed him certain basic rights. The I.L.O. had also its part to play in the economic field and in creating a social climate favourable to industrialisation. But industrialisation must be balanced by the modernisation of agriculture and the development of rural areas, for this was an indispensable basis for the development of industry. Appealing to Members to move beyond the political issues which divided them and to find common ground enabling them to co-operate for the betterment of man-

[1] See below pp. 259-260.

kind, the Director-General stressed the need to make the Organisation truly universal, encouraging diversity of opinion and interest, mutual respect and confidence, " consistent with the hopes of men and women everywhere for a new era and a new world, one where we have found the means and the will to resolve our problems without resort to war and its inevitable human misery and suffering ".

Financial and Budgetary Questions

The Conference voted the budget of the International Labour Organisation for 1967, amounting to $22,472,398.

The Conference also adopted a resolution concerning the proposed loan to finance the construction of the new headquarters building.[1]

Information and Reports on the Application of Conventions and Recommendations

The Committee on the Application of Conventions and Recommendations examined the material submitted by governments and received supplementary information during the session form representatives of governments.

The Committee noted in its report that in the 40 years since its establishment by the Conference in 1926 ratifications had risen from about 200 to nearly 3,200 and the number of reports examined from 180 to some 3,000 annually.

With regard to the reports on ratified Conventions, 90 per cent. of the reports requested from governments had been received, and the number of reports received concerning non-metropolitan territories was 93.5 per cent. of those requested.

The Committee also discussed the conclusions of the Committee of independent experts on the reports supplied under article 19 of the Constitution in respect of the three instruments relating to labour inspection; it noted with satisfaction that the Labour Inspection Convention, 1947, had received 65 ratifications, a figure which placed this instrument among those having received the greatest response all over the world, and expressed the wish that those countries which had not yet ratified it should examine the possibility of doing so because the needs which the labour inspectorate should meet were absolutely essential. The Committee regretted that the Convention did not cover agriculture and insisted on the necessity of placing the question of labour inspection in agriculture on the agenda of a forthcoming session of the Conference with a view to adopting an international instrument.

The Conference took note of this report.[2]

The Role of Co-operatives in the Economic and Social Development of Developing Countries

The Committee on Co-operatives examined the text of a proposed Recommendation which had been prepared by the Office on the basis of conclusions adopted by the Conference at the close of the first discussion of the item at its 49th Session.

After adoption by the Committee, the proposed Recommendation concerning the role of co-operatives in the economic and social development of developing countries was placed before the Conference, which adopted it by 317 votes in favour, none against, with 6 abstentions. The Conference also adopted two resolutions on the same subject.

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[1] See below pp. 258-259.

[2] See below pp. 308-309.

Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning Old-Age, Invalidity and Survivors' Pensions

The Committee on Social Security had before it two reports prepared by the Office on the revision of Conventions Nos. 35, 36, 37, 38, 39 and 40. The Conference adopted the conclusions proposed by the Committee with a view to the adoption of a Convention supplemented by a Recommendation concerning the revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning old-age, invalidity and survivors' pensions and adopted without opposition or abstention a resolution concerning the placing on the agenda of the next ordinary session of the Conference of the question of the revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning old-age, invalidity and survivors' pensions.

Questions concerning Fishermen : (a) *Accommodation on Board Fishing Vessels ;* (b) *Vocational Training of Fishermen ;* (c) *Fishermen's Certificates of Competency*

The Committee on Fishermen had before it a report containing the record of the Preparatory Technical Conference on Fishermen's Questions and another report prepared by the Office containing the texts of three proposed instruments: a proposed Convention concerning accommodation on board fishing vessels, a proposed Recommendation concerning the training of fishermen, and a proposed Convention concerning fishermen's certificates of competency.

After their adoption by the Committee the three instruments were placed before the Conference, which adopted them as follows: Convention concerning fishermen's certificates of competency: adopted by 284 votes in favour, none against, with 14 abstentions; Convention concerning accommodation on board fishing vessels: 303 votes in favour, none against, with 16 abstentions; Recommendation concerning the vocational training of fishermen: 330 votes in favour, none against, with 6 abstentions. The Conference also adopted two resolutions, one concerning the Code of Practice on Safety on board Fishing Vessels, the other concerning the future work of the International Labour Organisation on fishermen's questions.

Examination of Grievances and Communications within the Undertaking

The Committee on Grievances and Communications had before it two reports prepared by the Office on the examination of grievances and communications within the undertaking. The Conference adopted the conclusions proposed by the Committee with a view to the preparation of two instruments: a Recommendation concerning examination of grievances within the undertaking with a view to their settlement, and a Recommendation concerning communications within the undertaking; it also adopted a resolution concerning the placing on the agenda of the next ordinary session of the Conference of the question of examination of grievances and communications within the undertaking.

Other Matters

Resolutions

Twelve resolutions had been submitted to the Conference in accordance with article 17 of the Standing Orders. The resolution concerning the future work of the International Labour Organisation on fishermen's questions was referred to the Com-

mittee on Fishermen, and the texts of two resolutions concerning the industrialisation of developing countries were amalgamated to form a single resolution. Of the ten resolutions which thus remained, the Resolutions Committee determined by secret ballot which five should be considered first, and in what order, and six resolutions were finally submitted to the Conference and adopted by it. They dealt with the following questions: the role of the International Labour Organisation in the industrialisation of developing countries; the contribution of the International Labour Organisation to the International Human Rights Year in 1968; the development of human resources; national labour departments and other public institutions responsible for the administration of labour matters; special youth training and employment programmes; and workers' participation in undertakings.

Second Special Report of the Director-General on the Application of the Declaration concerning the Policy of "Apartheid" of the Republic of South Africa

The Conference took note of the Second Special Report of the Director-General on the Application of the Declaration concerning the Policy of "Apartheid " of the Republic of South Africa.

165th Session of the Governing Body of the International Labour Office [1]

(Geneva, 27-28 May 1966)

The 165th Session of the Governing Body of the International Labour Office was held in Geneva on 27 and 28 May 1966.

The agenda of the session was as follows:

1. Approval of the minutes of the 164th Session.
2. Agenda of the 52nd (1968) Session of the International Labour Conference.
3. Report of the Committee of Experts on the Application of Conventions and Recommendations (36th Session, Geneva, 14-25 March 1966).
4. Report of the Meeting of Experts on the Outline and Content of the Encyclopaedia of Occupational Health and Safety (Geneva, 18-26 April 1966).
5. Reports of the Committee on Freedom of Association.
6. Reports of the Financial and Administrative Committee.
7. Reports of the Allocations Committee.
8. Report of the International Organisations Committee.
9. Report of the Committee on Industrial Committees.
10. Composition and agenda of committees and of various meetings.
11. International Institute for Labour Studies.
12. International Centre for Advanced Technical and Vocational Training.
13. Report of the Director-General.

The Governing Body was composed as follows:

Chairman : Mr. O. B. DIARRA *(Mali)*.

Government group :

Algeria : Mr. A. BOUHARA.
Australia : Sir Henry A. BLAND.
Brazil : Mr. A. B. MENDES CADAXA.
Bulgaria : Mr. A. TZANKOV.
Canada : Mr. J. MAINWARING.
China : Mr. LIU Tsing-chang.
Ecuador : Mr. J. R. MARTÍNEZ COBO.
France : Mr. A. PARODI.
Gabon : Mr. M. REKANGALT.
Federal Republic of Germany : Mr. F. HAENLEIN.
India : Mr. P. C. MATHEW.

[1] The texts of the documents and reports submitted to the Governing Body, which contain full information on the questions dealt with, will be published subsequently in the appendices to the printed minutes of the session.

Italy : Mr. R. AGO.
Japan : Mr. M. AOKI.
Lebanon : Mr. F. N. ABI RAAD.
Liberia : Mr. A. D. WILSON.
Mali : Mr. O. B. DIARRA.
Mexico : Mr. E. DE SANTIAGO LÓPEZ.
Pakistan : Mr. S. K. DEHLAVI.
Peru : Mr. J. A. ENCINAS DEL PANDO.
Poland : Mr. L. CHAJN.
U.S.S.R. : Mr. N. MOLYAKOV.
United Kingdom : Mr. D. C. BARNES.
United States : Mr. G. L.-P. WEAVER.

Employers' group :

Mr. G. BERGENSTRÖM *(Swedish).*
Mr. A. DESMAISON *(Peruvian).*
Mr. E.-G. ERDMANN *(Federal Republic of Germany).*
Mr. F. A. P. MURO DE NADAL *(Argentine).*
Mr. M. NASR *(Lebanese).*
Mr. E. P. NEILAN (substitute for Mr. R. WAGNER) *(United States).*
Mr. H. M. OFURUM *(Nigerian).*
Sir George POLLOCK *(United Kingdom).*
Mr. M. A. RIFAAT *(United Arab Republic).*
Mr. N. H. TATA *(Indian).*
Mr. WAJID ALI *(Pakistani).*
Mr. P. WALINE *(French).*

Workers' group :

Mr. ABID ALI *(Indian).*
Mr. F. AHMAD *(Pakistani).*
Mr. H. BEERMANN *(Federal Republic of Germany).*
Mr. B. BOLIN *(Swedish).*
Mr. L. L. BORHA *(Nigerian).*
Lord COLLISON *(United Kingdom).*
Mr. M. BEN EZZEDINE *(Tunisian).*
Mr. R. FAUPL *(United States).*
Mr. K. KAPLANSKY *(Canadian).*
Mr. A. E. MONK *(Australian).*
Mr. J. MÖRI *(Swiss).*
Mr. A. SÁNCHEZ MADARIAGA *(Mexican).*

The following regular representatives were absent:

Government group :

Canada : Mr. G. V. HAYTHORNE.
Lebanon : Mr. R. WAHID.
Tanzania [1] *:*
U.S.S.R. : Mr. I. V. GOROSHKIN.

Employers' group :

Mr. R. WAGNER *(United States).*

[1] Regular representative not yet appointed.

The following deputy members or substitute deputy members were present:

Government group :

Argentina : Mr. R. A. BILLINGHURST.
Congo (Kinshasa) : Mr. A. MAKWAMBALA.
Ethiopia : Mr. M. AMEDE.
Morocco : Mr. H. REKIOUAK.
Norway : Mr. K. J. ØKSNES.
Philippines : Mr. R. SANTOS.
Ukraine : Mr. A. KISSEL.
Uruguay : Mr. M. J. MAGARIÑOS DE MELLO.
Venezuela : Mr. F. ÁLVAREZ CHACÍN.

Employers' group :

Sir Lewis BURNE *(Australian).*
Mr. P. CAMPANELLA *(Italian).*
Mr. C. R. VÉGH GARZÓN *(Uruguayan).*
Mr. A. MISHIRO *(Japanese).*
Mr. A. G. FENNEMA *(Netherlands).*
Mr. C. KUNTSCHEN *(Swiss).*
Mr. D. ANDRIANTSITOHAINA *(Malagasy).*
Mr. T. H. ROBINSON *(Canadian).*
Mr. F. MARTÍNEZ ESPINO *(Venezuelan).*

Workers' group :

Mr. A. BECKER *(Israeli).*
Mr. R. BOTHEREAU *(French).*
Mr. N. DE BOCK *(Belgian).*
Mr. A. FAHIM *(United Arab Republic).*
Mr. Y. HARAGUCHI *(Japanese).*
Mr. J. J. HERNANDEZ *(Philippine).*
Mr. G. PONGAULT *(Congolese (Brazzaville)).*
Mr. S. SHITA *(Libyan).*
Mr. D. COPPO *(Italian).*
Mr. G. WEISSENBERG *(Austrian).*

The following representatives of States Members of the Organisation were present as observers:

Belgium : Mr. J. DENYS.
Chile : Mr. R. HUIDOBRO.
Cuba : Mr. E. CAMEJO ARGUDÍN.
Czechoslovakia : Mr. O. JACHEK.
Hungary : Mr. J. BÉNYI.
Iran : Mr. S. AZIMI.
Ireland : Mr. J. C. B. MACCARTHY.
Israel : Mr. E. F. HARAN.
Netherlands : Father J. G. STOKMAN.
New Zealand : Mr. W. G. THORP.
Romania : Mr. T. TABACARU.
Switzerland : Mr. B. ZANETTI.
Turkey : Mr. O. AKSOY.
United Arab Republic : Mr. S. B. NOUR.
Yugoslavia : Mr. K. VIDAS.

The following representatives of international governmental organisations were present:

United Nations : Mr. N. G. LUKER.
United Nations Development Programme : Mr. R. P. ETCHATS.
Office of the High Commissioner for Refugees : Mr. J. ASSCHER.
International Bank for Reconstruction and Development : Mr. E. LÓPEZ HERRARTE.
World Health Organisation : Mr. C. FEDELE.
General Agreement on Tariffs and Trade : Mr. P. SOBELS.
Organisation of American States : Mr. R. C. MIGONE.
High Authority of the European Coal and Steel Community : Mr. J. DANIS.
European Economic Community : Mr. C. A. DUQUESNE.
Intergovernmental Committee for European Migration : Mr. A. G. NATALE.
League of Arab States : Mr. M. EL-WAKIL.

The following representatives of international non-governmental organisations were present as observers:

International Confederation of Free Trade Unions : Mr. A. HEYER.
International Co-operative Alliance : Mr. M. BOSON.
International Federation of Christian Trade Unions : Mr. G. EGGERMANN.
International Organisation of Employers : Mr. R. LAGASSE.
World Federation of Trade Unions : Mr. G. BOGLIETTI.

APPROVAL OF THE MINUTES OF THE 164TH SESSION

Subject to the insertion of the corrections received, the Governing Body approved the minutes of the 164th Session.

AGENDA OF THE 52ND (1968) SESSSION OF THE INTERNATIONAL LABOUR CONFERENCE

The Governing Body gave preliminary consideration to the agenda of the 52nd (1968) Session of the International Labour Conference. With a view to final determination of the agenda it decided that at its 167th Session it should receive law and practice reports or more detailed proposals on the following subjects:

(a) holidays with pay;
(b) labour inspection in agriculture;
(c) revision of Conventions Nos. 24 and 25 concerning sickness insurance; and
(d) minimum wage-fixing machinery and related problems, with special reference to developing countries.

Note was taken of a suggestion that a study on the law and practice in regard to social security in developing countries, and possible I.L.O. instruments on the subject, should also be submitted to the Governing Body.

REPORT OF THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS

(36th Session, Geneva, 14-25 March 1966)

The Governing Body took note of the report of the Committee of Experts on the Application of Conventions and Recommendations on its 36th Session (Geneva,

14-25 March 1966) [1], and of the special report on the measures taken by the Government of Portugal to give effect to the recommendations of the Commission of Inquiry appointed under article 26 of the Constitution to examine the observance by Portugal of the Abolition of Forced Labour Convention, 1957 (No. 105).[2]

Report of the Meeting of Experts on the Outline and Content of the Encyclopaedia of Occupational Health and Safety

(Geneva, 18-26 April 1966)

The Meeting of Experts on the Outline and Content of the Encyclopaedia of Occupational Health and Safety was held in Geneva from 18 to 26 April 1966.[3] The Governing Body took note of the report of the Meeting and invited the Director-General to take account of the experts' views in preparing the Encyclopaedia.

Reports of the Committee on Freedom of Association

At its first sitting the Governing Body examined the reports of its Committee on Freedom of Association.

Eighty-ninth Report [4]

The Governing Body had before it the 89th Report of its Committee on Freedom of Association and adopted the recommendations contained therein.

Ninetieth Report [4]

The Governing Body also had before it the 90th Report of its Committee on Freedom of Association. It adopted the recommendations contained therein.

Ninety-first Report [4]

The Governing Body further examined the 91st Report of the Committee and adopted the recommendations contained therein.

Ninety-second Report [4]

The Governing Body decided to examine the 92nd Report of the Committee on Freedom of Association at its 166th Session.

Reports of the Financial and Administrative Committee

The Governing Body took the following action on the reports of its Financial and Administrative Committee.

It recommended the Conference to adopt the Audited Accounts for 1965 and appointed Mr. Lars Breie (Norway) as Auditor to the International Labour Organisation for a period of one year from 1 April 1967.

With respect to the plan for the new headquarters building [5] the Governing Body approved the financing of extra expenditure in connection with the study of over-all plans for the building, and took note of the progress report on the study of over-all plans by the team of architects. In accordance with the recommendations submitted by the Building Subcommittee to the Financial and Administrative Committee, the

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[1] See below pp. 308-309.

[2] For information concerning the Commission see *Official Bulletin*, Vol. XLIV, No. 7, 1961, pp. 499-500.

[3] For information concerning the Meeting see ibid., Vol. XLIX, No. 1, Jan. 1966, pp. 19-20, No. 2 Apr. 1966, pp. 185-186, and below, p. 289.

[4] For the text of this report see Supplement II to this issue.

[5] See *Official Bulletin*, Vol. XLIX, No. 2, Apr. 1966, pp. 176-177.

Governing Body approved the contract with the Property Foundation for International Organisations, on the understanding that the contract would come into effect after the Conference had adopted a resolution authorising the Director-General to contract the loan required to finance the construction of the new building, that the Swiss constitutional procedures had been completed and that the Governing Body had approved the over-all plan and related cost estimates for the new building It decided to recommend to the International Labour Conference at its 50th Session the adoption of a resolution [1] designed to give effect to these decisions. The Governing Body also approved an addition to the membership of the Advisory Committee of Architects.

The Governing Body took action on various questions affecting serving and retired officials. It decided to submit to the Conference a resolution concerning the contributions payable to the I.L.O. Staff Pensions Fund for 1967. It approved proposals regarding an increase in pensions payable by the Fund and recommended to the Conference that, in order to give effect to these proposals, the Regulations of the I.L.O. Staff Pensions Fund should be amended with effect from 1 March 1965. The Governing Body also decided to submit to the Conference for adoption a resolution providing for upward adjustments of the pensions payable by the Pensions Fund of the Judges of the former Permanent Court of International Justice.

In connection with a proposal concerning the appointment of a Governing Body delegation to attend the Economic and Social Council [2], the Governing Body took steps to cover the expenditure which would be incurred if it should decide to appoint a delegation to accompany the Director-General to the Economic and Social Council in Geneva in July 1966, the amount of the charge thus authorised to be confirmed by the Governing Body at its 167th Session (November 1966).

Lastly, the Governing Body took note of the information contained in the reports of the Financial and Administrative Committee.

Reports of the Allocations Committee

In accordance with the recommendation of its Allocations Committee the Governing Body at its second sitting, held on 28 May 1966, authorised the Allocations Committee to continue its work if necessary after the meetings of the Governing Body on that date and to submit its reports direct to the Finance Committee of Government Representatives of the Conference.

The Governing Body decided to recommend to the International Labour Conference at its 50th Session the approval of the scale of assessment of contributions of member States for 1967, subject to such adjustments as might be necessary following the assessment of new member States.

Report of the International Organisations Committee

Recent Developments in the Field of Industrialisation

At its 164th Session the Governing Body, having been informed of the establishment of a United Nations Organisation for Industrial Development (U.N.O.I.D.), had taken a number of decisions concerning industrial development.[2] At its present session the Governing Body had before it the report of its International Organisations Committee on recent developments in this field. After a long debate, it decided, by 37 votes to 4, with 2 abstentions—

[1] See above p. 251.

[2] See *Official Bulletin*, Vol. XLIX, No. 2, Apr. 1966, p. 178.

(a) to confirm the decision of the I.L.O. to maintain and expand its assistance to developing countries in the training of staff needed for their accelerated industrial development, including skilled workers, technicians and management personnel, and its special competence and experience in the matter by reason of its tripartite structure;

(b) to welcome the intensification of activities to promote the industrialisation of developing countries to which U.N.O.I.D. should make an important contribution;

(c) to reaffirm the views expressed at the 162nd and 164th Sessions of the Governing Body that the resources and experience of the I.L.O. should be fully utilised in the United Nations Programme for Industrial Development; to endorse the view of the Administrative Committee on Co-ordination (A.C.C.), expressed in its 31st and 32nd Reports, that wasteful duplication and overlapping between agencies of the United Nations system must be avoided to assure an effective, co-ordinated United Nations programme of action for the promotion and acceleration of industrial development and to note its proposal that further consultations should take place with a view to agreement being reached on a generally acceptable formula;

(d) to invite the Director-General to continue to pursue with the Secretary-General of the United Nations and A.C.C. the development of arrangements under which the above objectives could be achieved on the basis of the equal status of the participating organisations;

(e) to consider at its 166th Session [1] the appointment of a tripartite Governing Body delegation to accompany the Director-General to the Economic and Social Council and the General Assembly as might be required [2]; and

(f) to communicate the report of the International Organisations Committee to the members of the Conference for information.

Report of the Committee on Industrial Committees

The Governing Body had before it the report of its Committee on Industrial Committees, on the basis of which it took the following decisions.

Formula Used in Communicating to Member States Conclusions and Resolutions of Industrial and Analogous Committees and Similar Meetings

The Governing Body decided that henceforth, in communicating to member States the reports, conclusions and resolutions of Industrial and analogous Committees and of similar meetings, the following practice should be observed:

(1) when, after consideration has been given by the Governing Body to the reports, conclusions and resolutions, a decision is taken to authorise their transmission to governments, the letter of transmittal should state that " the Governing Body has taken note of these documents " (instead of stating that " the Governing Body has not expressed any opinion on the contents thereof ", in accordance with the formula adopted by the Governing Body at its 127th Session (Rome, November 1954) [3];

[1] See below p. 288.

[2] See above p. 259.

[3] See *Official Bulletin*, Vol. XXXVII, No. 7, 31 Dec. 1954, p. 307.

(2) when a decision is taken at a particular session of the Governing Body to authorise the immediate transmission of the reports, conclusions and resolutions to governments, but to postpone until a later session of the Governing Body the consideration of the texts in question, it should be made clear, in transmitting them to governments, that " the Governing Body has not yet given consideration to these documents ".

Metal Trades Committee : Effect to Be Given to the Conclusions of the Eighth Session

The Governing Body authorised the Director-General to communicate the reports, conclusions and resolutions adopted by the Metal Trades Committee at its Eighth Session (Geneva, 6-17 December 1965) to governments, drawing their special attention to the report and conclusions (No. 63) concerning international co-operation in dealing with manpower, social and labour problems in the metal trades in developing countries [1] and the report and conclusions (No. 64) concerning the role of employers' and workers' organisations in programming and planning in the metal trades [2], informing them that the Governing Body has taken note of these documents and inviting them to transmit them to the employers' and workers' organisations concerned.

International Co-operation.

The Governing Body requested the Director-General to take account of the views expressed by the Metal Trades Committee in paragraphs 29 to 38 of conclusions No. 63 [3] when drawing up the over-all programme of work of the Office, and to ensure that effect was given to the suggestions made by the Metal Trades Committee in paragraph 41 of conclusions No. 63.[4]

Effect Given to the Conclusions and Resolutions Adopted by the Metal Trades Committee at Its Previous Sessions.

The Governing Body requested the Director-General—

(a) to study all aspects, including the financial aspects, of the measures which he might recommend with a view to improving the facilities provided in Spanish and German, in accordance with the resolution (No. 54) concerning the use of German and Spanish at sessions of the Committee [5]; and

(b) to submit a report on this matter to the Governing Body as soon as possible.

The Director-General was requested to take account of the requests made by the Metal Trades Committee at its Seventh Session (Geneva, 17-28 September 1962) in the conclusions (No. 56) concerning working conditions and safety in shipbuilding and ship repairing [6] and in the resolution (No. 57) concerning tripartite action regarding vocational training in the metal trades [7] when drawing up the work programme for 1968.

The Governing Body authorised the Director-General to give effect to the requests of the Committee that the Office should take appropriate measures to ensure that the

[1] See below pp. 313-326.
[2] See below pp. 326-342.
[3] See below pp. 324-326.
[4] See below p. 326.
[5] See *Official Bulletin*, Vol. XL, 1957, No. 4, pp. 255-256.
[6] Ibid., Vol. XLVI, No. 1, Jan. 1963, pp. 113-118.
[7] Ibid., pp. 127-128.

Consolidated Text of Conclusions and Resolutions Adopted by the Metal Trades Committee at Its Previous Sessions [1] was brought to the attention of all concerned and that it should bring the Consolidated Text up to date and submit it to the next session of the Committee.

Reduction in Hours of Work.

The Director-General was authorised to give effect to the requests mentioned in the resolution (No. 65) concerning a reduction in hours of work without reduction of income in the metal trades.[2]

Women Workers in the Metal Trades.

The Governing Body requested the Director-General to give effect to the requests made by the Metal Trades Committee in the resolution (No. 66) concerning women workers in the metal trades.[3]

Labour Statistics in the Metal Trades.

The Director-General was authorised to give effect to the requests made by the Metal Trades Committee in clauses *(a)* and *(b)* of the resolution (No. 67) concerning labour statistics in the metal trades.[4]

The Governing Body authorised the Director-General to bring the request expressed by the Metal Trades Committee in clause *(c)* of resolution No. 67 [5] to the attention of the Eleventh International Conference of Labour Statisticians together with a summary of the views expressed concerning this request during the discussion in the Committee on Industrial Committees.

Freedom of Association and Trade Union Rights in the Metal Trades.

The Governing Body requested the Director-General to draw the attention of governments, and through them that of the employers' and workers' organisations concerned, to the proposals made by the Metal Trades Committee in the resolution (No. 68) concerning freedom of association and trade union rights in the metal trades.[5]

Future I.L.O. Action relating to the Metal Trades.

The Director-General was authorised to take account of the requests made by the Metal Trades Committee in the resolution (No. 69) concerning future action of the International Labour Organisation relating to the metal trades [6] when drawing up the work programmes of the Office for future years.

Petroleum Committee : Invitations to Non-Governmental International Organisations for the Seventh Session

The Governing Body decided that the International Confederation of Executive Staffs should be invited to send observers to the Seventh Session of the Petroleum Committee.

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[1] See below pp. 350-378.
[2] See below p. 384.
[3] See below p. 385.
[4] See below pp. 385-386.
[5] See below p. 386.
[6] See below pp. 386-387.

Petroleum Committee :
Information concerning the Organisation of Petroleum Exporting Countries

Meetings of Industrial and Analogous Committees in 1968

Other Questions

The Governing Body took note of these sections of the report.

Inland Transport Committee :
Invitations to Non-Governmental International Organisations for the Eighth Session

The following non-governmental international organisations will be invited to send observers to the Eighth Session of the Inland Transport Committee:

International Confederation of Executive Staffs.
International Federation of Christian Factory and Transport Workers' Unions.
International Federation of Christian Trade Unions of Transport Workers.
International Road Transport Union.
International Transport Workers' Federation.
International Union of Railways.

Review of Problems Connected with Industrial Committees and Other Industrial Meetings of Various Kinds

The Governing Body decided—

(a) that a working party of the Committee on Industrial Committees should be set up to examine the problems connected with Industrial Committees and other industrial meetings of various kinds which the Committee on Industrial Committees had been requested to consider on the proposal of the Working Party on the Programme and Structure of the Organisation [1], and to report thereon to that Committee;

(b) that, with a view to the nomination of the members of the working party—three Government members, three Employers' members and three Workers' members of the Committee on Industrial Committees, together with the number of substitutes necessary—proposals should be submitted by each of the three groups for approval to the Governing Body at its 166th Session.[2]

COMPOSITION AND AGENDA OF COMMITTEES AND OF VARIOUS MEETINGS

Fifth Session of the Joint I.L.O.-W.H.O. Committee on Occupational Health

The Governing Body authorised the Director-General to invite the following experts to attend the Fifth Session of the Joint I.L.O.-W.H.O. Committee on Occupational Health [3]:

[1] See *Official Bulletin*, Vol. XLIX, No. 2, Apr. 1966, p. 175.
[2] See below p. 277.
[3] See *Official Bulletin*, Vol. XLIX, No. 2, Apr. 1966, pp. 178-179.

Dr. R. ASTURIAS VALENZUELA (Guatemala), Chairman of the American Regional Medico-Social Committee of the International Social Security Association; Chairman of the Inter-American Committee on Social Security; former Director-General of the Guatemalan Social Security Institute.

Dr. EBOKO (Cameroon), Head of the Occupational Health Inspection Service, Yaoundé.

Dr. J. J. GILLON (France), General Medical Inspector of Labour and Manpower, Ministry of Social Affairs, Paris.

Dr. G. O. SOFOLUWE (Nigeria), Lecturer on Occupational Health, Community Health Department, Medical School, Lagos University.

Dr. P. V. THACKER (India), Chief Medical Officer, Department of Industrial Health, Tata Industries, Bombay.

The Governing Body authorised its Officers, if necessary, to approve on its behalf the appointment of the expert to be nominated after consultation with the Workers' group.

Meeting of Experts on Discrimination in Employment and Occupation : Appointment of Experts

The Governing Body authorised the Director-General to invite the following experts to attend the Meeting of Experts on Discrimination in Employment and Occupation to be held in Geneva from 31 October to 4 November 1966.[1]

Experts designated by governments :

Mr. A. K. CHANDA (India), appointed as Commissioner for Scheduled Castes and Scheduled Tribes in April 1962 and concurrently Commissioner for Linguistic Minorities in March 1963; participated in the Meeting of the Panel of Consultants on Indigenous and Tribal Populations convened by the I.L.O. in Geneva in 1962.

Mr. J. DENYS (Belgium), Principal Counsellor, International Relations Service, Ministry of Employment and Labour; Belgian delegate to and former Chairman of the Group for Social Questions of the Council of the European Communities; adviser and member of the Social Commission, Economic Union of Benelux, etc.

Mr. L. KOFFI KOUASSI (Ivory Coast), Director of Social Welfare; Acting Director of Labour and Manpower; Regional Labour Inspector for Abidjan in 1962.

Mr. P. DE F. MELLO CARVALHO (Brazil), Director of the Manpower Department of the Ministry of Labour and Social Welfare; former Director of the National Department for Immigration; adviser to the Brazilian delegation at the 27th Session of the International Labour Conference (Paris, 1945).

Mr. M. A. O. NDISI (Kenya), Permanent Secretary of the Ministry of Labour.

Mr. K. G. SHERRIF (United Kingdom), of the Ministry of Labour; head of a division responsible for aspects of the placement work of employment exchanges, including questions of alleged discrimination in employment.

Mr. V. SHKUNAEV (U.S.S.R.), Doctor of Philosophy (History), senior scientific worker, World Economics and International Relations Institute, U.S.S.R. Academy of Sciences.

[1] See *Official Bulletin*, Vol. XLIX, No. 1, Jan. 1966, p. 18.

Mr. E. C. SYLVESTER, Jr. (United States), Director, Office of Federal Contract Compliance, United States Department of Labor; responsible for problems relating to discrimination in employment.

Experts nominated after consultation with the Employers' group of the Governing Body :

Mr. S. B. CHAMBERS (Jamaica), Director of the Employers' Federation of Jamaica.

Mr. D. F. HUBBER (Uruguay), Director, Alpargatas S.A.; Director, Management Training Institute.

Mr. C. KUNTSCHEN (Switzerland), Honorary Secretary, Central Federation of Swiss Employers' Associations.

Mr. A. K. A. LUGANGIRA (Uganda), Chief of Personnel, Electricity Company of Uganda; responsible for application of the Africanisation policy within the Company.

Experts nominated after consultation with the Workers' group of the Governing Body :

Mr. L. L. BORHA (Nigeria), General Secretary, United Labour Congress of Nigeria; President, African Trade Union Confederation; Member of the Governing Body of the International Labour Office.

Mr. A. MALAVÉ VILLALBA (Venezuela), Secretary-General of the Confederation of Venezuelan Workers.

Mr. S. THONDAMAN (Ceylon), M.P., President, Ceylon Workers' Congress; substitute deputy member of the Governing Body of the International Labour Office.

The Governing Body authorised its Officers, if necessary, to approve on its behalf the appointment of the fourth expert to be chosen in consultation with Workers' circles.

INTERNATIONAL INSTITUTE FOR LABOUR STUDIES

Pro memoria : No paper was before the Governing Body on this item on its agenda.

INTERNATIONAL CENTRE FOR ADVANCED TECHNICAL AND VOCATIONAL TRAINING

The Governing Body took note of the report on the activities of the International Centre for Advanced Technical and Vocational Training, following the First Session of the Board of the Centre (Turin, 7-8 March 1966).[1]

REPORT OF THE DIRECTOR-GENERAL

Obituary

The Governing Body asked the Director-General to convey its sympathy to the family of the late Mr. W. Schevenels, formerly Secretary of the Workers' group of the Governing Body and Workers' substitute deputy member, and to the family of Mr. Wit Hanke, formerly a Workers' member of the Governing Body and Polish Workers' delegate to the International Labour Conference.

[1] The Governing Body also had before it, for information, the budget of the Centre for 1966, under the agenda item relating to the reports of its Financial and Administrative Committee.

Progress of International Labour Legislation

Internal Administration

Publications

The Governing Body took note of the information contained in these sections of the report.

Interpretation of Decisions of the International Labour Conference

The Governing Body took note of the information submitted by the Director-General under this heading.[1]

Participation of Asian Countries of the Near and Middle East in the Asian Regional Activities of the International Labour Organisation

The Governing Body noted that the report was withdrawn pending the further consultations which the Director-General intended to hold.

Proposals concerning the Composition of the Asian Advisory Committee

The Governing Body decided that the Asian Advisory Committee [2] should be reconstituted, that it should consist of 24 members (12 representing Governments, six representing Employers and six representing Workers) and that it should comprise—

(a) automatic or ex officio members, consisting of the Government, Employers' and Workers' members and deputy members of the Governing Body who are nationals of one of the member States falling within the area;

(b) members elected by the International Labour Conference to complete with the ex officio members a total of ten Government, five Employers' and five Workers' members. Those eligible for election would be, in the case of governments, the member States of the Organisation belonging to the area and, in the case of employers and workers, nationals of those States; the electoral colleges would consist of the delegates of the member States entitled to attend the Asian Regional Conference;

(c) four members (two Government, one Employers' and one Workers') to be nominated by the Governing Body from countries entitled to attend the Asian Regional Conference. If the total number of members drawn from States Members of the Organisation under *(a)* and *(b)* fell short of 20, the number required to complete this figure would be nominated from among such members under this clause.

Organisation of the Work of the Governing Body

The Governing Body postponed consideration of the matters raised under this heading.

Report of the Officers of the Governing Body

On the recommendation of its Officers the Governing Body made the following decisions:

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[1] See below pp. 389-401.

[2] Established by the Governing Body at its 112th Session (June 1950).

Requests by Non-Governmental International Organisations to Be Represented by Observers at the 50th (1966) Session of the International Labour Conference.

The following organisations were invited to be represented by observers at the 50th (1966) Session of the International Labour Conference, it being understood that it would be for the Selection Committee of the Conference to consider their requests to participate in the work of the committees dealing with the items on the agenda in which they had expressed an interest:

European Organisation of the I.F.C.T.U.
International Association of Crafts and Small and Medium-Sized Enterprises.
International Association for Social Progress.
International Confederation of Arab Trade Unions.
International Confederation of Senior Officials.
International Federation of Chemical and General Workers' Unions.
International Federation of Commercial, Clerical and Technical Employees.
International Federation of Petroleum and Chemical Workers.
International Federation of Plantation, Agricultural and Allied Workers.
International Metalworkers' Federation.
International Union of Food and Allied Workers' Associations.
Latin American Federation of Christian Trade Unionists.
Pan-American Confederation of Commercial Travellers.
Postal, Telegraph and Telephone International.
World Assembly of Youth.

Requests by Non-Governmental International Organisations to Be Represented by Observers at the Eighth Conference of American States Members of the I.L.O.

The Public Services International and the World Young Women's Christian Association were invited to be represented by observers at the Eighth Conference of American States Members of the I.L.O.

Representation at the Eleventh International Conference of Labour Statisticians.

The Governing Body decided that any non-governmental international organisation with consultative status which approached the Director-General and indicated that it wished to be represented at the Eleventh International Conference of Labour Statisticians by a technically qualified observer should be authorised to do so.

Tribute to the Chairman

At the end of the session the Governing Body paid tribute to the outgoing Chairman, Mr. Oumar Baba Diarra, the first African Chairman of the Governing Body, to whom speakers from the three groups and the Director-General expressed their thanks and good wishes.

Composition of the Governing Body of the International Labour Office for the Period 1966-69

In accordance with paragraphs 1, 2, 4 and 5 of article 7 of the Constitution of the International Labour Organisation, the composition of the Governing Body of the International Labour Office was renewed during the 50th Session of the Conference.

The Governing Body consists of 48 regular members as a result of the coming into force on 22 May 1963 of the Instrument for the Amendment of the Constitution of the International Labour Organisation, 1962.

As a result of the elections carried out by the three electoral colleges of the Conference, the composition of the Governing Body for the period 1966-69 is as follows:

Regular Members

Government members:

Argentina.
Cameroon.
Canada.[1]
Chile.
China.[1]
Colombia.
Ethiopia.
France.[1]
Federal Republic of Germany.[1]
Hungary.
India.[1]
Iraq.
Italy.[1]
Japan.[1]
Malaysia.
Philippines.
Senegal.
Sierra Leone.
Union of Soviet Socialist Republics.[1]
United Arab Republic.
United Kingdom of Great Britain and Northern Ireland.[1]
United States of America.[1]
Venezuela.
Yugoslavia.

Employers' members:

Mr. G. BERGENSTRÖM (Swedish).
Mr. E.-G. ERDMANN (Federal Republic of Germany).
Mr. H. GEORGET (Niger).
Mr. F. MARTÍNEZ ESPINO (Venezuelan).
Mr. M. NASR (Lebanese).
Mr. E. P. NEILAN (United States).
Mr. M. OFURUM (Nigerian).
Sir George POLLOCK (United Kingdom).
Mr. N. H. TATA (Indian).
Mr. C. R. VÉGH GARZÓN (Uruguayan).
Mr. WAJID ALI (Pakistani).
Mr. P. WALINE (French).

[1] Members holding non-elective seats as States of chief industrial importance.

Workers' members :

Mr. ABID ALI (Indian).
Mr. H. BEERMANN (Federal Republic of Germany).
Mr. B. BOLIN (Swedish).
Mr. L. L. BORHA (Nigerian).
Lord COLLISON (United Kingdom).
Mr. M. BEN EZZEDINE (Tunisian).
Mr. R. FAUPL (United States).
Mr. Y. HARAGUCHI (Japanese).
Mr. K. KAPLANSKY (Canadian).
Mr. A. E. MONK (Australian).
Mr. J. MÖRI (Swiss).
Mr. P. T. PIMENOV (U.S.S.R.).

Deputy Members

Government deputy members :

Australia.
Byelorussia.
Chad.
Kenya.
Mexico.
Morocco.
Pakistan.
Peru.
Sweden.
Uruguay.

Employers' deputy members :

Mr. D. ANDRIANTSITOHAINA (Malagasy).
Mr. F. BANNERMAN-MENSON (Ghanaian).
Mr. P. CAMPANELLA (Italian).
Mr. A. G. FENNEMA (Netherlands).
Mr. M. GHALI (Tunisian).
Mr. M. GHAYOUR (Iranian).
Mr. D. GONZALES BLANCO (Brazilian).
Mr. D. A. R. PHIRI (Zambian).
Mr. T. H. ROBINSON (Canadian).
Mr. F. YLLANES RAMOS (Mexican).

Workers' deputy members :

Mr. A. BECKER (Israeli).
Mr. D. COPPO (Italian).
Mr. N. DE BOCK (Belgian).
Mr. J. GONZÁLEZ NAVARRO (Venezuelan).
Mr. J. J. HERNANDEZ (Philippine).
Mr. E. KANE (Mauritanian).
Mr. G. KHOURY (Lebanese).
Mr. J. R. MERCADO (Colombian).
Mr. S. SHITA (Libyan).
Mr. A. SÁNCHEZ MADARIAGA (Mexican).

The following substitute deputy members were also appointed by the Employers' and Workers' groups:

Employers' substitute deputy members :

Mr. H. AL-HILLI (Iraqi).
Mr. A. BASTID (Ivory Coast).
Mr. A. DESMAISON (Peruvian).
Mr. H. G. FERRIER (Australian).
Mr. G. MAUTNER-MARKHOF (Austrian).
Mr. M. MONTT BALMACEDA (Chilean).
Mr. M. A. RIFAAT (United Arab Republic).
Mr. A. VERSCHUEREN (Belgian).
Mr. A. VITAIC JAKASA (Argentine).
Mr. M. E. WIJESINGHE (Ceylonese).
Mr. K. YOSHIMURA (Japanese).
Mr. H. ZEMMOURI (Moroccan).

Workers' substitute deputy members :

Mr. M. DÖLEN (Turkish).
Mr. G. B. FOGAM (Cameroonian).
Mr. W. N. OTTENYO (Kenyan).
Mr. R. B. PEDROSA (Brazilian).
Mr. F. T. RASOLO (Malagasy).
Mr. B. SOLOMON (Ethiopian).
Mr. W. W. SUTTON (Trinidad and Tobago).
Mr. S. THONDAMAN (Ceylonese).
Mr. G. WEISSENBERG (Austrian).
Mr. S. J. H. ZAIDI (Malaysian).

166th Session of the Governing Body of the International Labour Office [1]

(Geneva, 23 June 1966)

The 166th Session of the Governing Body of the International Labour Office was held in Geneva on 23 June 1966.

The agenda of the session was as follows:

1. Election of the Officers of the Governing Body for 1966-67.
2. Appointment of Governing Body committees and of members of regional advisory committees and various bodies.
3. Ninety-second Report of the Committee on Freedom of Association.
4. Composition and agenda of committees and of various meetings.
5. Report of the Director-General.
6. Questions arising out of the 50th (1966) Session of the International Labour Conference.
7. Programme of meetings.
8. Appointment of Governing Body representatives on various bodies.
9. Date and place of the 167th Session of the Governing Body.

The Governing Body was composed as follows:

Chairman : Mr. P. WALINE *(France)*, followed by Mr. M. AOKI *(Japan)*.

Government group :

Argentina : Mr. R. A. BILLINGHURST.
Cameroon : Mr. NZO EKHAH NGHAKY.
Canada : Mr. J. MAINWARING.
Chile : Mr. R. HUIDOBRO.
China : Mr. LIU Tsing-Chang.
Colombia : Mr. E. ARANGO.
Ethiopia : Mr. M. AMEDE.
France : Mr. A. PARODI.
Federal Republic of Germany : Mr. F. HAENLEIN.
Hungary : Mr. E. BAKONYI-SEBESTYÉN.
India : Mr. P. C. MATHEW.
Iraq : Mr. A. R. AL-WAKIL.
Italy : Mr. R. AGO.
Japan : Mr. M. AOKI.
Malaysia : Mr. YEAP Kee Aik.
Philippines : Mr. A. PAREDES.
Senegal : Mr. A. R. DIOP.
Sierra Leone : Mr. M. A. E. DAVIES.
U.S.S.R. : Mr. I. V. GOROSHKIN.

[1] The texts of the documents and reports submitted to the Governing Body, which contain full information on the questions dealt with, will be published subsequently in the appendices to the printed minutes of the session.

United Arab Republic : Mr. H. KAMEL.
United Kingdom : Mr. A. M. MORGAN.
United States : Mr. G. L. P. WEAVER.
Venezuela : Mr. F. ÁLVAREZ CHACÍN.
Yugoslavia : Mr. R. TABOR.

Employers' group :

Mr. D. ANDRIANTSITOHAINA *(Malagasy).*
Mr. G. BERGENSTRÖM *(Swedish).*
Mr. E.-G. ERDMANN *(Federal Republic of Germany).*
Mr. H. GEORGET *(Niger).*
Mr. F. MARTÍNEZ ESPINO *(Venezuelan).*
Mr. E. P. NEILAN *(United States).*
Mr. H. M. OFURUM *(Nigerian).*
Sir George POLLOCK *(United Kingdom).*
Mr. N. H. TATA *(Indian).*
Mr. C. R. VÉGH GARZÓN *(Uruguayan).*
Mr. WAJID ALI *(Pakistani).*
Mr. P. WALINE *(French).*

Workers' group :

Mr. ABID ALI *(Indian).*
Mr. H. BEERMANN *(Federal Republic of Germany).*
Mr. B. BOLIN *(Swedish).*
Mr. L. L. BORHA *(Nigerian).*
Lord COLLISON *(United Kingdom).*
Mr. M. BEN EZZEDINE *(Tunisian).*
Mr. R. FAUPL *(United States).*
Mr. Y. HARAGUCHI *(Japanese).*
Mr. E. KANE *(Mauritanian).*
Mr. K. KAPLANSKY *(Canadian).*
Mr. A. E. MONK *(Australian).*
Mr. J. MÖRI *(Swiss).*

The following regular representatives were absent:

Government group :

Canada : Mr. G. V. HAYTHORNE.
United Kingdom : Mr. D. C. BARNES.

Employers' group :

Mr. M. NASR *(Lebanese).*

Workers' group :

Mr. P. T. PIMENOV *(U.S.S.R.).*

The following deputy members or substitute deputy members were present:

Government group :

Australia : Sir Henry BLAND.
Byelorussia : Mr. G. F. BASOV.
Chad : Mr. E. YAMSALA.

Kenya : Mr. J. H. I. OBIMBO.
Mexico : Mr. E. DE SANTIAGO LÓPEZ.
Morocco : Mr. H. REKIOUAK.
Pakistan : Mr. S. K. DEHLAVI.
Peru : Mr. J. A. ENCINAS DEL PANDO.
Sweden : Mr. I. BENGTSSON.
Uruguay : Mr. M. MAGARIÑOS DE MELLO.

Employers' group :

Mr. F. BANNERMAN-MENSON *(Ghanaian).*
Mr. A. G. FENNEMA *(Netherlands).*
Mr. M. GHALI *(Tunisian).*
Mr. M. GHAYOUR *(Iranian).*
Mr. D. GONZALES BLANCO *(Brazilian).*
Mr. D. A. R. PHIRI *(Zambian).*
Mr. H. G. FERRIER *(Australian).*
Mr. A. VERSCHUEREN *(Belgian).*
Mr. M. A. RIFAAT *(United Arab Republic).*
Mr. M. E. WIJESINGHE *(Ceylonese).*

Workers' group :

Mr. D. COPPO *(Italian).*
Mr. N. DE BOCK *(Belgian).*
Mr. J. GONZÁLEZ NAVARRO *(Venezuelan).*
Mr. J. J. HERNANDEZ *(Philippine).*
Mr. G. KHOURY *(Lebanese).*
Mr. A. SÁNCHEZ MADARIAGA *(Mexican).*
Mr. G. WEISSENBERG *(Austrian).*
Mr. B. SOLOMON *(Ethiopian).*
Mr. S. THONDAMAN *(Ceylonese).*
Mr. F. T. RASOLO *(Malagasy).*

The following representatives of international non-governmental organisations were present:

International Confederation of Free Trade Unions : Mr. A. HEYER.

International Co-operative Alliance : Mr. M. BOSON.

International Federation of Christian Trade Unions : Mr. G. EGGERMANN.

International Organisation of Employers : Mr. R. LAGASSE.

World Federation of Trade Unions : Mrs. S. DRAGOI.

ELECTION OF THE OFFICERS OF THE GOVERNING BODY FOR 1966-67

The Governing Body unanimously and by acclamation elected as its Chairman for the year 1966-67 Mr. M. AOKI, representative of the Government of Japan on the Governing Body.

Mr. P. WALINE and Mr. J. MÖRI were unanimously re-elected as Employers' and Workers' Vice-Chairmen respectively.

Appointment of Governing Body Committees and of Members of Regional Advisory Committees and Various Bodies

Appointment of Governing Body Committees

On the proposal of the groups concerned the Governing Body constituted as follows its various committees, with the exception of the Committee on Discrimination, the reconstitution of which it postponed until its 167th Session (November 1966).

Financial and Administrative Committee.

Chairman (ex officio) : The Chairman of the Governing Body (1966-67: Mr. Aoki, Japan).

Government group :

Australia.
Canada.
Cameroon.
China.
Colombia.
France.
Federal Republic of Germany.
Hungary.
India.
U.S.S.R.
United Kingdom.
United States.

Substitutes:

Byelorussia.
Chad.
Chile.
Iraq.
Italy.
Japan.
Malaysia.
Pakistan.
Philippines.
Senegal.
Sierra Leone.
Sweden.
Venezuela.
Yugoslavia.

Employers' group :

Mr. Bergenström.
Mr. Fennema.
Mr. Georget.
Mr. Ghali.
Mr. Nasr.
Mr. Neilan.
Sir George Pollock.
Mr. Végh Garzón.
Mr. Wajid Ali.
Mr. Waline.

Substitutes:

Mr. Campanella.
Mr. Erdmann.
Mr. Martínez Espino.
Mr. Robinson.
Mr. Gonzales Blanco.
Mr. Andriantsitohaina.

Workers' group :

Mr. Abid Ali.
Mr. Bolin.
Mr. Borha.
Lord Collison.
Mr. De Bock.
Mr. ben Ezzedine.
Mr. Faupl.
Mr. Kaplansky.
Mr. Möri.
Mr. Sánchez Madariaga.

Substitutes:

Mr. BEERMANN.
Mr. COPPO.
Mr. GONZÁLEZ NAVARRO.
Mr. HARAGUCHI.
Mr. KANE.

Building Subcommittee.

Government group :

Chile.
India.
Italy.
U.S.S.R.
United Kingdom.
United States.

Employers' group :

Mr. BERGENSTRÖM.
Mr. GEORGET.
Mr. VÉGH GARZÓN.

Substitutes:

Mr. GONZALES BLANCO.
Mr. WALINE.

Workers' group :

Lord COLLISON.
Mr. FAUPL.
Mr. KAPLANSKY.

Substitute:

Mr. BEN EZZEDINE.

Allocations Committee.

Government group :

Canada.
Ethiopia.
France.
Hungary.
India.
U.S.S.R.
United States.
Uruguay.

Substitutes:

Argentina.
Italy.
Senegal.
United Kingdom.

Committee on Standing Orders and the Application of Conventions and Recommendations.

Government group :

Australia.
Byelorussia.
Italy.
Japan.
Morocco.
Peru.
U.S.S.R.
United Kingdom.

Substitutes:

Argentina.
Chad.
India.
Sweden.
United States.

Employers' group :

Mr. BANNERMAN-MENSON.
Mr. FENNEMA.
Mr. NEILAN.
Mr. WALINE.

Substitutes:

Mr. BERGENSTRÖM.
Mr. CAMPANELLA.
Mr. GEORGET.

Workers' group :

Mr. BOLIN.
Mr. DE BOCK.
Mr. GONZÁLEZ NAVARRO.
Mr. KAPLANSKY.

Substitutes:

Mr. COPPO.
Mr. BEN EZZEDINE.
Mr. HERNANDEZ.
Mr. MERCADO.

Committee on Industrial Committees.

Government group :

Chad.
Federal Republic of Germany.
Hungary.
India.
Italy.
Japan.
Mexico.
Pakistan.
U.S.S.R.
United Kingdom.
United States.
Venezuela.

Substitutes:

Argentina.
Australia.
China.
Kenya.
Peru.
Philippines.
Sweden.
Uruguay.
Yugoslavia.

Employers' group :

Mr. CAMPANELLA.
Mr. ERDMANN.
Mr. FENNEMA.
Mr. MARTÍNEZ ESPINO.
Mr. NEILAN.
Mr. OFURUM.
Mr. PHIRI.
Sir George POLLOCK.
Mr. TATA.
Mr. VÉGH GARZÓN.

Substitutes:

Mr. BERGENSTRÖM.
Mr. YLLANES RAMOS.
Mr. GEORGET.
Mr. GONZALES BLANCO.
Mr. WALINE.
Mr. GHALI.
Mr. WAJID ALI.
Mr. ANDRIANTSITOHAINA.

Workers' group :

Mr. BEERMANN.
Lord COLLISON.
Mr. DE BOCK.
Mr. FAUPL.
Mr. HARAGUCHI.
Mr. MERCADO.
Mr. SÁNCHEZ MADARIAGA.
Mr. SHITA.

Substitutes:

Mr. ABID ALI.
Mr. BOLIN.
Mr. BORHA.
Mr. COPPO.
Mr. MONK.
Mr. PIMENOV.

Working Party to Examine Problems Connected with Industrial Committees and Other Industrial Meetings of Various Kinds and to Report Thereon to the Committee on Industrial Committees.

Government group :

Federal Republic of Germany.
India.
U.S.S.R.

Workers' group :

Lord COLLISON.
Mr. DE BOCK.
Mr. FAUPL.

Substitutes:

Mr. BEERMANN.
Mr. BORHA.

Employers' group [1] *:*

International Organisations Committee.

Government group :

Australia.
Chile.
China.
Iraq.
U.S.S.R.

Substitutes:

Argentina.
Byelorussia.
Cameroon.
Canada.
Ethiopia.
France.
United Arab Republic.
United Kingdom.
United States.
Uruguay.
Yugoslavia.

India.
Italy.
Malaysia.
Mexico.
Morocco.
Peru.

Employers' group :

Mr. GONZALES BLANCO.
Mr. MARTÍNEZ ESPINO.
Mr. PHIRI.

Substitutes:

Mr. BERGENSTRÖM.
Mr. ERDMANN.
Mr. FENNEMA.
Mr. GEORGET.
Mr. TATA.
Mr. WALINE.
Mr. YLLANES RAMOS.

Mr. GHALI.
Mr. GHAYOUR.
Mr. NEILAN.
Mr. VÉGH GARZÓN.

Workers' group :

Mr. BOLIN.
Mr. FAUPL.
Mr. KANE.
Mr. KAPLANSKY.
Mr. MONK.
Mr. MÖRI.

[1] The Governing Body noted that the Employers' group had not yet submitted its nominations.

Substitutes:

Mr. BECKER.
Mr. BEERMANN.
Mr. COPPO.
Mr. DE BOCK.
Mr. GONZÁLEZ NAVARRO.
Mr. HARAGUCHI.
Mr. HERNANDEZ.
Mr. SHITA.

Committee on Operational Programmes.

Government group :

Argentina.
Canada.
France.
Italy.
Malaysia.
Morocco.
Pakistan.
Philippines.
Senegal.
Sierra Leone.
Sweden.
U.S.S.R.
United Kingdom.
United States.
Uruguay.
Yugoslavia.

Substitutes:

Cameroon.
China.
Ethiopia.
Federal Republic of Germany.
Hungary.
India.
Iraq.
Kenya.
Mexico.
United Arab Republic.
Venezuela.

Employers' group :

Mr. ANDRIANTSITOHAINA.
Mr. BANNERMAN-MENSON.
Mr. GEORGET.
Mr. GHALI.
Mr. GONZALES BLANCO.
Mr. MARTÍNEZ ESPINO.
Mr. NASR.
Mr. OFURUM.
Mr. ROBINSON.
Mr. VÉGH GARZÓN.

Substitutes:

Mr. BERGENSTRÖM.
Mr. CAMPANELLA.
Mr. FENNEMA.
Mr. GHAYOUR.
Mr. WAJID ALI.
Mr. WALINE.

Workers' group :

Mr. ABID ALI.
Mr. BECKER.
Mr. BORHA.
Lord COLLISON.
Mr. BEN EZZEDINE.
Mr. FAUPL.
Mr. KANE.
Mr. PIMENOV.

Substitutes:

Mr. GONZÁLEZ NAVARRO.
Mr. HARAGUCHI.
Mr. HERNANDEZ.
Mr. KAPLANSKY.
Mr. KHOURY.
Mr. MONK.
Mr. SHITA.

Committee on Freedom of Association.

Government group :

Argentina (substitute: Uruguay).
India (substitute: Cameroon).
Italy (substitute: France).

Employers' group :

Mr. GHAYOUR.
Mr. VÉGH GARZÓN.
Mr. WALINE.

Substitutes:

Mr. BERGENSTRÖM.
Mr. FENNEMA.
Mr. GEORGET.

Workers' group :

Mr. HERNANDEZ.
Mr. MÖRI.
Mr. SÁNCHEZ MADARIAGA.

Substitutes:

Mr. BOLIN.
Mr. DE BOCK.
Mr. BEN EZZEDINE.

Working Party on the Programme and Structure of the I.L.O.

Chairman : The Chairman of the Governing Body (1966-67: Mr. AOKI, Japan).

Government group :

Colombia.
France.
India.
U.S.S.R.
United Arab Republic.
United Kingdom.
United States.
Yugoslavia.

Employers' group :

Mr. BERGENSTRÖM (substitute: Sir George POLLOCK).
Mr. ERDMANN (substitute: Mr. FENNEMA).
Mr. GEORGET (substitute: Mr. GHALI).
Mr. NEILAN (substitute: Mr. ROBINSON).
Mr. WAJID ALI (substitute: Mr. TATA).
Mr. WALINE (substitute: Mr. GHAYOUR).
Mr. YLLANES RAMOS (substitute: Mr. MARTÍNEZ ESPINO).

Workers' group :

Mr. ABID ALI.
Lord COLLISON.
Mr. DE BOCK.
Mr. BEN EZZEDINE.
Mr. FAUPL.
Mr. KAPLANSKY.
Mr. MÖRI.

Substitutes:

Mr. BOLIN.
Mr. BORHA.
Mr. COPPO.
Mr. PIMENOV.

Committee Responsible for Making Proposals to the Governing Body in connection with the Representation Submitted by the Association of Federal Servants of São Paulo concerning the Application of the Labour Inspection Convention, 1947 (No. 81), in Brazil.[1]

Government group : Mr. AGO.

Employers' group : Sir George POLLOCK.

Workers' group : Mr. MÖRI.

Appointment of Members of Regional Advisory Committees and Various Bodies

African Advisory Committee.

On the proposal of the three groups the Governing Body nominated the following members from the countries entitled to attend the African Regional Conference to complete the membership of the African Advisory Committee:

Government group :

Ivory Coast.
Libya.
Rwanda.
Somalia.

Employers' group :

Mr. RICHMOND (Kenyan).
Substitute: Mr. GEBREGZIABHER (Ethiopian).
Mr. SIDIBÉ (Senegalese).
Substitute: Mr. KONIAN KODJO (Ivory Coast).

Workers' group :

Mr. LUANDE (Ugandan).
Mr. RANDRIANATORO (Malagasy).

It was noted that the term of office of the above-mentioned members would expire in 1969.

Asian Advisory Committee.

On the proposal of the groups concerned the Governing Body nominated the following members from countries entitled to attend the Asian Regional Conference to complete the membership of the Asian Advisory Committee.[2]

Employers' group :

Mr. WIJESINGHE (Ceylonese).

Workers' group :

Mr. THONDAMAN (Ceylonese).

It was noted that the term of office of the above-mentioned members would expire in 1969.

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[1] See *Official Bulletin*, Vol. XLIX, No. 1, Jan. 1966, pp. 17-18 and 27.

[2] The Government group postponed the nomination of the Government members until the 167th Session of the Governing Body.

Inter-American Advisory Committee.

On the proposal of the three groups the Governing Body nominated the following members from countries entitled to attend the Conferences of American States Members of the International Labour Organisation to complete the membership of the Inter-American Advisory Committee:

Government group :

Brazil.
Panama.

Employers' group :

Mr. CHAMBERS (Jamaican).
Substitute: Mr. ARANGO RESTREPO (Colombian).

Workers' group :

Mr. ARTILES MARTÍNEZ (Honduran).

It was noted that the term of office of the above-mentioned members would expire in 1969.

Board of the International Institute for Labour Studies.

On the proposal of the three groups the Governing Body appointed the following of its members as members of the Board of the International Institute for Labour Studies for a period of three years.[1]

Government group :

Mr. AGO (Italy).
Mr. AOKI (Japan).

Employers' group :

Mr. NASR.
Mr. WALINE.

Substitutes:

Mr. MARTÍNEZ ESPINO.
Mr. OFURUM.

Workers' group :

Mr. ABID ALI.
Mr. WEISSENBERG.

Board of the International Centre for Advanced Technical and Vocational Training (Turin).

On the proposal of the groups concerned [2], the Governing Body appointed the following of its members as members of the Board of the International Centre for Advanced Technical and Vocational Training (Turin) for a period of three years [3]:

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[1] See *Official Bulletin*, Vol. XLIII, No. 7, 1960, p. 437 (article II 2 *(b)* of the Regulations of the Institute).

[2] The Employers' members will submit their nominations at the 167th Session of the Governing Body.

[3] See *Official Bulletin*, Vol. XLVI, No. 3, July 1963, p. 380 (article III 2 *(c)* of the Statute of the Centre).

Government group :

Mr. BAKONYI-SEBESTYÉN (Hungary).
Mr. DAVIES (Sierra Leone).
Mr. HAYTHORNE (Canada).
Mr. ENCINAS DEL PANDO (Peru).

Workers' group :

Mr. BEERMANN.
Mr. BORHA.
Mr. FAUPL.
Mr. HERNANDEZ.
Substitute: Mr. COPPO.

NINETY-SECOND REPORT OF THE COMMITTEE ON FREEDOM OF ASSOCIATION [1]

The Governing Body examined the 92nd Report of its Committee on Freedom of Association and adopted the recommendations contained therein.

COMPOSITION AND AGENDA OF COMMITTEES AND OF VARIOUS MEETINGS

Committee of Social Security Experts

At previous sessions the Governing Body had approved the appointment of experts to renew the membership of the Committee of Social Security Experts.[2] At the present session, it approved the appointment of the following experts on social security in general as members of the Committee of Social Security Experts for a period expiring on 31 December 1968:

Expert nominated after consultation with Governments :

Mr. F. ROSELLI (Italy), Director-General for Social Welfare and Social Assistance, Ministry of Labour and Social Welfare, Rome.[3]

Experts nominated after consultation with the Workers' group of the Governing Body :

Mr. N. CRUIKSHANK (United States), former Director, A.F.L.-C.I.O. Social Security Department, Washington.
Mr. B. HEISE (Federal Republic of Germany), Chief of the Executive Board, German Confederation of Trade Unions.[4]

Agenda of the Third Session of the African Advisory Committee

At its 152nd Session (June 1962) the Governing Body had placed two questions on the agenda of the Third Session of the African Advisory Committee and had

[1] For the text of this report see Supplement II to this issue, pp. 80-116.

[2] For the composition of this committee see *Official Bulletin*, Vol. XLVIII, No. 2, Apr. 1965, p. 154, ibid., Vol. XLIX, No. 1, Jan. 1966, pp. 20-23, and ibid., No. 2, Apr. 1966, p. 190.

[3] Appointment to fill the vacancy created by the death of Mr. G. Carapezza (Italy), Director-General of Pensions and Social Assistance, Ministry of Labour, Rome, who was appointed to the Committee by the Governing Body at its 163rd Session.

[4] Appointed to replace Mr. Kanev (Israel), Chairman, Health Insurance Institution, Kupat Holim, Tel Aviv, who, in view of his appointment as a Government expert on social security in general, is not in a position to go on serving in the Committee as a Workers' expert.

authorised the Director-General to submit to it in due course proposals concerning a third question.[1] At its present session it fixed the agenda of the Third Session of the Committee as follows:

I. Labour administration, including labour inspection, in Africa.

II. Evaluation and prospects of technical assistance in Africa.

III. Employment policy in Africa.

It was understood that the question of the determination of the minimum subsistence level, including the establishment of standard family budgets, would be dealt with within the framework of item III.

Proposals concerning a Meeting of Experts on the Safe Use of Benzene and Benzenic Solvents

The budget adopted by the International Labour Conference at its 50th Session (June 1966) contains provision for a Meeting of Experts on the Safe Use of Benzene and Benzenic Solvents. The Governing Body approved the following agenda for the Meeting [2]:

I. Composition, preparation and industrial use of substances containing benzene or its homologues.

II. Occupational hazards and examination of whether it is possible to determine acceptable levels of exposure.

III. Technical safety measures and substitution.

IV. Medical control and health education.

The Governing Body decided that the Meeting should consist of 12 experts. It noted that the Director-General intended to submit to the Governing Body at its 167th Session proposals concerning the experts to be invited to attend the Meeting, having regard to those countries in which the substances in question are most widely used, and that at least two of these nominations would be made following consultations with the Employers' group and at least two following consultations with the Workers' group of the Governing Body.

The Director-General will invite the World Health Organisation, the Council of Europe, the European Economic Community and the International Social Security Association to be represented at the Meeting.

The Director-General was authorised to invite the following non-governmental international organisations to send observers to the Meeting:

International Union of Pure and Applied Chemistry.

Permanent Commission and International Association on Occupational Health.

Report of the Director-General

Preliminary Proposals concerning the Celebration of the 50th Anniversary of the International Labour Organisation

The year 1969 will mark the 50th anniversary of the International Labour Organisation. The Governing Body had before it preliminary proposals concerning the celebration of this anniversary, in the light of which it took the following action.

[1] See *Official Bulletin*, Vol. XLV, No. 3, July 1962, p. 173.

[2] For the date and place of this Meeting see below p. 286.

It decided to appoint from among its members a tripartite committee, to be called the " Fiftieth Anniversary Committee ", to study and recommend appropriate measures with a view to the 50th anniversary celebration, it being understood that the Committee would probably be appointed by the Governing Body at its 167th Session.

The Governing Body further authorised the Director-General—

(a) to request member States to consider the issue of commemorative stamps in 1969 on the occasion of the 50th anniversary of the I.L.O.; and

(b) to inform the Director of the Universal Postal Union of the measures taken and to request him to bring the matter to the attention of postal administrations.

Questions Arising out of the 50th (1966) Session of the International Labour Conference

Resolution concerning the Role of the International Labour Organisation in the Industrialisation of Developing Countries

At its 50th Session (June 1966) the International Labour Conference adopted a resolution concerning the role of the International Labour Organisation in the industrialisation of developing countries.[1] The Governing Body was called upon, at its present session, to take immediate steps with respect to this resolution.

The Governing Body authorised the Director-General—

(a) to communicate the resolution to the governments of member States, asking them to transmit it to employers' and workers' organisations and requesting them to make available to him, not later than 1 November 1966, information on the work programmes which they consider it appropriate for the I.L.O. to undertake with respect to the social, labour and vocational training problems raised by industrialisation, in co-ordination with the programmes of the United Nations Organisation for Industrial Development (U.N.O.I.D.);

(b) to submit to the Governing Body, for discussion at its session to be held in February-March 1967, plans drawn up on the basis of the various factors mentioned in clause *(c)* of paragraph 3 of the resolution with a view to adapting and intensifying the activities of the I.L.O. relating to the industrialisation of the developing countries, these plans to be submitted, after discussion by the Governing Body, to the 51st (1967) Session of the International Labour Conference for consideration and decision under the eighth item on its agenda, namely " the International Labour Organisation and technical co-operation ";

(c) to take all appropriate steps to ensure that the I.L.O. co-operates with U.N.O.I.D., within the field of competence of the International Labour Organisation, in connection with the industrial development of the developing countries; and

(d) to communicate the resolution to the Secretary-General of the United Nations and to the executive heads of the agencies within the United Nations system.

Programme of Meetings

Programme for 1966

The Governing Body, accepting with gratitude the invitations extended by the Norwegian Government and the Government of Singapore respectively, decided that

[1] See above p. 252, and, for the text of the resolution, Supplement I to this issue, pp. 39-41.

the Third Session of the Tripartite Subcommittee on Seafarers' Welfare of the Joint Maritime Commission should be held in Oslo from 3 to 7 October 1966 and that the 13th Session of the Asian Advisory Committee should be held in Singapore from 28 November to 7 December 1966.

The Governing Body confirmed the following programme of meetings for the remainder of 1966:

Date	Title of meeting	Place
12-23 September	Eighth Conference of American States Members of the I.L.O.	Ottawa
3-7 October	Tripartite Subcommittee on Seafarers' Welfare of the Joint Maritime Commission	Oslo
3-14 October	Petroleum Committee (Seventh Session)	Geneva
18-28 October	Eleventh International Conference of Labour Statisticians	,,
31 October-4 November .	Meeting of Experts on Discrimination in Employment and Occupation	,,
31 October-18 November [1]	167th Session of the Governing Body and its Committees	,,
21 November-2 December	Inland Transport Committee (Eighth Session)	,,
28 November-7 December	Asian Advisory Committee (13th Session)	Singapore

[1] Provisional dates.

Programme for 1967

The Governing Body approved the following draft programme of meetings for 1967, on the understanding that further proposals would be made by the Director-General in due course.

Date	Title of meeting	Place
13 February-3 March [1] . . .	168th Session of the Governing Body and its Committees	Geneva
9-22 March	Committee of Experts on the Application of Conventions and Recommendations (37th Session)	,,
April (ten days)	Meeting of Experts on Programmes of Adjustment to Automation and Advanced Technological Change	,,
April (14 days)	Technical Meeting of Experts on the Organisation and Planning of Vocational Training	,,

[1] Provisional dates.

Date	Title of meeting	Place
April-May (13 days)	Meeting of members of the Committee of Social Security Experts	Geneva
May (nine days)	Meeting of Consultants on Young Workers' Problems	,,
May (seven days)	Meeting of Experts on the Safe Use of Benzene and Benzenic Solvents	,,
26 May-3 June and immediately following the Conference [1]	169th Session of the Governing Body and its Committees	,,
7-29 June	51st Session of the International Labour Conference	,,
4-15 September	Tripartite Technical Meeting on the Woodworking Industries	,,
September-October (12 days)	Joint Maritime Commission (19th Session)	,,
September, October or December (12 days) . . .	Advisory Committee on Salaried Employees and Professional Workers (Sixth Session)	,,
October (ten days)	Meeting of Experts on the Scope, Methods and Use of Family Expenditure Surveys	,,
September-October (ten days)	Technical Meeting on the Rights of Trade Union Representatives at the Level of the Undertaking	,,
November (ten days) . . .	Meeting of Heads of Official Services for Occupational Safety and Health	,,
6-17 November [1]	170th Session of the Governing Body and its Committees	,,
September-October (12 days)	Meeting of Experts on Minimum Wage Fixing	,,

[1] Provisional dates.

Appointment of Governing Body Representatives on Various Bodies

Eighth Conference of American States Members of the I.L.O.

The Governing Body appointed the following delegation to represent it at the Eighth Conference of American States Members of the I.L.O. (Ottawa, 12-23 September 1966):

Government group :

The Chairman of the Governing Body (Mr. AOKI).
Mr. BARNES (United Kingdom).
Mr. AMEDE (Ethiopia).

Employers' group :

Mr. MARTÍNEZ ESPINO.
Substitute: Mr. YLLANES RAMOS.
Mr. ERDMANN.
Substitute: Mr. WAJID ALI.

Workers' group :

Mr. MÖRI.
Mr. KAPLANSKY.
Substitute: Mr. BORHA.

Special Intergovernmental Conference on the Status of Teachers

The Governing Body appointed the following members of the delegation to represent it at the Special Intergovernmental Conference on the Status of Teachers (Paris, 21 September-5 October 1966) [1]:

Government group :

Mr. BORISOV (U.S.S.R.).
Mr. DAVIES (Sierra Leone).

Employers' group :

Mr. WALINE.[2]

Workers' group :

Mr. BOLIN.
Mr. KANE.
Substitute: Mr. BEERMANN.

Petroleum Committee (Seventh Session)

The Governing Body appointed the following delegation to represent it at the Seventh Session of the Petroleum Committee (Geneva, 3-14 October 1966):

Chairman and Government group representative :

Mr. TABOR (Yugoslavia).

Employers' group :

Mr. YLLANES RAMOS.
Substitute: Mr. GONZALES BLANCO.

Workers' group :

Mr. GONZÁLEZ NAVARRO.
Substitute: Mr. SHITA.

[1] See *Official Bulletin*, Vol. XLIX, No. 2, Apr. 1966, p. 193.
[2] The Employers' group will submit a further nomination in due course.

Inland Transport Committee (Eighth Session)

The Governing Body appointed the Government and Worker members of the tripartite delegation [1] to represent it at the Eighth Session of the Inland Transport Committee (Geneva, 21 November-2 December 1966) as follows:

Chairman and Government group representative :

Mr. PURPURA (Italy).

Workers' group :

Mr. FAUPL.
Substitute: Mr. MÖRI.

Economic and Social Council and General Assembly of the United Nations

The Governing Body appointed the following tripartite delegation, consisting of nine members, for the Director-General to call upon to accompany him either to the Economic and Social Council or to the General Assembly of the United Nations as and when he might consider it necessary and appropriate[2]:

Government group :

The Chairman of the Governing Body (Mr. AOKI).
Mr. AMEDE (Ethiopia).
Mr. PARODI (France).

Employers' group :

Mr. TATA.
Mr. VÉGH GARZÓN.
Mr. VERSCHUEREN.
Substitute: Mr. OFURUM.

Workers' group :

Mr. BEN EZZEDINE.
Mr. KAPLANSKY.
Mr. SÁNCHEZ MADARIAGA.

Asian Advisory Committee

Note was taken of a request made on behalf of the Employers' group that the Financial and Administrative Committee of the Governing Body should consider at the 167th Session of the Governing Body the possibility of making provision for the sending of a Governing Body delegation to the 13th Session of the Asian Advisory Committee (Singapore, 28 November-7 December 1966).

DATE AND PLACE OF THE 167TH SESSION OF THE GOVERNING BODY

It was decided that the 167th Session of the Governing Body would meet in Geneva from Tuesday, 15 to Friday, 18 November 1966, and its Committees from Monday, 7 to Saturday, 12 November. The groups would meet on Monday, 14 November. It was further decided that the Working Party on the Programme and Structure of the Organisation would meet from Monday, 31 October to Friday, 4 November, and the Working Party of the Committee on Industrial Committees on Tuesday, 8 and Wednesday, 9 November.

[1] The Employers' group will submit its nomination at a later stage.

[2] See above pp. 259-260.

Meeting of Experts on the Outline and Content of the Encyclopaedia of Occupational Health and Safety

(Geneva, 18-26 April 1966)

Between 1930 and 1934 the I.L.O. published the encyclopaedia *Occupation and Health*, which was intended to provide those interested in the protection of the health of workers at their workplaces with a summary of the knowledge available on this subject. The encyclopaedia was well received and it was regarded as a most useful work of reference. Since then, however, knowledge in this field has developed, and parts of the encyclopaedia are now out of date.

In 1950 the special Committee set up by the Governing Body to study the programme of work of the Office in the field of industrial safety and health recommended that it should be brought up to date, and two panels of the Correspondence Committee on Occupational Safety and Health expressed the hope that the new edition would include articles on the main aspects of safety.

In November 1965 the Governing Body authorised the Director-General to undertake the preparation of a new edition of the encyclopaedia and to convene a meeting of experts to consider the outline and content of this work. The meeting was held at Geneva from 18 to 26 April 1966. It was made up of 15 experts, some of whom had been appointed in consultation with the Employers' and Workers' groups of the Governing Body. They came from the following countries: Brazil, Canada, France, Federal Republic of Germany, India, Italy, Mexico, Poland, Senegal, Sweden, Switzerland, U.S.S.R., United Arab Republic, United Kingdom and United States. The World Health Organisation, the High Authority of the European Coal and Steel Community and the European Economic Community were represented. The Permanent Commission and International Association on Occupational Health and the International Social Security Association sent observers. Professor H. DESOILLE was elected Chairman. Professors G. NOFER and A. M. EL KADEEM were appointed reporters.

The agenda of the Meeting, as approved by the Governing Body at its 163rd Session (November 1965) was as follows:

I. Determination of the list of articles.

II. Internal arrangement of the articles.

III. Criteria for the preparation of the articles.

IV. Other questions.

The Meeting had before it various working papers prepared by the Office, including one containing drafts of cards for about 950 articles. These papers were examined in detail by the Meeting, which made the necessary modifications and gave general instructions on the distribution, internal arrangement and length of the articles. It also recommended that the Office should be empowered to make such modifications and adaptations as it considered necessary to the contributions of the various authors with a view to harmonising the presentation of the articles, avoiding repetitions and making good any omissions.

Committee on Work on Plantations

(Fifth Session, Geneva, 2-13 May 1966)

The Fifth Session [1] of the Committee on Work on Plantations of the International Labour Organisation was held at the International Labour Office, Geneva, from 2 to 13 May 1966.

The agenda of the session, which had been fixed by the Governing Body of the International Labour Office at its 160th Session (November 1964), was as follows:

I. General Report, dealing particularly with—
   (a) action taken in the various countries in the light of the conclusions adopted at previous sessions of the Committee;
   (b) steps taken by the Office to follow up the studies and inquiries proposed by the Committee; and
   (c) recent events and developments in work on plantations.

II. Practical measures to promote good labour-management relations on plantations, with particular reference to—
   (a) recruitment and engagement of workers;
   (b) joint consultation; and
   (c) grievance procedures.

III. Labour inspection on plantations.

The International Labour Office had prepared a report on each of the above items.

In accordance with the decision of the Governing Body the Chairman of the Fifth Session was Mr. A. D. WILSON Jr., representative of the Government of the Republic of Liberia on the Governing Body. Mr. J. A. T. PERERA (Malaysia) represented the Employers' group of the Governing Body. Mr. F. AHMAD, who was appointed to represent the Workers' group of the Governing Body, was unable to attend owing to ill health.

The Committee elected two Vice-Chairmen: Mr. KONIAN KODJO (Ivory Coast) for the Employers' group and Mr. S. P. S. NATHAN (Malaysia) for the Workers' group.

The following 22 countries which are members of the Committee on Work on Plantations were represented at the Fifth Session:

Argentina	Ecuador	Mexico
Brazil	France	Pakistan
Cameroon	India	Peru
Central African Republic	Israel	Philippines
Ceylon	Ivory Coast	Tanzania
China	Kenya	Uganda
Costa Rica	Malaysia	United Arab Republic
Cuba		

[1] For the previous sessions see *Official Bulletin*, Vol. XXXIII, No. 4, 20 Dec. 1950, pp. 168-182; ibid., Vol. XXXVI, No. 2, 20 Aug. 1953; ibid., Vol. XXXVIII, 1955, No. 6; ibid., Vol. XLV, No. 2, Apr. 1962, pp. 111-118 and 137-161.

Burma, which is also a member of the Committee, was not able to send a delegation to attend the Fifth Session. Jamaica was represented at the meeting by an observer.

Representatives of the United Nations Conference on Trade and Development and the League of Arab States attended the session.

In addition, observers of the following non-governmental international organisations were present at the session:

International Confederation of Free Trade Unions.[1]

International Federation of Christian Trade Unions.[1]

International Federation of Plantation, Agricultural and Allied Workers.

International Union of Food and Allied Workers.

International Organisation of Employers.[1]

Organisation of Employers' Federations and Employers in Developing Countries.

World Federation of Trade Unions.[1]

The Committee was divided into two subcommittees for the examination of the two technical items on its agenda: a subcommittee on labour-management relations and a subcommittee on labour inspection on plantations. The Committee also set up a Steering Committee and a working party to consider the effect given to the conclusions and resolutions adopted by the Committee on Work on Plantations at its previous sessions.

The Committee held 11 plenary sittings, of which nine were devoted mainly to a general discussion of the problems before the session. At its eleventh sitting the Committee adopted the reports and conclusions submitted by its two subcommittees, along with nine resolutions.[2]

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[1] Organisation with consultative status.

[2] The text of the reports, conclusions and resolutions adopted by the Committee will be published in a later issue of the *Official Bulletin*, after consideration by the Governing Body.

Membership of the International Labour Organisation

GUYANA

Guyana became a Member of the International Labour Organisation by a decision of the International Labour Conference on 8 June 1966. The documents relating to the admission of Guyana are reproduced below:

LETTER FROM THE PRIME MINISTER OF GUYANA TO THE DIRECTOR-GENERAL OF THE INTERNATIONAL LABOUR OFFICE

Georgetown, 28 May 1966.

Sir,

I have the honour to apply, on behalf of the Government of Guyana, for membership of the International Labour Organisation under paragraph 4 of article 1 of the Constitution of the International Labour Organisation and request that this application be laid before the General Conference.

The Government of Guyana hereby accepts the obligations of the Constitution of the International Labour Organisation.

The Government of Guyana will bear its share of the expenses of the International Labour Organisation in accordance with the provisions of the Constitution of the Organisation, and will make the necessary arrangements concerning its financial contribution with the Governing Body.

The Government of Guyana recognises that it continues to be bound by the obligations entered into on behalf of the territory of Guyana by the United Kingdom in respect of the following Conventions:

No. 2. Unemployment, 1919;
No. 5. Minimum Age (Industry), 1919;
No. 7. Minimum Age (Sea), 1920;
No. 10. Minimum Age (Agriculture), 1921;
No. 11. Right of Association (Agriculture), 1921;
No. 12. Workmen's Compensation (Agriculture), 1921;
No. 15. Minimum Age (Trimmers and Stokers), 1921;
No. 19. Equality of Treatment (Accident Compensation), 1925;
No. 26. Minimum Wage-Fixing Machinery, 1928;
No. 29. Forced Labour, 1930;
No. 42. Workmen's Compensation (Occupational Diseases) (Revised), 1934;
No. 45. Underground Work (Women), 1935;
No. 50. Recruiting of Indigenous Workers, 1936;
No. 64. Contracts of Employment (Indigenous Workers), 1939;
No. 65. Penal Sanctions (Indigenous Workers), 1939;
No. 81. Labour Inspection, 1947;
No. 86. Contracts of Employment (Indigenous Workers), 1947;
No. 94. Labour Clauses (Public Contracts), 1949;
No. 95. Protection of Wages, 1949;
No. 97. Migration for Employment (Revised), 1949;
No. 98. Right to Organise and Collective Bargaining, 1949;
No. 105. Abolition of Forced Labour, 1957;
No. 108. Seafarers' Identity Documents, 1958;
No. 115. Radiation Protection, 1960.

The Government of Guyana undertakes to ratify in full immediately Convention No. 87 concerning freedom of association and protection of the right to organise, 1948, and to examine immediately the following Conventions, which had hitherto been applied with modifications, to ascertain whether it would be possible to eliminate the circumstances which originally made a modification necessary:

No. 8. Unemployment Indemnity (Shipwreck), 1920;
No. 17. Workmen's Compensation (Accidents), 1925;
No. 32. Protection against Accidents (Dockers) (Revised), 1932;
No. 58. Minimum Age (Sea) (Revised), 1936;
No. 59. Minimum Age (Industry) (Revised), 1937;
No. 63. Statistics of Wages and Hours of Work, 1938;
No. 88. Employment Service, 1948.

The Government of Guyana undertakes to examine, as early as possible, the following Conventions on which a decision had hitherto been reserved to determine whether it could remove the conditions which led to the original conclusion that a decision must be reserved:

No. 3. Maternity Protection, 1919;
No. 14. Weekly Rest (Industry), 1921;
No. 16. Medical Examination of Young Persons (Sea), 1921;
No. 22. Seamen's Articles of Agreement, 1926;
No. 24. Sickness Insurance (Industry), 1927;
No. 25. Sickness Insurance (Agriculture), 1927;
No. 27. Marking of Weight (Packages Transported by Vessels), 1929;
No. 35. Old-Age Insurance (Industry), etc., 1933;
No. 36. Old-Age Insurance (Agriculture), 1933;
No. 37. Invalidity Insurance (Industry), etc., 1933;
No. 38. Invalidity Insurance (Agriculture), 1933;
No. 39. Survivors' Insurance (Industry, etc.), 1933;
No. 40. Survivors' Insurance (Agriculture), 1933;
No. 44. Unemployment Provision, 1934;
No. 56. Sickness Insurance (Sea), 1936;
No. 68. Food and Catering (Ships' Crews), 1946;
No. 69. Certification of Ships' Cooks, 1946;
No. 70. Social Security (Seafarers), 1946;
No. 74. Certification of Able Seamen, 1946;
No. 77. Medical Examination of Young Persons (Industry), 1946;
No. 89. Night Work (Women) (Revised), 1948;
No. 90. Night Work of Young Persons (Industry) (Revised), 1948;
No. 92. Accommodation of Crews (Revised), 1949;
No. 99. Minimum Wage Fixing Machinery (Agriculture), 1951;
No. 101. Holidays with Pay (Agriculture), 1952;
No. 102. Social Security (Minimum Standards), 1952.

The Government of Guyana undertakes to continue to apply the non-metropolitan Conventions which the United Kingdom had applied hitherto, until it is able to ratify the corresponding " metropolitan " Conventions.

(Signed) L. F. S. BURNHAM,
Prime Minister.

EXTRACTS FROM THE FIFTH REPORT OF THE SELECTION COMMITTEE TO THE 50TH SESSION OF THE INTERNATIONAL LABOUR CONFERENCE

. . . . . .

2. Since Guyana is not at present a Member of the United Nations, its admission to membership of the International Labour Organisation is governed by paragraph 4 of article 1 of the Constitution of the Organisation, which provides as follows:

> 4. The General Conference of the International Labour Organisation may also admit Members to the Organisation by a vote concurred in by two-thirds of the delegates attending the session, including two-thirds of the Government delegates present and voting. Such admission shall take effect on the communication to the Director-General of the International Labour Office by the government of the new Member of its formal acceptance of the obligations of the Constitution of the Organisation.

3. The independence of Guyana was officially proclaimed on 26 May 1966.

4. From the foregoing it appears that Guyana is today a fully self-governing State which has the same international status as the other Members of the International Labour Organisation. There is, therefore, no doubt that the applicant Government has the international status necessary to enable it to discharge the obligations involved in membership of the International Labour Organisation.

5. The Conference will note that in its letter of 28 May 1966 the Government of Guyana has already communicated to the Director-General of the International Labour Office the formal acceptance by that Government of the obligations of the Constitution of the International Labour Organisation.

6. The Conference will also note that in the same letter the Government of Guyana recognises that Guyana remains bound by the obligations of the international labour Conventions which had formerly been declared applicable by the United Kingdom to the territory of Guyana; that it undertakes to ratify immediately the Freedom of Association and Protection of the Right to Organise Convention, 1948; that it undertakes to examine a number of further Conventions with a view to ratification; and that it undertakes to continue to apply the non-metropolitan Conventions which the United Kingdom had applied hitherto until it has been able to ratify the corresponding " metropolitan " Conventions.

7. The representative of the Government of Guyana assured the Subcommittee appointed by the Selection Committee to examine the application that it is the policy of the Government of Guyana to respect the freedom and independence of employers' and workers' organisations. These organisations elect their officers freely, are financed by their own membership and may form national federations which can affiliate freely with international organisations.

8. The Selection Committee accordingly submits to the Conference for adoption the following resolution:

[Here follows the text of the resolution.] [1]

At its ninth plenary sitting, held on 8 June 1966, the International Labour Conference adopted by 376 votes to 0, with no abstentions, the resolution concerning the admission of Guyana to the International Labour Organisation.

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[1] For the text of the resolution see Supplement I to this issue, p. 38.

Implementation of Instruments Adopted by the International Labour Conference [1]

Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1, 2 and 3), 1964 [2]

Ratifications or Acceptances

The following ratifications or acceptances of the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1, 2 and 3), 1964, have been communicated to the Director-General of the International Labour Office.

ETHIOPIA

The ratification by Ethiopia of the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1, 2 and 3), 1964, was received by the Director-General of the International Labour Office on 11 June 1966.

The text of the instrument of ratification is as follows:

Conquering Lion of the Tribe of Judah,
HAILE SELASSIE I,
Elect of God, Emperor of Ethiopia,

To all to whom these presents shall come, greetings:

Be it known that, whereas the Instruments for the Amendment of the Constitution of the International Labour Organisation (Nos. 1, 2 and 3), 1964, adopted by the Forty-eighth Session of the International Labour Conference, Geneva, 1964, as well as the Conventions No. 2 of 1919, 111 of 1958, and 116 of 1961 of the International Labour Organisation have been submitted to Us for ratification;

And whereas, in accordance with the provisions of Our Constitution the ratification of the aforementioned amendments and Conventions is reserved to Us; and that no other formalities are required for the said amendments and Conventions to be binding upon the Empire of Ethiopia;

Having seen and examined the text of the Amendments and Conventions;

Now, therefore, We declare by these presents, that We do hereby approve and ratify the said Amendments and Conventions and declare the same to be binding upon the Empire of Ethiopia.

In witness whereof We have hereunto set Our hand and caused to be affixed Our great seal.

Given at Our Imperial Court at Addis Ababa, on this the 23rd day of the month of Ganbot in the year of Our Lord one thousand nine hundred and fifty-eight (Ethiopian Calendar) corresponding to the 31st of May in the year one thousand nine hundred and sixty-six (Gregorian Calendar) and of Our reign the thirty-fifth.

(Signed) HAILE SELASSIE I,
Emperor.

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[1] Report III (Part III), which has been laid before every session of the Conference since 1950, contains a summary of the information supplied by governments in accordance with article 19 of the Constitution of the International Labour Organisation on the measures taken by member States to bring Conventions and Recommendations before the competent authorities and on relevant action taken by these authorities.

[2] For the text of these Instruments of Amendment see *Official Bulletin*, Vol. XLVII, No. 3, July 1964, Supplement I, pp. 5-12.

NIGERIA

The ratification by Nigeria of the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1, 2 and 3), 1964, was received by the Director-General of the International Labour Office on 26 May 1966.

The text of the instrument of ratification of Instrument of Amendment No. 1 is as follows:

Whereas the Constitution of the International Labour Organisation Instrument of Amendment (No. 1), 1964, was adopted by the Conference at its Forty-eighth Session held at Geneva on July 6th, one thousand nine hundred and sixty-four, and is subject to ratification:

And whereas the Government of the Federal Republic of Nigeria in accordance with its constitutional procedure has agreed to confirm and ratify the Instrument of Amendment (No. 1), 1964, and undertake faithfully to perform and carry out all the stipulations therein contained:

And whereas it is provided in Article 5 (1) of the said Instrument that the formal ratification shall be communicated to the Director-General of the International Labour Office:

And whereas by virtue of the Constitution (Suspension and Modification) Decree, 1966, the Federal Executive Council has delegated to me the power to execute this Instrument:

Now therefore, I, Edwin Ogebe OGBU, Permanent Secretary, Ministry of External Affairs, hereby confirm and ratify the International Labour Organisation Instrument of Amendment (No. 1), 1964, on behalf of the Government of the Federal Republic of Nigeria.

Done at Lagos this seventh day of May 1966.

(Signed) Edwin Ogebe OGBU,
Permanent Secretary,
Ministry of External Affairs.

The texts of the instruments of ratification of Instruments of Amendment Nos. 2 and 3 are in similar terms.

Ratifications of International Labour Conventions and Declarations concerning the Application of Conventions to Non-Metropolitan Territories

[NOTE. *The publication of information concerning the ratification and application of international labour Conventions does not imply any expression of views by the International Labour Office on the legal status of the State having communicated a ratification or declaration, or on its authority over the territories in respect of which such ratification or declaration is made ; in certain cases these may present problems on which the I.L.O. is not competent to express an opinion.*]

AUSTRALIA

Declarations concerning the Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947 (No. 85).

The Director-General of the International Labour Office registered on 20 June 1966, declarations, communicated under article 35 of the Constitution of the International Labour Organisation, concerning the application without modification of Convention No. 85 to New Guinea and Papua.[1]

CEYLON

Ratification of the Night Work (Women) Convention (Revised), 1948 (No. 89).

The ratification by Ceylon of Convention No. 89 was registered by the Director-General of the International Labour Office on 31 March 1966.

[1] These declarations supersede declarations of application with modifications of 30 September 1954.

The communication which constitutes the instrument of ratification of this Convention is as follows:

(Translation)

I have the honour to refer to Convention No. 89 concerning night work of women employed in industry (revised 1948) adopted by the Conference at its Thirty-first Session, San Francisco, 9 July 1948, and to inform you that the Government of Ceylon, having considered the Convention aforesaid, do hereby, in terms of article 19 (5) *(d)* of the Constitution of the International Labour Organisation, confirm and ratify the same, and undertake faithfully to perform and carry out all the stipulations therein contained.

In witness thereof I have set my seal at Colombo this twenty-fifth day of March in the year one thousand nine hundred and sixty-six.

I have the honour to be Sir, etc.

(Signed) J. R. JAYEWARDENE,
Acting Chairman of Cabinet and Parliamentary Secretary to the Prime Minister and Minister of Defence and External Affairs.

CHAD

Ratification of the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

The ratification by Chad of Conventions Nos. 100 and 111 was registered by the Director-General of the International Labour Office on 29 March 1966.

The communication from the Minister of Labour, Youth and Sport, which constitutes the instrument of ratification of these Conventions, is in similar terms to the communication which constitutes the instrument of ratification of the Labour Inspection Convention, 1947 (No. 81).[1]

CYPRUS

Ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

The ratification by Cyprus of Conventions Nos. 87 and 98 was registered by the Director-General of the International Labour Office on 24 May 1966.

The communication from the Minister of Labour and Social Insurance which constitutes the instrument of ratification of Convention No. 87 is as follows:

Nicosia, 13 May 1966.

Sir,

I have the honour to inform you that the Government of the Republic of Cyprus, having considered the International Labour Convention No. 87 concerning freedom of association and protection of the right to organise and having completed all procedures for ratification of international Conventions in accordance with our Constitution and Municipal Law, hereby confirm and ratify the same and undertake, in accordance with article 19, paragraph 5 *(d)*, of the Constitution of the International Labour Organisation, faithfully to perform and carry out all the stipulations therein contained.

In witness whereof, I have signed these presents at Nicosia, Cyprus, on the 13th day of May 1966.

Yours faithfully,

(Signed) Tassos PAPADOPOULOS,
Minister of Labour and Social Insurance.

The communication which constitutes the instrument of ratification of Convention No. 98 is in similar terms.

[1] See *Official Bulletin*, Vol. XLIX, No. 1, Jan. 1966, pp. 39-40.

Ethiopia

Ratification of the Unemployment Convention, 1919 (No. 2); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); and the Final Articles Revision Convention, 1961 (No. 116).

The ratification by Ethiopia of Conventions Nos. 2, 111 and 116 was registered by the Director-General of the International Labour Office on 11 June 1966.[1]

Guyana

Ratification of the Unemployment Convention, 1919 (No. 2); the Minimum Age (Industry) Convention, 1919 (No. 5); the Minimum Age (Sea) Convention, 1920 (No. 7); the Minimum Age (Agriculture) Convention, 1921 (No. 10); the Right of Association (Agriculture) Convention, 1921 (No. 11); the Workmen's Compensation (Agriculture) Convention, 1921 (No. 12); the Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15); the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19); the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26); the Forced Labour Convention, 1930 (No. 29); the Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42); the Underground Work (Women) Convention, 1935 (No. 45); the Recruiting of Indigenous Workers Convention, 1936 (No. 50); the Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64); the Penal Sanctions (Indigenous Workers) Convention, 1939 (No. 65); the Labour Inspection Convention, 1947 (No. 81) [2]; the Contracts of Employment (Indigenous Workers) Convention, 1947 (No. 86); the Labour Clauses (Public Contracts) Convention, 1949 (No. 94); the Protection of Wages Convention, 1949 (No. 95); the Migration for Employment Convention (Revised), 1949 (No. 97) [3]; the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Abolition of Forced Labour Convention, 1957 (No. 105); the Seafarers' Identity Documents Convention, 1958 (No. 108); and the Radiation Protection Convention, 1960 (No. 115).

At the time of its admission into the International Labour Organisation, on 8 June 1966 [4], the Government of Guyana recognised that it continued to be bound by the obligations entered into by the United Kingdom on behalf of the territory of Guyana in respect of Conventions Nos. 2, 5, 7, 10, 11, 12, 15, 19, 26, 29, 42, 45, 50, 64, 65, 81 [2], 86, 94, 95, 97 [3], 98, 105, 108 and 115.

The ratification of these Conventions on behalf of Guyana was therefore registered by the Director-General of the International Labour Office on 8 June 1966.

The Government of Guyana also undertakes to ratify immediately the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and to continue to apply the Conventions relating to non-metropolitan territories which the United Kingdom previously applied, until it is able to ratify the corresponding Conventions of general application.

Iraq

Ratification of the Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8); the White Lead (Painting) Convention, 1921 (No. 13); the Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15); and the Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16).

The ratification by Iraq of Conventions Nos. 8, 13, 15 and 16 was registered by the Director-General of the International Labour Office on 19 April 1966.

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[1] See above the text of the instrument of ratification of these Conventions, p. 295.

[2] Excluding Part II.

[3] Excluding Annexes I, II and III.

[4] See above pp. 292-294.

The communication from the Minister of Labour and Social Affairs which constitutes the instrument of ratification of these Conventions is as follows:

Baghdad, 12 April 1966.

Dear Mr. Morse,

Reference is kindly made to our letter No. 25956 dated 31.7.1965.

In the report attached to the above-mentioned letter you were kindly informed that the following Conventions, along with their respective draft laws of ratification, had been submitted to the Council of Ministers for final approval:

1. Unemployment Indemnity (Shipwreck) Convention, No. 8, 1920.
2. White Lead (Painting) Convention, No. 13, 1921.
3. Minimum Age (Trimmers and Stokers) Convention, No. 15, 1921.
4. Examination of Young Persons (Sea) Convention, No. 16, 1921.

Now that the Council of Ministers has approved the ratification of those instruments, I have the honour to enclose herewith Laws Nos. 178, 176, 171, 177 for 1965 concerning the ratification of the above-mentioned Conventions respectively.

I avail myself of this opportunity to renew the assurance of my highest consideration.

Yours faithfully,

(Signed) Faris Nasser AL-HASSAN,
Minister of Labour and Social Affairs.

The texts of the laws mentioned in this communication are similar to those of Law No. 110 of 1965 concerning the ratification of the Hours of Work (Industry) Convention, 1919 (No. 1).[1]

JORDAN

Ratification of the Forced Labour Convention, 1930 (No. 29); the Minimum Age (Underground Work) Convention, 1965 (No. 123); and the Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124).

The ratification by Jordan of Conventions Nos. 29, 123 and 124 was registered by the Director-General of the International Labour Office on 6 June 1966.

The texts of the communications from the Minister of Social Affairs and Labour which constitute the instruments of ratification of these Conventions are as follows:

2 June 1966.

Sir,

Further to letter No. S11/200/12533 dated 25 November 1964 of the Ministry of Foreign Affairs, I have the honour to inform you that the Government of the Hashemite Kingdom of Jordan, having considered the Forced Labour Convention, 1930 (No. 29), hereby confirm and ratify the same and undertake, in accordance with article 19, paragraph 5 *(d)*, of the Constitution of the International Labour Organisation, faithfully to perform and carry out all the stipulations therein contained.

The Decision of the Council of Ministers, No. 745, dated 31 October 1964, regarding the ratification of this Convention, was approved by Royal Assent.

With the expression of my highest consideration,

(Signed) Saleh BURGAN,
Minister of Social Affairs and Labour.

2 June 1966.

Sir,

I have the honour to inform you that the Government of the Hashemite Kingdom of Jordan, having considered the Minimum Age (Underground Work) Convention, 1965 (No. 123), hereby confirm and ratify the same and undertake, in accordance with article 19, paragraph 5, of the Constitution of the International Labour Organisation, faithfully to perform and carry out all the stipulations therein contained.

[1] See *Official Bulletin*, Vol. XLVIII, No. 4, Oct. 1965, pp. 326-327.

I have also the honour to append hereto, pursuant to Article 2, paragraph 2, of the Convention, a declaration prescribing the minimum age for admission of persons to employment underground in mines.

The Royal Decree (No. 298) approving the ratification of this Convention as published in the Official Gazette of 10 April 1966 (No. 1913) has already been communicated to you.

With the expression of my highest consideration,

(Signed) Saleh BURGAN,
Minister of Social Affairs and Labour.

2 June 1966.

Sir,

I have the honour to inform you, in accordance with Article 2, paragraph 2, of the Minimum Age (Underground Work) Convention, 1965 (No. 123), that the minimum age for admission of persons to employment underground in mines in Jordan is sixteen years.

With the expression of my highest consideration,

(Signed) Saleh BURGAN,
Minister of Social Affairs and Labour.

2 June 1966.

Sir,

I have the honour to inform you that the Government of the Hashemite Kingdom of Jordan, having considered the Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124), hereby confirm and ratify the same and undertake, in accordance with article 19, paragraph 5 *(d)*, of the Constitution of the International Labour Organisation, faithfully to perform and carry out all the stipulations therein contained.

The Royal Decree (No. 298) approving the ratification of this Convention as published in the Official Gazette of 10 April 1966 (No. 1913) has already been communicated to you.

With the expression of my highest consideration,

(Signed) Saleh BURGAN,
Minister of Social Affairs and Labour.

MALAWI

Ratification of the Recruiting of Indigenous Workers Convention, 1936 (No. 50), and the Contracts of Employment (Indigenous Workers) Convention, 1939 (No. 64).

The ratification by Malawi of Conventions Nos. 50 and 64 was registered by the Director-General of the International Labour Office on 7 June 1966.

The text of the instrument of ratification of these Conventions is as follows:

Whereas Malawi became a member of the International Labour Organisation on 22nd March, 1965;

And whereas the Government of Malawi wishes to ratify the following two Conventions of the International Labour Organisation:

No. 50 Recruiting of Indigenous Workers, 1936, and

No. 64 Contracts of Employment (Indigenous Workers), 1939.

Now therefore I, Hastings Kamuzu BANDA, Prime Minister and Minister of External Affairs of Malawi, for and on behalf of the Government of Malawi do hereby confirm and notify, in accordance with the provisions of paragraph 5 *(d)* of article 19 of the Constitution of the International Labour Organisation, that the Government of Malawi ratifies the said Conventions and undertakes faithfully to perform and to carry out all the stipulations therein contained.

Given under my hand at Zomba this 26th day of May, 1966.

(Signed) H. Kamuzu BANDA,
Prime Minister
and
Minister of External Affairs.

NORWAY

Ratification of the Sickness Insurance (Sea) Convention, 1936 (No. 56); the Hygiene (Commerce and Offices) Convention, 1964 (No. 120); and the Employment Policy Convention, 1964 (No. 122).

The ratification by Norway of Conventions Nos. 56, 120 and 122 was registered by the Director-General of the International Labour Office on 6 June 1966.

The text of the instrument of ratification of Convention No. 56 is as follows:

(Translation)

We, OLAV,
King of Norway,
Make known,

That having seen and examined the Convention concerning sickness insurance for seamen, adopted by the General Conference of the International Labour Organisation at its Twenty-first Session in Geneva in 1936,

We hereby approve, ratify and confirm the said Convention, promising to have it observed according to its form and contents.

In witness whereof We have signed the present instrument of ratification and caused the seal of the Realm to be affixed thereto.

Given at the Royal Palace in Oslo, this twenty-fifth day of March, one thousand nine hundred and sixty-six.

In the absence of His Majesty the King,

(Signed) HARALD.
(Countersigned) [illegible.]

The texts of the instruments of ratification of Conventions Nos. 120 and 122 are in similar terms.

PANAMA

Ratification of the Forced Labour Convention, 1930 (No. 29); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Abolition of Forced Labour Convention, 1957 (No. 105); and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

The ratification by Panama of Conventions Nos. 29, 98, 105 and 111 was registered by the Director-General of the International Labour Office on 16 May 1966.

The text of the instrument of ratification of these Conventions is as follows:

(Translation)

Marco A. ROBLES,
President of the Republic of Panama,
To all who may see these presents, Greeting:

Whereas the Republic of Panama is a signatory of the following Conventions adopted by the International Labour Conference: the Forced Labour Convention, 1930 (No. 29); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Abolition of Forced Labour Convention, 1957 (No. 105); and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111),

And whereas the Republic of Panama has accepted the foregoing instruments by means of Act No. 23 dated 1 February 1966;

I hereby declare, in accordance with the Constitution of the International Labour Organisation and the powers conferred upon me by the National Constitution, that the said instruments are accepted by the Republic of Panama and will be observed and carried out as a matter of national honour.

Wherefore I sign the present ratification, sealed with the Seal of the State and countersigned by the Minister of Foreign Affairs in Panama City, on the 29th day of April, nineteen hundred and sixty-six (1966).

(Signed) Marco A. ROBLES,
Minister of Foreign Affairs.
(Countersigned) Fernando ELETA A.

POLAND

Ratification of the Minimum Age (Fishermen) Convention, 1959 (No. 112).

The ratification by Poland of Convention No. 112 was registered by the Director-General of the International Labour Office on 20 June 1966.

The text of the instrument of ratification of this Convention is in terms similar to those of the instrument of ratification of the Radiation Protection Convention, 1960 (No. 115).[1]

SENEGAL

Ratification of the Hygiene (Commerce and Offices) Convention, 1964 (No. 120); the Employment Injury Benefits Convention, 1964 (No. 121); and the Employment Policy Convention, 1964 (No. 122).

The ratification by Senegal of Conventions Nos. 120, 121 and 122 was registered by the Director-General of the International Labour Office on 25 April 1966.

The instrument of ratification of Convention No. 120 is as follows:

(Translation)

We, Léopold Sédar SENGHOR,
President of the Republic of Senegal,
To all who may see these presents, Greeting !

Having seen and examined the said Convention,

Have approved and do approve it as a whole and in each of its parts in pursuance of articles 76 and 77 of our Constitution and Law No. 66-14 of 18 January 1966.

Declare that it is accepted, ratified and confirmed and undertake that it will be faithfully observed.

Wherefore we have caused the seal of the Republic of Senegal to be affixed hereto.

Dakar, 15 March 1966.

(Signed) Léopold Sédar SENGHOR.

The texts of the instruments of ratification of Conventions Nos. 121 and 122 are in similar terms.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Declarations concerning the Minimum Age (Agriculture) Convention, 1921 (No. 10); the Workmen's Compensation (Accidents) Convention, 1925 (No. 17); the Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42); the Labour Inspection Convention, 1947 (No. 81); the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Holidays with Pay (Agriculture) Convention, 1952 (No. 101); and the Radiation Protection Convention, 1960 (No. 115).

The Director-General of the International Labour Office registered, on the dates indicated below, the following declarations, communicated under article 35 of the Constitution of the International Labour Organisation, concerning the application to certain non-metropolitan territories of the international labour Conventions mentioned below:

Convention No. 10.

Applicable with the following modifications: Antigua—27 April 1966: *Article 1.* Applicable only with regard to children under 12 years of age.

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[1] See *Official Bulletin*, Vol. XLVIII, No. 2, Apr. 1965, p. 183.

Convention No. 17.

Applicable with the following modifications: Bermuda [1]—17 June 1966:

Article 9.

(a) (i) Compensation for the reasonable cost of hospital, bed and board and services of a medical nature incurred by reason of confinement in hospital is limited to a maximum of 56 days' hospitalisation.

(ii) Compensation for the reasonable cost of medical expenses in respect of medical services in connection with medical treatment, skilled nursing services, ambulance charges and the supply of medicines is limited to an aggregate amount of £100.

(iii) Compensation for the reasonable cost of transporting, other than by ambulance, the worker to and from the place of treatment is limited to £15.

(b) The employer is required to defray reasonable expenses which are based on the charges approved by the Trustees of the King Edward VII Memorial Hospital.

Article 10.

(a) Compensation for the reasonable cost of the supply, maintenance, repair and renewal of non-articulated limbs or any other artificial appliances is limited to an aggregate amount of £100.

(b) No other conditions for the supply, renewal or replacement of such artificial limbs and appliances by the award of additional compensation have been made.

(c) There are no supervisory measures to prevent abuses and to ensure that the additional compensation is utilised for the proper purpose.

Convention No. 42.

Applicable with the following modifications: St. Lucia [2]—31 March 1966: *Article 2.* Excluded from the schedule of diseases: poisoning by mercury; phosphorus poisoning; arsenic poisoning; and poisoning by benzene.

Convention No. 81.

Applicable without modification: Solomon Islands [3]—26 May 1966.

Convention No. 87.

Applicable with the following modifications: Fiji [4]—26 May 1966: *Articles 2 and 3.* Excluded. St. Helena [5]—26 May 1966: *Article 3.* The funds of a trade union may be expended only for objects specified in national laws.

Convention No. 98.

Applicable without modification: St. Helena [5]—17 June 1966.

Convention No. 101.

Applicable with the following modifications: Swaziland [6]—27 April 1966: *Articles 8 and 9.* Excluded.

Convention No. 115.

Decision reserved: Dominica—26 May 1966.

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[1] This declaration is communicated in accordance with the provisions of Article 1 (4) of the Labour Standards (Non-Metropolitan Territories) Convention, 1947 (No. 83), and will become effective when this Convention comes into force. It supersedes the declaration of decision reserved registered on 27 March 1950.

[2] This declaration supersedes a declaration of application with modifications of 11 November 1964.

[3] Including Part II. This declaration supersedes a declaration of 24 September 1965 by which Part II was excluded.

[4] This declaration supersedes a declaration of decision reserved of 29 December 1958.

[5] This declaration supersedes a declaration of decision reserved of 19 June 1958.

[6] This declaration supersedes a declaration of decision reserved of 19 January 1959.

European Convention concerning the Social Security of Workers Engaged in International Transport [1]

Ratification by Italy

On 30 March 1966 the Director-General of the International Labour Office registered the ratification by Italy of the European Convention concerning the Social Security of Workers Engaged in International Transport.

The text of the instrument of ratification is as follows:

(Translation)

The President of the Republic

To all who may see these presents, greeting!

A European Convention concerning the social security of workers engaged in international transport having been adopted in Geneva on 9 July 1956, which is worded as follows:

[Here follows the text of the Convention.]

We, having seen the said Convention and approved it as a whole and in each of its parts, have accepted, ratified and confirmed it and by these presents hereby accept, ratify and confirm it and undertake to observe it and to ensure that it is faithfully observed.

Wherefore we have signed these presents with our own hand and caused our seal to be affixed hereto.

Given in Rome on the tenth day of March in the year nineteen hundred and sixty-six.

(Signed) Giuseppe Saragat.

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[1] See *Official Bulletin*, Vol. XXXIX, 1956, No. 6, pp. 409-418.

Office Publications and Documents

International Labour Review

The following, in addition to the regular section " Current Information " and the Bibliography, are the contents of recent issues of the *International Labour Review.*

April 1966 :

Participation by workers and employers in economic and social planning: some introductory remarks.
Participation by workers' and employers' organisations in planning in France, by Jean-Jacques Bonnaud.
Manpower and employment in Brazil, by A. B. Aráoz.
Women's occupational situation in Scandinavia, by Harriet Holter.
International Labour Conventions and the U.S.S.R., by S. A. Ivanov.
Judicial decisions in the field of labour law.

May 1966 :

" The Church in the world ": a contribution to pluralism, by J. Joblin, S. J.
Equality of opportunity in a multi-racial society: Brazil, by R. A. Métall and M. Paranhos da Silva.
Payroll and employment taxation and the economics of employment in Hungary, by Sándor Balázsy.
The Education Corps in Iran: a survey of its social and economic aspects, by Richard Blandy and Mahyar Nashat.
Some determinants of the level of frictional unemployment, by Vladimir Stoikov.

June 1966 :

The contribution of co-operation and trade unionism to improved urban-rural relations, by Yair Levy.
Sedentarisation of the nomads of Central Asia, including Kazakhstan, under the Soviet régime, by T. Zhdanko.
Collaboration between the authorities and occupational organisations in Luxembourg, by Georges Als.
Urban employment in Brazil, by Manuel Diégues Júnior.

July 1966 :

Manpower mobilisation and economic growth: an assessment of Moroccan and Tunisian experience, by J. P. Arlès.
Evolution of the incentives system in U.S.S.R. industry, by M. Kabaj.
Needs and aspirations of married women workers in France, by Andrée Michel.
Trade unions and economic planning in Ireland, by Charles McCarthy.

Legislative Series

The March-April 1966 issue of the *Legislative Series* contains texts promulgated in 1964-65 dealing with the following subjects.

Labour legislation :

Czechoslovakia 1 (1965): Labour Code.
Trinidad and Tobago 1 (1965): Industrial stabilisation.

United States 2 (1965): Manpower.
Yugoslavia 1 (1965): Minimum personal incomes; 2 (1965): Placement; 5 (1965): Hours of work.

Social security legislation :

Turkey 1 (1964): Social insurance.
United Arab Republic 3 (1964): Social insurance.

The May-June 1966 issue contains texts promulgated in 1964-65 dealing with the following subjects.

Labour legislation :

Brazil 2 (1964): Wage policy.
Chile 1 (1965): Fishermen.
Hungary 1 (1964): Labour Code (amendments); 2 (1964): Placement.
Switzerland 1 (1964): Work in industry, handicrafts and commerce.
Yugoslavia 3 (1964): Workers' self-management; 4 (1965): Employment relationships.
Zambia 1 (1964): Apprenticeship.

Social security legislation :

Brazil 3 (1964): Occupational diseases.
Colombia 1 (1964): Employment injury insurance.
New Zealand 1 (1964): Social security.

These two issues also contain lists of recent labour legislation.

Bulletin of Labour Statistics

The *Bulletin of Labour Statistics* contains the usual data on employment, unemployment, wages, hours of work and consumer prices.[1]

The present number also contains the results of the I.L.O. 1965 October Inquiry on hourly wages of adult wage earners in selected occupations (Part I), salaries and normal hours of work of employees in selected occupations (Part II) and retail prices of selected consumer goods (Part III).

Minutes of the Governing Body 161st Session [2]

This volume contains a record of the discussions of the Governing Body, the documents relating to the various items on the agenda, and the decisions taken at its 161st Session (1-5 March 1965).

Documents of the International Labour Conference (50th Session)

In preparation for the 50th Session of the International Labour Conference (June 1966) the Office published the following reports:

Draft Budget: Programme and Budget Proposals 1967 and Other Financial Questions [3]

The report contains eight sections. Each section contains, as appropriate, notes on action taken by the Governing Body, information on relevant items submitted or to be

[1] *Bulletin of Labour Statistics*, 2nd quarter, 1966 (Geneva, I.L.O., 1966), 181 pp. Price: 90 cents; 6s.3d.

[2] *Minutes of the 161st Session of the Governing Body* (Geneva, 1-5 March 1965) (Geneva, I.L.O., 1966). ix + 143 pp. Annual subscription: $6; 42s.

[3] *Draft Budget: Programme and Budget Proposals 1967 and Other Financial Questions*, Report II, International Labour Conference, 50th Session, Geneva, 1966 (Geneva, I.L.O., 1966). 121 pp. Price: $2.50; 17s.

submitted to the General Conference, factual statements on financial or budgetary questions of concern to the Conference, and extracts from relevant documentation.

Summary of Reports on Ratified Conventions [1]

This volume represents the first part of the report submitted in connection with the third item on the agenda: "Information and reports on the application of Conventions and Recommendations." [2]

Article 22 of the Constitution of the I.L.O. requires each Member to agree to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. Article 23 provides that the Director-General of the I.L.O. shall lay before the Conference a summary of the reports communicated in pursuance of article 22.

The present summary, which covers the period from 1 July 1963 to 30 June 1965, contains information on the Conventions in force at that time, and in certain cases information received too late for inclusion in last year's summary. A table indicating ratifications and, in the case of non-metropolitan territories, declarations of application, appears under each Convention. Voluntary reports (in respect of Conventions which are not in force for the countries concerned) supplied by certain governments are also summarised.

The present publication conforms to a decision taken by the Governing Body at its 134th Session (March 1957) laying down new criteria for the inclusion of information in the summary of annual reports, in order to reduce its size and to focus attention on the detailed particulars given in the first reports submitted following ratification and on important changes in the subsequent application of a Convention. This volume includes, therefore, as regards first reports, the principal legislation and regulations giving effect to a Convention, information on the manner in which each of its substantive Articles is implemented and a brief record on the way in which it is applied in practice. In the case of all subsequent reports mention is made only of information supplied in response to a request or an observation of the Committee of Experts or of the Conference Committee on the Application of Conventions and Recommendations (unless these replies have already appeared in the reports of one or the other of these Committees, in which case the summary merely refers to the relevant document), or of important changes which have occurred in the legislation or practice of a country. Information on practical application (statistics, etc.) and on changes of secondary importance is no longer summarised, but separate mention is made, under each Convention, of countries which have supplied such data and of countries which refer to or repeat information previously reported.

As decided by the Governing Body at its 142nd Session and endorsed by the Conference at its 43rd Session (both held in June 1959), and confirmed by these bodies in 1961, governments need supply detailed reports only every two years. For this purpose Conventions in force have been divided into two groups, and detailed reports are requested in alternate years on one of these groups. This year's summary covers primarily the reports on the Conventions in the first of these groups as well as other reports which are also due under the above-mentioned decision (first reports or cases of serious divergences between the national law and practice and the provisions of a ratified Convention observed by the Committee of Experts or the Conference Committee).

The summaries of reports on the application of Conventions in non-metropolitan territories are printed in a separate section, following that concerning metropolitan countries.

Information supplied by the governments of new member States, which is summarised in the metropolitan countries section of the report, is limited to particulars not previously included in the non-metropolitan territories section of the report. As indicated above, these reports cover a period ending 30 June 1965.

At the end of the respective sections of the summary information is given regarding the communication by governments of copies of their reports to the representative organisations of employers and workers.

The summary covers the reports received by the Office up to 15 February 1966.

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[1] *Information and Reports on the Application of Conventions and Recommendations: Summary o Reports on Ratified Conventions (Articles 22 and 35 of the Constitution)*, Report III (Part I), International Labour Conference, 50th Session, Geneva, 1966 (Geneva, I.L.O., 1966). iv + 423 pp. Price: $4.50; 31s. 6d.

[2] For Part II see *Official Bulletin*, Vol. XLIX, No. 1, Jan. 1966, p. 47.

Summary of Information relating to the Submission to the Competent Authorities of Conventions and Recommendations Adopted by the International Labour Conference [1]

In accordance with article 23 of the Constitution a summary of the information communicated in pursuance of article 19 is submitted to the Conference. The present summary contains information relating to the submission to the competent authorities of the Conventions and Recommendations adopted by the Conference at its 48th Session (June 1964).

The present report also contains a summary of additional information relating to the submission to the competent authorities of the Conventions and Recommendations adopted by the Conference at its 31st to 47th Sessions (1948 to 1963). The information summarised in this report consists of communications which were forwarded to the Director-General of the International Labour Office after the close of the 49th Session of the Conference and which could not, therefore, be laid before the Conference at that session.

Report of the Committee of Experts on the Application of Conventions and Recommendations [2]

This volume contains the report of the 36th Session (Geneva, 14-25 March 1966) of the Committee of Experts appointed by the Governing Body of the I.L.O. to examine the information and reports submitted under articles 19, 22 and 35 of the Constitution by Members of the International Labour Organisation upon the application by them of Conventions and Recommendations.

The Committee's report is divided into four parts. The first, " General Report ", contains the general observations of the Committee on the application of Conventions and Recommendations and their submission to the competent authorities. The Committee notes that from 1 January to 31 December 1965 a total of 126 ratifications were registered (73 new ratifications and 53 resulting from the continuance by new member States (Malawi, Malta, Singapore) of the obligations undertaken on their behalf by the States which were previously responsible for their international relations). At the time of the adoption of the Committee's report the total number of ratifications amounted to 3,122.

The second part of the report contains the observations of the Committee concerning particular countries, divided into three chapters: observations concerning annual reports on ratified Conventions (article 22 of the Constitution); observations on the application of Conventions in non-metropolitan territories (article 22 and article 35, paragraphs 6 and 8, of the Constitution); and observations concerning the submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference (article 19 of the Constitution). Governments have the opportunity of replying to these observations during the International Labour Conference.

The third part deals with the submission of international labour Conventions and Recommendations to the competent authorities in federal States under article 19, paragraph 7, of the I.L.O. Constitution. Of the 18 States invited to submit information, 12 replied; the scope of the study therefore covers basically these countries (Argentina, Australia, Austria, Cameroon, Canada, Federal Republic of Germany, India, Nigeria, Switzerland, U.S.S.R., United States and Venezuela).

The fourth part deals with labour inspection in industry, commerce, and mining and transport undertakings. It contains general conclusions on the reports concerning the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection Recommendation, 1947 (No. 81), and the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82).

The volume also contains the Special Report by the Committee of Experts on the Application of Conventions and Recommendations concerning the Measures Taken by the

[1] *Information and Reports on the Application of Conventions and Recommendations: Summary of Information relating to the Submission to the Competent Authorities of Conventions and Recommendations Adopted by the International Labour Conference (Article 19 of the Constitution)*, Report III (Part III), International Labour Conference, 50th Session, Geneva, 1966 (Geneva, I.L.O., 1966). 17 pp. Price: 25 cents; 1s. 9d.

[2] *Information and Reports on the Application of Conventions and Recommendations: Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 50th Session, Geneva, 1966 (Geneva, I.L.O., 1966). viii + 300 + 27 pp. Price: $3.50; 24s. 6d.

Government of Portugal to Implement the Recommendations of the Commission Appointed under article 26 of the I.L.O. Constitution to Examine the Observance by Portugal of the Abolition of Forced Labour Convention, 1957 (No. 105).

Reports Prepared for the International Labour Conference (51st Session)

In preparation for the 51st Session of the International Labour Conference (June 1967) the International Labour Office has published the following reports.

Examination of Grievances and Communications within the Untertaking [1]

The first chapter of the present report summarises the proceedings of the 50th Session of the Conference relating to the examination of grievances and communications within the undertaking (extracts from the report of the Conference Committee; Proposed Conclusions with a view to the adoption of a Recommendation concerning the examination of grievances within the undertaking with a view to their settlement and Proposed Conclusions with a view to the adoption of a Recommendation concerning communications within the undertaking, submitted by the Conference Committee; and discussion in plenary sitting). The second chapter contains the text of the two proposed Recommendations prepared by the Office on the basis of the Proposed Conclusions. The purpose of the report is to transmit these texts to governments so as to enable them to send in any amendments or comments.

Improvement of Conditions of Life and Work of Tenants, Share-Croppers and Similar Categories of Agricultural Workers [2]

At its 163rd Session (November 1965) the Governing Body of the International Labour Office decided to place on the agenda of the 51st (1967) Session of the International Labour Conference an item entitled " Improvement of conditions of life and work of tenants, share-croppers and similar categories of agricultural workers ".

The subject is to be discussed under the double-discussion procedure as laid down in article 39 of the Standing Orders of the Conference. Accordingly, the Office has compiled the present preliminary report for communication to governments, preparatory to a first discussion by the Conference at its 51st Session. The report relates in summary form the background and some of the antecedents to the Governing Body's action, and describes the relevant law and practice in a representative number of member States.

After a first chapter containing introductory remarks, the chapters which follow deal respectively with security of tenure, payment for the use of land and remuneration for services rendered, arbitration and settlement of disputes, access to land, and some aspects of living conditions. Finally, the report contains conclusions and a questionnaire to which governments are requested to reply with specific suggestions.

Eighth Conference of American States Members of the International Labour Organisation (Ottawa, 1966)

Report of the Director-General: Social Development in the Americas [3]

" Social development in the Americas " is the theme of the report which the Director-General will be presenting to the Eighth Conference of American States Members of the International Labour Organisation. Three chapters deal successively with the following questions: economic evolution and social needs; employers' and workers' organisations

[1] *Examination of Grievances and Communications within the Undertaking*, Report V (1), International Labour Conference, 51st Session, Geneva, 1967 (Geneva, I.L.O., 1966). 50 pp. Price: 50 cents; 3s. 6d.

[2] *Improvement of Conditions of Life and Work of Tenants, Share-Croppers and Similar Categories of Agricultural Workers*, Report VII (1), International Labour Conference, 51st Session, Geneva, 1967 (Geneva, I.L.O., 1966). 92 pp. Price: $1; 7s.

[3] *Report of the Director-General: Social Development in the Americas*, Report I, Eighth Conference of American States Members of the International Labour Organisation, Ottawa, 1966 (Geneva, I.L.O., 1966). 127 pp. Price: $1.25; 8s. 9d.

and labour relations as a means and an expression of social participation; and participation of employers' and workers' organisations in planning. A report on the technical co-operation activities of the I.L.O. in the region is contained in an appendix, which lays special stress on management development and small-scale industry and on vocational training.

Labour Inspection: A World Survey of National Law and Practice [1]

This survey consists of an extract from the report of the 36th (1966) Session of the Committee of Experts on the Application of Conventions and Recommendations. Its nine chapters deal with the following subjects: methods of application and scope of the instruments relating to labour inspection; functions of labour inspection; organisation and staff of labour inspection; powers of labour inspectors; violations and penalties; special obligations of labour inspectors; means available to and action of the labour inspection services; labour inspection reports; and difficulties and progress in applying the Convention. These are followed by the Committee's conclusions. The legislation consulted has been classified by countries.

An appendix in the form of a table shows the reports requested and reports received by 25 March 1966 under article 19 of the I.L.O. Constitution.

Mimeographed Documents [2]

Eighth Conference of American States Members of the International Labour Organisation (Ottawa, September 1966) [3]

Report II: Manpower Planning and Employment Policy in Economic Development (second item on the agenda). 211 pp. + annex.

Report III (Parts 1 and 2): The Role of Social Security and Improved Living and Working Standards in Social and Economic Development (third item on the agenda). 150 and 62 pp.

I.L.O. Technical Assistance Mission Reports

Africa :

Le cours spécial d'administration du travail (normes nationales et internationales du travail) à l'intention d'administrateurs des services du travail des pays africains d'expression française (the special labour administration course (national and international labour standards) for labour administrators in French-speaking African countries) (Yaoundé, 20 September-2 October 1965) (OIT/TAP/Afr/R.8).

Basutoland :

The possibilities of development of small-scale industries (ILO/TAP/Basutoland/R.2).

Brazil :

La formation professionnelle commerciale (vocational training for commerce) (OIT/TAP/Brésil/R.8).

Cameroon :

L'assurance-vieillesse (old-age insurance) (OIT/TAP/Cameroun/R.8).

Central African Republic :

Les conditions de développement du mouvement coopératif (conditions for the development of the co-operative movement) (OIT/TAP/Centrafricaine/R.4).

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[1] *Labour Inspection : A World Survey of National Law and Practice* (Geneva, I.L.O., 1966). 111 pp. Price: $1; 7s.

[2] Limited quantities of these documents are available; copies are obtainable from the I.L.O., Geneva.

[3] See also above, p. 309.

Chile :

Organización cooperativa entre artesanos y pequeños industriales (co-operative organisation in the small-scale and handicrafts industries) (OIT/TAP/Chile/R.9).

China :

Manpower assessment and planning (ILO/TAP/China/R.8).

Congo (Kinshasa) :

Le développement du mouvement coopératif (development of the co-operative movement) (OIT/ONUC/Congo(Léo)/R.9).

Ghana :

Establishment of an industrial health scheme for silicosis (ILO/OTA/Ghana/R.8).

India :

The operation and extension of vocational guidance activities (ILO/TAP/India/R.17).

The work of the I.L.O. Management Development and Productivity Mission 1954-64 (ILO/TAP/India/R.18).

Ivory Coast :

Les conditions de développement du mouvement coopératif (conditions for the development of the co-operative movement) (OIT/TAP/Côte-d'Ivoire/R.2).

Jamaica :

The proposed social insurance scheme (ILO/TAP/Jamaica/R.5).

A proposed social security scheme (ILO/TAP/Jamaica/R.7).

Lebanon :

Le développement rural (rural development) (OIT/OTA/Liban/R.7).

Mauritania :

Les conditions de développement du mouvement coopératif — mission d'enquête (conditions for the development of the co-operative movement—a study mission) (OIT/TAP/Mauritanie/R.5).

Sierra Leone :

Labour statistics (statistics of employment, earnings and hours of work) (ILO/TAP/Sierra Leone/R.5).

Sudan :

The development of a social insurance scheme (ILO/TAP/Sudan/R.10).

Swaziland :

The development of vocational training (ILO/TAP/Swaziland/R.2).

Tunisia :

Le développement des moyens de formation et de perfectionnement professionnels des employés de bureau (development of basic and advanced vocational training facilities for office workers) (OIT/OTA/Tunisie/R.13).

La préparation professionnelle des jeunes filles et des femmes en Tunisie (projet conjoint Tunisie-O.I.T.-UNICEF) (vocational training for girls and women in Tunisia (joint Tunisia-I.L.O.-UNICEF project) (OIT/OTA/Tunisie/R.16).

Turkey :

La législation du travail en agriculture (labour legislation in agriculture) (OIT/OTA/Turquie/R.26).

DOCUMENTS

Metal Trades Committee

(Eighth Session, Geneva, 6-17 December 1965)

The Eighth Session [1] of the Metal Trades Committee of the International Labour Organisation was held at the International Labour Office, Geneva, from 6 to 17 December 1965.[2]

The Committee adopted the following reports, conclusions and resolutions:

(1) the report of the Subcommittee on International Co-operation, with the conclusions (No. 63) concerning international co-operation in dealing with manpower, social and labour problems in the metal trades in the developing countries;

(2) the report of the Subcommittee on Programming and Planning, with the conclusions (No. 64) concerning the role of employers' and workers' organisations in programming and planning in the metal trades;

(3) the report of the Working Party on the Effect Given to the Conclusions and Resolutions Adopted by the Metal Trades Committee at Its Previous Sessions, with the classification of those conclusions and resolutions;

(4) the resolution (No. 65) concerning a reduction in hours of work without reduction of income in the metal trades;

(5) the resolution (No. 66) concerning women workers in the metal trades;

(6) the resolution (No. 67) concerning labour statistics in the metal trades;

(7) the resolution (No. 68) concerning freedom of association and trade union rights in the metal trades;

(8) the resolution (No. 69) concerning future action of the International Labour Organisation relating to the metal trades; and

(9) the resolution (No. 70) concerning the agenda of the Ninth Session of the Metal Trades Committee of the International Labour Organisation.

These texts and a summary of the discussions leading to their adoption appear on the following pages.[3] In addition, a Consolidated Text of Conclusions and Resolutions Adopted by the Metal Trades Committee at Its Previous Sessions is reproduced as an appendix to the report of the Working Party on the Effect Given to the Conclusions and Resolutions Adopted by the Metal Trades Committee at Its Previous Sessions.

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[1] For details concerning the agenda, composition and attendance of the Eighth Session of the Metal Trades Committee see *Official Bulletin*, Vol. XLIX, Apr. 1966, No. 2, pp. 196-197.

[2] For previous sessions see *Official Bulletin*, Vol. XXX, No. 2, 15 Sep. 1947, pp. 113-122; Vol. XXXI, No. 2, 15 Sep. 1948, pp. 115-126; Vol. XXXII, No. 4, 15 Dec. 1949, pp. 255-266; Vol. XXXV, No. 3, 20 Dec. 1952, pp. 146-167; Vol. XXXVII, No. 6, 20 Dec. 1954, pp. 187-209; Vol. XL, No. 4, 1957, pp. 219-257; Vol. XLVI, No. 1, Jan. 1963, pp. 31 and 77-130.

[3] The Governing Body of the International Labour Office considered these texts at its 165th Session (May 1966); see above pp. 261-262.

REPORTS AND CONCLUSIONS ADOPTED

Report of the Subcommittee on International Co-operation [1]

Composition and Officers of the Subcommittee

1. The Subcommittee on International Co-operation in dealing with manpower, social and labour problems in the metal trades in the developing countries was composed of 27 Government members, 26 Employers' members and 26 Workers' members, namely 79 members in all.

2. The Subcommittee appointed its officers as follows:

Chairman : Mr. A. A. SHTERNOV (Government member, Ukraine).

Vice-Chairmen : Mr. H. ESCOTO OCHOA (Employers' member, Mexico); Mr. A. SOLÓRZANO (Workers' member, Peru).

Reporter : Mr. S. V. PURUSHOTTAM (Government member, India).

On behalf of their respective groups the Employers' and Workers' spokesmen of the Subcommittee, while having no objection as to the person of the Chairman, expressed their reservations as to the procedure followed in the election of the Chairman, observing that they had not been consulted beforehand.

3. The Subcommittee held seven sittings.

4. During its third sitting the Subcommittee, in accordance with article 20 of the Standing Orders for Industrial and Analogous Committees, set up a Working Party to draw up draft conclusions, composed of the following members, in addition to the Chairman of the Subcommittee:

Government members :

Titular members :

Belgium:	Mr. J. DEROO.
India:	Mr. S. V. PURUSHOTTAM.
United Kingdom:	Miss S. A. OGILVIE.

Deputy members :

France:	Mr. C. LAPIERRE.
Mexico:	Mr. H. BLANCO MELO.
United States:	Mr. R. E. RICCIUTI.

Employers' members :

Titular members :

Mr. H. ESCOTO OCHOA (Mexico).
Mr. A. G. ROBERTSON (United Kingdom) (personal substitute: Mr. C. C. D. MILLER).
Mr. C. SCHLÜTER (Switzerland).

Deputy members :

Mr. R. JACCARD (France) (personal substitute: Mr. F. X. AZAIS).
Mr. F. A. JASDANWALLA (India).
Mr. H. PÉREZ (Chile).

Workers' members :

Titular members :

Mr. D. R. AGUIRRE (Argentina).
Mr. A. L. DRUCE (Australia).
Mr. F. HAUSER (Federal Republic of Germany).

Deputy members :

Mr. K. JOSEPH (India).
Mr. A. LAVAL (France).
Mr. P. H. MENGER (United States).

[1] Adopted unanimously.

Terms of Reference of the Subcommittee

5. The Subcommittee was called upon to consider the second item on the agenda of the Committee: " International co-operation in dealing with manpower, social and labour problems in the metal trades in the developing countries ". The Subcommittee had before it a report on that subject prepared by the Office.[1]

6. The representative of the Secretary-General recalled that, in examining the suggestions tabled by the Metal Trades Committee itself at its Seventh Session, the Governing Body of the International Labour Office had wished to give the Committee an opportunity to express its views on the importance of industrialisation, and particularly of the metal trades, in development and also on how manpower problems and social problems which were hampering development of that industrial sector or were being caused by it could best be solved through international co-operation.

General Remarks on Industrialisation and the Role of the Metal Trades in Development

7. The importance of industrialisation in development was unanimously recognised by the Subcommittee, which saw in it a means of harnessing an ever-growing share of national resources, material as well as human, to serve the economic and social progress of each developing country. A Workers' member, however, pointed out that care must be taken to avoid being too dogmatic on the subject and that theories stressing specialisation in primary production or restricted industrialisation might in some cases not be entirely valueless. A Government member stressed that speedy industrialisation was not an end in itself, but that industrialisation activities should be brought into line with the development of the various sectors of the economy and a close watch should be kept on trends, such as inflation, which might have an effect on the living conditions of the people.

8. The Subcommittee listed hindrances to industrialisation, which it defined as being mainly, but to varying degrees according to the country, the difficulty in obtaining access to raw materials or power supplies, scarcity of capital, dearth of skilled manpower and restricted export markets. Concerning the last item a Government member regretted that the restrictive nature of international trade often deprived developing countries of the outlets which were essential to them. In the industrial field, he added, the developing countries had many problems in common with the developed countries, but the former feel them much more acutely.

9. The Subcommittee recognised that the metal trades played an important role in the process of industrialisation. In themselves they provided a great many job opportunities and part of their production went to support the mining and manufacturing industries or was used in most of the other sectors of the economy.

10. Development of the metal trades, however, encountered obstacles in regard to industrialisation in general, and these were pointed out by the Subcommittee. A Government member stated that, for lack of sufficient capital, the economy was confined within the narrow boundaries of industries which could not reach the level of expansion they ought to reach considering the natural resources of the country. In most of the developing countries the most powerful brake on progress in the metal trades was the shortage of skilled manpower, such as technicians, engineers, instructors, foremen and supervisors.

International Co-operation

11. In the opinion of the Subcommittee international co-operation was one of the best ways for achieving industrial progress and thus speeding up the development of backward countries. It provided a stimulus which, through a real effort of will on the part of the recipient countries, enabled them to emerge from their original state of underdevelopment.

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[1] *International Co-operation in Dealing with Manpower, Social and Labour Problems in the Developing Countries*, Report II, International Labour Organisation, Metal Trades Committee, Eighth Session, Geneva, 1965 (Geneva, I.L.O., 1965) (mimeographed).

As several members of the Subcommittee emphasised, such action was not charity but constituted real co-operation. This co-operation was all the more necessary because, far from being filled, the gap between the advanced countries and those in the process of development was becoming still wider. An Employers' member said that, despite all the efforts that had been made, industrialisation in his country had not kept pace with the rapid growth of the population.

12. Several members of the Subcommittee expressed the opinion that, however broad and diverse might be the assistance given by governments on a bilateral basis and by private industrial companies, it was desirable to concentrate more especially on the assistance which was channelled through the international organisations, particularly those belonging to the United Nations family, whose disinterestedness could not be questioned. A Workers' member suggested that the industrial companies might pay a tax to the United Nations of which the yield could be used for encouraging the development of industrialising countries.

13. The Subcommittee as a whole recognised that, by reason of its tripartite nature, the I.L.O. had a very special role to play in international co-operation, and a Government member expressed the wish that it should increase its activities aimed at promoting development. Another Government member considered that I.L.O. assistance should be concentrated on the most important needs of the developing countries. Such assistance should be provided on a regional basis, through regional centres responsible for supervising it, negotiating with the governments and collecting data on the needs of the region. The I.L.O. should also intensify its assistance to departments of labour and to employers' and workers' organisations.

14. Several members stressed the need for co-ordinating international co-operation activities in order to avoid any overlapping between the various programmes and to make the best use of all the resources made available to the developing countries. Co-ordination between the donor countries was indisputably insufficient and could be improved by various means, for instance by meetings at ministerial level between several countries taking part in technical co-operation activities relating to one particular region.

Choice of Techniques

15. The problem concerning the choice of techniques and of equipment to be used by the metal trades of the developing countries was discussed at length in the Subcommittee. It was noted that modern techniques were attractive to those countries by reason of their efficiency. Although they should not, without due consideration, make use of modern machinery when they did not have the skilled workers required to operate it, in some cases it was better to have recourse at the outset to advanced techniques which, by their use, could stimulate other industries and lead to the more rapid training of a skilled labour force. In the first stages of industrialisation, moreover, it was permissible for developing countries to enlist the aid of foreign experts who could train staff to take over from them at the local level. Conversely, consideration might be given to the installation or development, as a first step, of industrial undertakings using simpler equipment and employing more manpower. Finally, the Subcommittee was of the opinion that the developing countries should adopt those solutions which were best suited to their economic and social conditions, particularly in regard to their resources in capital and in skilled manpower.

16. In this regard the Subcommittee considered the advantages and disadvantages of using second-hand machinery. Some members were clearly against such a solution. In their opinion, although it undoubtedly led to savings at the time of purchase, the higher running costs and the poor yield from such equipment largely offset that advantage. Second-hand machines slowed down the process of development and diminished competitive ability. Other members observed that the purchase of used machines was a normal practice, even in the industrialised countries, and could therefore be recommended—subject to necessary control as to the condition of such equipment—since it was preferable to have second-hand machines than to have none at all. As and when the labour force improved its technical skills and more capital became available, such machines could be replaced by new equipment. The sale of second-hand equipment sometimes led to an agreement to train the workers who were to use it in the importing country, such training being given by instructors provided by the

firm selling the equipment. No uniform solution could be found for this problem. The destination of the manufactured goods should be borne in mind: the equipment could be more or less up to date, according to whether the production was intended for domestic or foreign consumption, competitiveness at the international level representing a very important criterion in this respect. Each country should therefore make its choice based on the priorities it had to observe.

Development of Human Resources

17. Since manpower and particularly skilled manpower resources were one of the key factors in the growth of the metal trades, the Subcommittee examined the means for developing those resources. First of all, the Subcommittee realised that it was necessary to have as accurate data as possible regarding manpower needs, since underemployment in an industrialisation programme could lead to economic losses which were quite as serious as shortage of manpower. In this connection the lack of adequate statistics on the total numbers available and the categories of workers employed in the metal trades of the developing countries was pointed out; it was suggested that the I.L.O. should make an additional effort in this field and try to obtain more accurate information from the governments.

18. It was recognised that one of the most serious difficulties hindering industrialisation was the lack of vocational and technical training facilities, which was aggravated by deficiencies in primary education systems. Several members stressed the urgent need to provide a basic education for the population as a whole. With regard to vocational training, the Subcommittee agreed that it was not advisable to transfer unchanged to the developing countries the methods currently in use in the advanced countries, and that vocational training should be adapted to the individual needs of each country. Several members pointed out that vocational training programmes should take account of the introduction into industry of modern techniques.

19. Vocational training systems were given consideration by the Subcommittee. Several members said that it was preferable to provide vocational training on the spot in the developing countries and that training in the factory itself had many advantages. Other members also brought out the usefulness of practical training courses. The Workers' members expressed the opinion that undertakings with foreign participation should devote some of their resources to training their workers; undertakings which did not provide such training should pay a tax which would be used for training skilled workers and technicians.

20. The Subcommittee considered it desirable that talented people should be given an opportunity to receive further training in industrial institutions and firms located in the industrialised countries. That applied especially to technicians, instructors, foremen and managerial personnel. In that connection it was noted that the International Centre for Advanced Technical and Vocational Training, in Turin, which had recently been set up, held out enormous opportunities which the countries in the course of industrialisation should draw upon to an increasing extent. A Government member said that the importance of higher-grade personnel and specialists in development was such that they should be generously accorded access to technical schools and colleges in the industrialised countries. A Workers' member expressed the opinion that trainees in factories should be protected by suitable collective agreements and that their numbers should not exceed a given proportion of the workers employed in the firm receiving them, so as to ensure that their training could be carried out in favourable conditions. Another Workers' member considered that trainees should receive a training that was adapted to the needs of their country.

21. The Subcommittee laid great stress on the need for training national instructors, both in the developing countries and abroad, with a view to giving a cumulative effect to vocational training activities. Foreign technicians and foreign supervisory staff could undoubtedly play an important role in the first stages of such training but they would gradually make way for similar personnel who would be nationals of the country concerned.

22. The Workers' members regretted the inadequacy of measures to encourage promotion of workers in the developing countries. They pointed out that promotion to jobs as

foremen and to the higher grades was often made difficult for these workers on such grounds as their social origin or other considerations; in their opinion every worker who had the necessary aptitudes should be provided with the means for obtaining vocational training at all levels.

23. The importance of international co-operation in the field of vocational training was brought out very clearly. In that connection stress was laid on the special role of the I.L.O. on account of its tripartite structure. It was suggested that the I.L.O. should intensify its studies on the type of assistance which should be offered to each country—according to the stage of development it had reached—and particularly on the training programmes established for the metal trades, bearing in mind the production techniques that were available in the developing countries.

Living and Working Conditions

24. Many comments and suggestions were submitted in regard to living and working conditions in the metal trades in the developing countries. The Workers' members strongly recommended that every effort should be made to raise those conditions to the highest possible level, in regard both to wages and social benefits and to working hours. It was desirable not only for workers in the developing countries that these conditions should be brought into line with those prevailing in the industrialised countries but also for workers in the latter countries who would otherwise be threatened by competition caused by lower manpower costs.

25. A Workers' member suggested that, in order to offset imbalance which might be caused in an under-industrialised country by the presence of modern undertakings able to pay high salaries, some measures might be taken either in the form of taxation or by what could be called a " socialised wage ", namely by increasing fringe benefits in relation to wages, including those concerning housing, vocational training, etc. Another Workers' member was opposed to any wage system based on piece-work since it was harmful to the health and safety of the labour force.

26. With regard to working hours the Workers' members drew attention to the importance of putting into application the instruments adopted by the I.L.O. in that field.

27. The Subcommittee recognised that productivity in the developing countries depended mainly on the level of trade skills, quality of the supervisory personnel, quality of the equipment, working conditions, and satisfactory labour-management relations within the undertaking. The adaptation of workers coming from the countryside to urban and industrial life also played a part in productivity, and their adaptation should be made easier for them. The introduction to modern methods and techniques, coupled with the obligation to lead a new type of life, could give rise to serious psychological difficulties, although the problem was less acute in some regions.

28. The Subcommittee expressed the opinion that, if a solution could be found to these various problems, it would not only help to diminish absenteeism but would also reduce the excessive labour turnover which occurs in some of the developing countries.

29. The Subcommittee also paid attention to the special problems of given categories of workers. Women undoubtedly accounted for a considerable proportion of the labour force employed in the metal trades, particularly in some sectors, such as electronics. That fact should therefore be taken into consideration when drawing up vocational training programmes. Men and women should moreover be granted equal treatment for equal work; such equality should apply to all working conditions and especially to wage systems.

30. It was noted that the distinction between manual and non-manual workers was beginning to be less clearly defined as technical progress increased. Preference for non-manual jobs in the developing countries could undoubtedly have an adverse effect, but that should not conceal the fact that there were other aspects to the problem of non-manual workers: the high proportion of non-manual workers in the metal trades emphasised the need for bearing that category in mind when evaluating manpower requirements and organising vocational training.

31. In the opinion of the members of the Subcommittee attention should also be given to the problems of migrant workers because their movements, within one particular country or from one country to another, could become very significant in some developing areas. It was pointed out that workers emigrated because they were forced to do so by necessity; the way to prevent such population movements and the human suffering they entailed would be to increase investments in the countries concerned, which would lead to the establishment of new jobs.

Labour-Management Relations

32. The Subcommittee was unanimous in considering that care should be taken to avoid repeating in the developing countries the errors which characterised the early stages of industrialisation in Europe in the field of labour-management relations. The establishment of good relations between employers and workers was essential to industrial progress, and no economic development could take place without lasting industrial peace. The flow of capital and proper development of human resources were possible only in countries where a satisfactory social climate prevailed; productivity could not reach a high level in an uneasy atmosphere and without full co-operation between the two parties concerned.

33. The Subcommittee as a whole recognised that, in this respect, governments had a special responsibility because it was for them to set up the appropriate legislative and administrative framework and, in particular, to encourage the establishment and development of employers' and workers' organisations capable of assuming the responsibilities devolving upon them.

34. The importance attaching to strengthening the trade union movement in the developing countries was frequently stressed. The Workers' members remarked that a rather arbitrary distinction was sometimes drawn between militant and constructive trade unionism. If the former type of trade unionism existed, it was because of the unstable conditions in which the working masses in the developing countries lived and worked and because the trade union was the natural defender of the worker. The existence of powerful trade unions became all the more important as international interests became more influential in the metal trades sector. For their part, the trade unions were ready to play a constructive role in economic and social development. In this connection the Workers' members recalled two resolutions that were adopted by the Metal Trades Committee at its Seventh Session, in 1962, which envisaged tripartite co-operation in setting up and putting into effect national and international development programmes. In this connection the Subcommittee unanimously recognised that the employers' and workers' organisations should be very closely associated with technical assistance activities.

35. The need to develop the education of trade union leaders so that they could take part in development programmes was mentioned by several members of the Subcommittee. The Workers' members pointed out that not only should trade union leaders be trained to perform their tasks but they should also be helped to carry them out by receiving all the necessary information without which they could not participate effectively in drawing up and implementing these programmes.

Small-Scale Industries

36. The Subcommittee dwelt on matters that were of particular concern to small-scale industries. All the members agreed that, taken as a whole, small-scale industries could make a weighty contribution to ensuring a sustained rate of economic growth, mainly because they could provide a great many jobs and because they encouraged the training of local technical personnel who could, in turn, be drawn upon by large-scale industries. Moreover, small firms, on account of their specialisation in a given type of production, could complement the large undertakings to the advantage of both.

37. Considering, however, that quite a number of small undertakings existed by subcontracting, the Workers' members called attention to the hazards to working conditions which that practice involved. Forced to conform to the unsatisfactory conditions that in some cases were imposed upon them by the undertaking for which they were producing,

these firms might find themselves obliged to reduce their cost price by cutting down expenditure on those items where they found it possible. Since they able to were reduce neither the power costs nor the cost of raw materials, they might be tempted to cut manpower costs by lowering the wage levels and by extending hours of work without granting adequate compensation. The workers employed by these subcontractors were all the more deprived of protection because they were frequently hired on a part-time basis and hence rarely organised. In the opinion of the Workers' members the small firms which had recourse to such methods might become centres of social retrogression and could even bring about a lowering of the standards applied in the large undertakings.

38. The Workers' members stated that it was necessary to extend the benefits of labour legislation and the protection of factory inspection to the manpower employed in all small firms, whether subcontracting or not. In their opinion conditions of work should be the subject of collective bargaining in small undertakings as in large ones. Moreover, assistance programmes for small undertakings should be provided only for those which, in regard to their staff, promised to respect the labour standards generally applicable in their country.

39. Several Government members stressed the need for such assistance programmes to small-scale industries either at the national or the international level. One member recalled that the International Labour Conference, at its 46th (1962) Session, had adopted a resolution laying down on broad lines how the I.L.O. could provide assistance to small-scale industries. Another Government member suggested that international assistance could include the provision of equipment to small undertakings.

Problems relating to International Co-operation Experts

40. Some comments were made on the recruitment of international co-operation experts and the qualifications they should be expected to have. It was recalled that the tripartite principle should be applied when recruiting such experts. Career problems which they had to solve would be settled more easily if they were offered longer contracts. Their training was extremely important and some countries had already taken special measures regarding it. When an expert was called upon to train instructors it was desirable that he himself should already have a technical career behind him, and some members of the Subcommittee expressed their preference for older men who had acquired knowledge and experience. It was pointed out that the briefing period spent by experts at I.L.O. headquarters before reaching their place of appointment was usually too short. It was mentioned that experts should certainly have technical skills but they should also have the type of personality which enabled them to adapt themselves to the conditions of the countries to which they were appointed and to understand their specific problems. In this connection it might be preferable to have recourse to experts originating from countries which were still in the first stages of industrial development. Finally, it was suggested that, upon their return, experts should diffuse widely their experience as agents of technical co-operation by describing—for instance in the *International Labour Review*—the problems they encountered and how they managed to solve them.

Adoption of the Draft Conclusions

41. At its sixth sitting the Subcommittee had before it the draft conclusions drawn up by the Working Party. The draft conclusions as a whole were adopted unanimously, subject to a reservation made by an Employers' member respecting the use of the terms " national industrialisation policy " and " development programmes ".

Adoption of the Report

42. At its seventh sitting, on 16 December 1965, the Subcommittee unanimously adopted the present report.

Geneva, 16 December 1965.

(Signed) A. A. SHTERNOV,
Chairman.

(Signed) S. V. PURUSHOTTAM,
Reporter.

Examination by the Committee of the Report and of the Draft Conclusions concerning International Co-operation in Dealing with Manpower, Social and Labour Problems in the Metal Trades in the Developing Countries

At its eighth plenary sitting the Committee had before it the foregoing report, together with the draft conclusions concerning international co-operation in dealing with manpower, social and labour problems in the metal trades in the developing countries.

In submitting the report and the draft conclusions Mr. PURUSHOTTAM (Government delegate, India; Reporter of the Subcommittee on International Co-operation) pointed out that the report and its appendix accurately reflected the work which had been accomplished in the Subcommittee and in the Working Party which it had set up. The report was divided into eight parts dealing respectively with industrialisation and the role of the metal trades in development; international co-operation; choice of techniques; development of human resources; living and working conditions; labour-management relations; small-scale industries; and problems relating to international co-operation experts. The report and the conclusions appended to it had been unanimously adopted by the members of the Subcommittee. The discussions had taken place in an atmosphere of perfect mutual confidence and understanding and in a spirit of co-operation under the able guidance of its Chairman.

The report highlighted two aspects of the problem of international co-operation, namely employment of women workers in the metal trades and the need for primary education to serve as a starting point for workers to receive advanced vocational training. Those two points had not been mentioned in the list contained in the excellent Report II, which had been prepared by the I.L.O. as a basis for discussion. The credit belonged to the members of the Subcommittee, who had stressed the importance of those two problems to the developing countries, whose governments were facing a gigantic task. All the members of the Subcommittee, whether they came from the developing or the more advanced countries, had shown great interest in the whole subject and great understanding of the problems of countries in the course of industrialisation.

Mr. AGUIRRE (Workers' delegate, Argentina) said that the Workers' group was completely satisfied with the report of the Subcommittee on International Co-operation and with the conclusions appended thereto, and recommended their adoption.

Mr. ESCOTO OCHOA (Employers' delegate, Mexico; Vice-Chairman of the Subcommittee on International Co-operation) stressed that the report faithfully reflected the discussions that had taken place in the Subcommittee. The Employers' group considered it to be highly satisfactory.

The Committee unanimously adopted the report and conclusions (No. 63) concerning international co-operation in dealing with manpower, social and labour problems in the metal trades in the developing countries. The text of the conclusions is reproduced below.

Conclusions (No. 63) concerning International Co-operation in Dealing with Manpower, Social and Labour Problems in the Metal Trades in the Developing Countries [1]

The Metal Trades Committee of the International Labour Organisation,

Having met in Geneva in its Eighth Session from 6 to 17 December 1965;

Adopts this seventeenth day of December 1965 the following conclusions:

Preamble

1. It is generally agreed, in both the developing and the industrialised countries, that governments, employers' organisations [2] and workers' organisations should co-operate energetically in the industrialisation of the developing countries.

2. Such co-operation is only possible on the basis of full mutual understanding and trust, which alone can ensure that all relevant problems will be solved in a constructive spirit.

[1] Adopted unanimously.

[2] The term " employers' organisations " in this and other paragraphs should be interpreted in a wide sense, to include action by individual employers.

3. The greatest attention should be given to the special characteristics of each developing country, for instance its economic, social, demographic and technical conditions, including the availability of raw materials, its domestic market conditions, exporting possibilities, and, in particular, the quantity and quality of its manpower.

4. The speed of the population increase—a factor which considerably affects the growth of industrialisation in most developing countries—lends urgency to the problem and, apart from the need for vocational training, the necessity for sound primary education should not be overlooked.

5. Good relations should be encouraged between employers and workers within the undertakings established in the developing countries, and between their respective organisations, thus contributing to a favourable climate for collective bargaining.

Role of the Metal Trades in Development

6. Industrialisation has an important role to play in economic and social development. In fact, it is gradually mobilising an ever-increasing share of national resources designed to build up an economic structure that is characterised by a dynamic sector composed of the manufacturing industries capable of providing the means of production and consumer goods that are required for economic and social progress.

7. The metal trades have a predominant role to play in that regard. Their role cannot be estimated merely in relation to the place attributed to the metal trades in industrial production or to the total number of jobs they directly provide, although in that respect they are in the forefront since they are looked upon as a sector with a very high proportion of manpower. Their importance is largely and perhaps mainly based on the fact that part of their production provides the tools that will be used by the other sectors in their productive processes, and they therefore have a multiplying effect in stimulating employment and contribute to the growth of auxiliary industries. This importance is emphasised whenever there is a contraction of the market and, above all, of employment. The metal trades are also a dynamic factor in promoting technical and scientific development that helps the economy as a whole.

Manpower Problems

8. The metal trades are characterised, to varying degrees, by extensive needs for capital. They would not, however, be able to aspire to a lasting expansion unless a sufficiently skilled labour force is progressively built up to take advantage of available capital resources and new techniques. In both these areas equal attention should be given to the problems of male and female workers. The development of human resources and more specifically the continuous improvement of technical skills are thus one of the key factors for development of the metal trades. The effort of international co-operation should largely be concentrated on that aim.

9. The developing countries are, to a varying extent, characterised by an abundance of unskilled manpower. On the other hand, they are handicapped by a marked shortage of skilled and semi-skilled manpower, of technicians, engineers, instructors, foremen and managerial staff. Since the requirements of the metal trades are particularly pressing in those categories, the national authorities should draw up a vocational guidance and training policy, coupled with full employment and the rational development of human resources, its objectives being determined on the basis of short-term and long-term needs. It is desirable that this policy should be established in co-operation with the employers' and workers' organisations and, if the national authorities deem it desirable, with the aid of technical advice furnished by experts.

10. The need to base the development of human resources on suitable primary education should receive special attention from the authorities responsible for the education policy in the developing countries.

11. Vocational guidance should not merely be aimed at encouraging the necessary manpower towards the trades requiring workers, but should be directed at attracting into

industry talented people, too many of whom, in many countries, tend to enter administrative jobs and the professions.

12. The organisation and extension of vocational training for manual and non-manual workers should be among the first concerns of the governmental authorities and of the employers' and workers' organisations. They should make full use of all the means of training available to them: vocational training schools, centres for apprenticeship, training centres for adults, in-service training in factories, etc. They should pay special attention to the cumulative effects of training, namely the training of teachers and instructors, as well as the training of personnel who will later occupy key posts in maintenance and repair, supervision and management. They should arrange for opportunities for vocational training and measures to encourage promotion to supervisory and managerial posts to be put into effect in accordance with the provisions of the Discrimination (Employment and Occupation) Convention, 1958.

13. International technical co-operation programmes should be directed towards providing the developing countries with suitable means for training projects carried out in their own country or in their own particular region. Such assistance could take many forms: establishment or help towards establishing and equipping training centres, sending of experts, technicians and instructors, training carried out in firms with foreign participation set up in the developing countries. With regard to the last-mentioned type of assistance, it is desirable that the training provided by firms with foreign participation should extend to all skill levels and include supervisory and managerial grades.

14. Measures should also be taken to ensure that nationals of developing countries, selected for the increased contribution they would thus be able to make towards developing their country, are provided with the means, including financial and technical assistance, for finishing their training in the industrialised countries, either in factories or in training centres. It is important to find a satisfactory solution to the difficulties which may arise for trainees mainly because of differences in language and way of life and those caused by the temporary nature of the employment of such trainees in factories.

Choice of Techniques

15. The choice between very advanced and less advanced techniques brings into play a great many economic and social considerations. The basic aims in view, which are on the one hand to reach a high degree of productivity and thus to speed up economic growth and, on the other, to provide jobs for abundant manpower, may seem divergent in the preliminary stages of development, although in the long run they tend to merge. Adoption of modern techniques is essential in some cases, as for instance on account of international competition. Recourse to outmoded techniques would retard the progress of countries just beginning to be industrialised. Nevertheless, the use of intermediate techniques, requiring simple, robust and efficient equipment, can show substantial advantages, both in relation to production costs and to jobs. In any event, each country should select the equipment and machinery which are best suited to its own economic programme. Developing countries should not be persuaded to use second-hand machinery against their will.

Contribution of Small-Scale Industry to Development

16. The contribution that small-scale industry can make towards development is of special importance in the metal trades. Taken collectively, small firms can do a great deal towards achieving a sustained rhythm in economic growth, alongside the large undertakings. It is desirable that both categories of production units should complement each other.

Living and Working Conditions

17. Workers coming from the countryside often encounter difficulties, especially in the early stages of industrialisation, in adapting themselves to the tasks entrusted to them in the factory. Differences between their former living conditions and those of their new surroundings are sometimes too great to be rapidly surmounted. Labour discipline, observ-

ance of timetables and of safety regulations, work in two or three shifts, frequently seem completely alien to their former behaviour pattern. Special attention should therefore be given to considerations of that nature and to plant and community measures to facilitate the adaptation of the workers and their families when setting up new firms or drawing upon new sources of manpower in the metal trades. The development of industrial manpower in less industrialised countries or areas is often affected by the migration of new and large groups of national workers to more industrialised centres or countries.

18. Payment for work done raises some delicate problems requiring solution. Obviously it is unacceptable that industrialisation should result in low wages, diminished social benefits and disregard of trade union rights, which would be a serious social injustice. It should, however, be borne in mind that the existence of modern factories, capable of paying high wages, in a still under-industrialised area can cause problems that must find economic and social solutions in accordance with the interests of the various sectors of the community.

19. The equipment and working environment in the metal trades of developing countries should be designed or adapted to suit the average physiological characteristics of the workers and the climatic conditions. All the machinery to be used should be equipped with suitable safety devices and the workers should be taught to make use of them under proper supervision. Decisions on its use must give priority to the safety, health and welfare of the worker.

20. In general, it is essential that every new metal trades factory built in a developing country should be in conformity with the provisions of national legislation in regard to working conditions, safety devices, material and installations. Its activities must be exemplary in the social as well as the technical field, and it must ensure that its workers have good conditions of safety, health and welfare, accompanied by appropriate social services, so that the community living near the factory is assured of as satisfactory a standard of life as possible.

21. Special attention should be paid, in regard to wages and general working conditions, to small firms in the metal trades, whether producing for the general market or for other firms. The manpower employed by such firms must be accorded all necessary protection, both in law and in fact. Protection through collective bargaining, legislation and factory inspection can be enhanced by making sure that programmes of national and international assistance to such firms insist upon adherence to those standards.

22. Productivity is as dependent upon good working conditions and fair wages as it is upon the level of manpower skills, able supervision, the quality of equipment and suitable factory environment. Every effort should therefore be made in that regard in order to improve productivity of the metal trades in developing countries. That in itself might help to diminish absenteeism and excessive labour turnover which adversely affect some of those countries.

Labour-Management Relations

23. It cannot be stressed too much that satisfactory labour-management relations can greatly contribute to industrial development. The State, employers' organisations and trade unions all have their part to play in determining and putting into effect the national industrialisation policy.

24. The responsibility of the government in the ultimate drawing up and application of industrialisation policy is evident. In many developing countries the government is the main employment provider and, as such, takes on special responsibilities to create a healthy climate of labour-management relations. In addition, it must encourage the development of employers' and workers' organisations. It is desirable that governments of developing countries should take account, in that respect, of the special needs and the size of the metal trades industry.

25. Attempts to achieve industrialisation and implementation of a policy requiring the support of the whole population can scarcely be successful without the participation of employers' and workers' organisations in preparing development programmes. This is

especially true in the metal trades industry, a key sector. In order to play that role, the employers' and workers' organisations must be strong enough and sufficiently independent to exercise a real influence. Moreover, their leaders should be sufficiently well informed to represent them adequately at all levels.

26. At the level of the enterprise the establishment of satisfactory labour-management relations makes an essential contribution to industrial development by encouraging the adaptation of workers to industrial life and the increase of productivity.

27. The workers' representatives should be given a role in organising and putting into effect vocational training and other initiatives designed to help in raising manpower skills.

28. Governments of developing countries should consult the employers' and workers' organisations of the metal trades when drawing up requests for technical co-operation and when implementing projects concerning this sector. It is also desirable that the employers' and workers' organisations of the industrialised countries should be given the opportunity to take part in international co-operation programmes that are put into effect by those countries.

Special Role of the I.L.O.

29. Industrialisation brings into play a whole series of factors which fall directly within the mandate of the International Labour Organisation, such as labour policy, manpower planning, vocational training, management development and productivity, living and working conditions and social institutions which form the framework for industrial relations. Moreover, the tripartite structure of the I.L.O. and the fact that this Organisation includes among its Members countries that are representative of the whole range of social and economic development render it especially qualified to give guidance to countries which are unable to expedite their own development without having recourse to international co-operation. The Industrial Committees can make a special contribution in this regard since, by the extent and diversity of their experience and their representative nature, they are able in full knowledge of the facts to evaluate the needs of their respective sectors and to arouse understanding and support for industrialisation policies among those most directly concerned. In order to make the best possible use of all the advantages offered by the I.L.O., by the other international organisations and through bilateral programmes, it is desirable that the various programmes of international co-operation should be established in the light of the special aims of the I.L.O., together with its important role in the past and in the present.

Development of Human Resources.

30. In its activities relating to employment policy the I.L.O. should pay special attention to the possibilities of productive employment offered by the metal trades not only to men but also to women and young persons in rural areas as well as in towns, and the job prospects which development of those trades can open up in other sectors of industry.

31. In addition, when carrying out its activities for manpower planning, the I.L.O. should devote special attention to assessing the present and future manpower trends and needs of the metal trades at all skill levels; it should also help in preparing programmes correlated to those needs so that this key sector will in due course have available a labour force endowed with the necessary qualifications. To that end, the I.L.O., within the scope of its possibilities and taking account of its programme, should collect statistical data, in each developing country, relating to population, working population, number of workers engaged in the metal trades, their skills, their distribution by trade branches, the results and prospects of vocational training, together with the needs and trends of the labour market.

32. It is in the field of vocational training, the most favourable domain for tripartite action, that the I.L.O. should continue to make one of its major contributions to the process of industrialisation. The I.L.O. should intensify its activities relating to the planning and organisation of vocational training, established as an integral part of general development policies, whether by way of initial training, specialisation and advanced training in the course of employment or the progressive adjustment of the labour force to meet the needs of a continuously developing economy. The training of key groups, such as instructors, main-

tenance staff, foremen and supervisors, should continue to receive special attention. It would, moreover, be useful if the I.L.O. could study and perfect in the light of its experience in many developing countries the training methods which are best suited to the particular conditions of countries in the process of industrialisation and examine the results already achieved in this area.

33. Similarly, the activities of the I.L.O. regarding management development and productivity should be further developed and, in this connection, the metal trades should be given special attention. It is essential that the management staff, in small as well as large undertakings, should be trained in planning and organisational techniques, checking and marketing of production, supervision of staff and labour-management relations so as to ensure that more effective use is made of the equipment and raw materials, together with a more rational utilisation of the labour force in favourable social conditions.

34. In addition to the technical co-operation training activities which, so far, it has carried out mainly at the national level, the I.L.O. should develop its action according to the principal industrial sectors and, in particular, should take into consideration the specific needs of the metal trades. In this connection the governments and, through them, the employers' and workers' organisations of the metal trades should, with the co-operation of the I.L.O., draw largely upon the resources offered by the United Nations Development Programme. Among the measures which this Programme could put into effect, the establishment of inter-enterprise training centres in the metal trades sector, at the national and regional level, would undoubtedly be useful. This would serve to provide a training that would be based on the specific needs of that sector.

35. Such training at the national or regional level could be complemented by instruction aimed at increasing the skills of the best workers, selected from the key categories and distributed among factories or institutions located in the industrialised countries. In this regard it may be pointed out that the Advanced Technical and Vocational Training Centre at Turin specially caters for crafts in the metal trades since it can receive instructors, draughtsmen, foremen, maintenance and repair mechanics and other highly skilled workers in the following branches: general engineering, maintenance, electricity, motor vehicles, farm machinery, sheet metal work, fitting and welding. Instruction given at the Centre also enables high-level staff from the developing countries to become familiar with such subjects as general management of firms, organisation of production methods, and market study. It is particularly desirable that the governments of developing countries, when drawing up their requests for technical co-operation provided by the United Nations Development Programme, should bear in mind the advantages they can derive from the Turin Centre's activities.

Living and Working Conditions.

36. In the field of living and working conditions it is desirable that the I.L.O. should intensify its studies of the different wage systems and wage levels, paying particular attention to the relationship between wages on the one hand and productivity and industrial development on the other, and that it should provide advice on this subject to governments and employers' and workers' organisations in the developing countries. Its activities should also be directed towards the adaptation of equipment, work schedules and rhythm of work to the physiological aspects and social background and customs of the manpower of those countries and generally be aimed at improving safety, health and physical and mental conditions of work, together with social security systems.

Labour-Management Relations.

37. It is desirable that the I.L.O. should intensify its efforts to stimulate a healthy and constructive relationship between all those taking part in the production process. Its action in this field should on the one hand be directed towards assisting governments to prepare and implement labour legislation and administration based on I.L.O. standards and to participate in training personnel in methods of labour administration and factory inspection. It should aim, on the other hand, at encouraging the establishment and development of

employers' and workers' organisations capable of coping with the special responsibilities incumbent upon them in the course of industrialisation.

Small-Scale Industries.

38. It is desirable that the I.L.O. should pay special attention to the specific needs of small firms, by collaborating to that end with the various organs of the United Nations family which can contribute to their development. The measures taken for that purpose by the I.L.O. in co-operation with those other organs should induce the governments of developing countries to give small-scale industries the place which should be attributed to them in their economic development programmes and contribute towards establishing institutions that could give them the necessary services. Such technical co-operation activities should be aimed at putting small-scale industries on a footing enabling them to provide for their own development. It might also be useful to explore the possibilities of supplying countries in the course of industrialisation with equipment which could be made available to small undertakings.

Problems relating to International Co-operation Experts

39. The recruitment of international co-operation experts encounters some difficulties arising mainly from problems caused by their secondment from their administration or the undertaking in which they are employed, for example maintenance of continuity in their career and benefits deriving from it, such as promotion, pension rights, etc. Steps should be taken to smooth out such difficulties, in particular by having recourse to the employers' and workers' organisations concerned. Tripartite action, at the national level in the countries concerned, could enable experts to be recruited judiciously and in an organised manner, and could permit the working out of arrangements so that experts might be assured with regard to their future.

40. Special training courses should be arranged for experts, including possibly language courses and an insight into the traditions and way of life of the countries to which they are assigned, so as to give them the opportunity to add to their technical skills the special qualifications and background knowledge that are necessary for carrying out technical co-operation projects.

41. Experts of the International Labour Office should adapt their activities to international standards of work. Moreover, it is their duty to work in very close co-operation not only with government services but also with employers' and workers' organisations.

Co-ordination of International Co-operation

42. In dealing with international co-operation, lack of co-ordination of efforts and overlapping constitute an irrational use of inestimably valuable resources. In order to prevent this, energetic action should be taken. It is desirable that countries which offer technical co-operation, whatever its nature, through bilateral or multilateral agreements, should be invited to co-ordinate their efforts in so far as is possible. Whenever appropriate, it is recommendable that they should address themselves either to the International Labour Organisation or the United Nations, in co-operation with specialised bodies in the developing countries. In that way international co-operation could be carried out in accordance with orderly general planning.

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Report of the Subcommittee on Programming and Planning [1]

Composition and Officers of the Subcommittee

1. The Subcommittee on Programming and Planning in the Metal Trades was composed of one Government member, one Employers' member and one Workers' member from each of the delegations represented on the Committee.

[1] Adopted unanimously.

2. The Subcommittee appointed its officers as follows:

Chairman :

Mr. P. ARNOW (Government member, United States).

Vice-Chairmen :

Mr. B. MACARTY (Employers' member, United Kingdom); Mr. H. G. BARRATT (Workers' member, United Kingdom).

Reporter :

Mr. H. BUSTARRET (Government member, France).

On behalf of their respective groups the employers' and workers' spokesmen of the Subcommittee, while having no objection to the person of the Chairman, expressed reservations as to the procedure followed in the election of the Chairman, observing that they had not been consulted beforehand.

3. The Subcommittee held six sittings.

4. During its fourth sitting the Subcommittee appointed a Working Party to prepare draft conclusions, composed of the Chairman and the Reporter and the following members:

Government members :

Titular members :

Chile: Mr. C. COSTA-NORA.
U.S.S.R.: Mr. I. IVANOV.
United Kingdom: Mr. P. McC. BOYD.

Deputy members :

Australia: Mr. A. D. FOGARTY.
Italy: Mr. L. DI CLEMENTE.
Switzerland: Mr. O. H. SCHLUCHTER.

Employers' members :

Titular members :

Mr. B. MACARTY (United Kingdom).
Mr. F. A. MALTUSCH (Federal Republic of Germany).
Mr. J. J. WADDLETON (United States).

Deputy members :

Mr. E. BOURSIER (France).
Mr. D. P. MUKHERJEE (India).
Mr. H. O. SEEGER (Peru).

Workers' members :

Titular members :

Mr. H. G. BARRATT (United Kingdom).
Mr. V. G. MAZZACANO (United States).
Mr. F. OPEL (Federal Republic of Germany).

Deputy members :

Mr. J. MAIRE (France).
Mr. M. ROŽIĆ (Yugoslavia).
Mr. S. ZAN-BAR (Israel).

Terms of Reference of the Subcommittee

5. The Subcommittee was called upon to consider the third item on the agenda of the Committee: " The role of employers' and workers' organisations in programming and planning in the metal trades ". The Subcommittee had before it a report on this subject prepared by the Office.[1]

[1] *The Role of Employers' and Workers' Organisations in Programming and Planning in the Metal Trades*, Report III. International Labour Organisation, Metal Trades Committee, Eighth Session, Geneva, 1965 (Geneva, I.L.O. 1965) (mimeographed).

6. The representative of the Secretary-General, in introducing the report, recalled that by reason of the actual terms of the item on the Committee's agenda it related mainly to countries with systems of programming and planning covering the metal trades. The fact that the Office had put greater emphasis in its report on countries with such systems and had endeavoured to explain their operation should not, however, be regarded as taking any stand in favour of these systems or of any one of them. This merely followed logically from the terms of the item on the agenda. The representative of the Secretary-General then drew attention to the difficulty of knowing at what point planning and programming began and observed that, while these terms were coming to be used more widely, there was a danger that some of those who used them did not always attach the same meaning to them. The Office had also considered that, if the Committee was to have a useful discussion of the role of employers' and workers' organisations in programming and planning in the metal trades, the report should endeavour to clarify concepts and explain the variety of notions covered by the terms " programming " and " planning ". It had not seemed possible in the report to draw a clear distinction between the two concepts; and the term " planning ", which had been regarded as covering also " programming ", had been defined as " a fairly well developed combination of procedures and systems which enable a coherent body of economic and social goals to be formulated which is aimed at making the best possible use of material and human resources and generally specifies the means and stages by which the goals are to be duly attained." The representative of the Secretary-General further observed that it had not been considered possible to describe programming and planning systems in relation to the metal trades alone, firstly, because such systems were generally set up for the economy as a whole and, secondly, because the Office had little information available on programming and planning in the metal trades alone.

Discussion of Points

7. Following a suggestion made by the Chairman the Subcommittee began a general discussion on the basis of the suggested points for discussion contained in the report prepared by the Office. It was, however, understood that any other points relating to the item under discussion might also be raised by the members of the Subcommittee.

8. The general discussion enabled many Government, Employers' and Workers' members to have a broad exchange of views on the methods used in their own countries to promote economic and social development, either under planning and programming systems such as those which had been stressed in the Office report, or under various types of national policies and programmes which had similar goals from the point of view of economic growth and full employment. This exchange of views enabled several members to supplement or to correct information contained in the Office report regarding the methods of programming and planning practised in their own countries.

9. In the course of the general discussion several members of the Subcommittee stressed the difficulty of discussing the role of employers' and workers' organisations in programming and planning in the metal trades alone, since such measures were generally conceived and applied in relation to the economy as a whole. The discussion therefore often went beyond the metal trades and covered the various methods of employers' and workers' participation in programming and planning systems as a whole.

10. The discussion particularly brought out the variety of notions covered by the terms " programming " and " planning " and of the methods followed in this connection by reason of the differences of political, economic and social systems in the various countries of the world and of their degree of economic development. In spite of the diversity of views expressed in the Subcommittee some common trends of thought came to light in the course of the discussion, which are reflected in the conclusions adopted by the Subcommittee on completion of its work.

11. The Workers' members were in favour of a democratic organisation of the economy based on methods suited to the particular circumstances in each country; and they stressed the need for programming or planning in the metal trades. They emphasised that such programming and planning should not be viewed merely with respect to technical and

commercial implications, but also in the light of social objectives: prevention of unemployment, reduction of hours of work, raising the standard of living and, in general, protection of the interests of workers, particularly workers affected by technological development.

12. Recalling the importance of the metal trades in the economy of the various industrialised or developing countries, they maintained that, to ensure full employment and a higher standard of living and social progress in general, governments must assume the necessary responsibility to ensure a balanced and harmonious growth of the metal trades by having recourse to efficient programming and planning methods. The ever-increasing pace of scientific and technological developments in the metal trades and greater freedom of trade gave rise to problems of structural change, modernisation and social assimilation which called for systematic and continuous co-ordination and guidance of policies at the national and even international levels, particularly in such sectors as shipbuilding and the automobile, aircraft and electronics industries. Planning and programming subjected economic and social development to constant observation and control. They should prevent trade cycles and purposeless operations, and should contribute to an increase in production and in efficiency. They by no means called for or precluded nationalisation as a prior condition. It was of course necessary to preserve the freedom of individuals to take initiatives of their own in the economic and social field, but some restrictions must be imposed on it. On too many occasions the workers had found a free market economy to be synonymous with economic Malthusianism, unemployment, waste of effort and investments and production aimed at the greatest possible profit, and failing to meet the needs of the population. In the name of individual freedom the running of the economy could not be left to the whims of the few. Thus planning should not be the task of employers alone. That would amount to control by management. Planning and programming in modern undertakings and government programmes in certain fields, whether short-term or long-term, were not new and their implementation was perfectly practicable. It was rather the lack of programming and planning which should be regarded as an omission. While requirements of planning differed from country to country, planning had a common feature in all: it must meet basic human needs.

13. The Workers' members further observed that questions of programming and planning should be considered in the light of the Declaration of Philadelphia and the Constitution of the International Labour Organisation, which brought out the notion of the common good and the need to develop the economy for the benefit of society. In view of the resolution (No. 58) concerning programming techniques in the metal trades, adopted by the Metal Trades Committee at its Seventh Session, and the resolution concerning the concept of democratic decision-making in programming and planning for economic and social development, adopted by the International Labour Conference at its 48th Session (1964), it was out of the question that the Committee's current session should attempt to reconsider the principles contained in these resolutions. The question was how to implement them.

14. As to planning methods, the Workers' members stressed that all planning or programming should be tripartite or, where appropriate, bipartite; free and independent employers' and workers' organisations should actively participate in it, together with representatives of the government or planning and programming authorities; and the plans drawn up should receive in their implementation the support of competent commissions at all levels of the economy (national, regional and undertaking). The co-operation of scientific and technical institutions should also be obtained.

15. The Workers' members also called for a strengthening of the participation by European trade unions in international organisations, such as the European Coal and Steel Community and the European Common Market.

16. In the opinion of the Workers' members planning and programming would help to clarify problems for employers and workers. They would certainly lead to a broadening of the functions of trade unions and employers' organisations, which must adapt themselves to new situations; they would not change industrial relations, however, which would continue to be based on free collective bargaining. An incomes policy could in any event be considered only in connection with a general economic policy and prices policy and provided

it aimed at an increase in real income through faster industrial growth. An incomes policy should apply to all incomes, not just wages. If workers' organisations were to be able to play their part in planning and programming, they must enjoy full independence and, in particular, their right to protest.

17. The Employers' members of Belgium, Canada, France, the Federal Republic of Germany, India, Italy, Japan, the United Kingdom and the United States each made known their attitude to methods of programming and planning in the economy. They came out very clearly in favour of the principle of free enterprise and the market economy and stressed that it was an indispensable condition for economic and social development and progress.

18. The Employers' member of the United States in particular recalled that while his country might be classified among the most advanced industrial nations it was not very long since it had emerged from a primarily agricultural into a substantially industrial economy, and it was among the younger of the industrial nations. The functioning of the United States economy was traditionally based on freedom of action: freedom in the market place of the customer as well as of the undertakings supplying the customer; freedom of the undertaking and of its competitors to decide what should be made and how much should be made of a particular product; freedom of the undertaking to seek through technical and market research to improve the quality of its products so that it might expand its market and increase the number of jobs; and lastly, freedom to risk its investment and, when it was successful, to receive the rewards not merely in the form of profits but through the creation of new and better jobs. The American economy thus showed a decentralisation of decisions taken to meet the needs of a free market, and the incentive of individual profit was tempered by a sense of responsibility towards society as a whole. The Government could of course reinforce these freedoms by providing a climate favourable to high production and high consumption. This it did through various fiscal and monetary policies, consultations with employers and workers, measures to promote general education and vocational training and, possibly, legislation to prevent abuses and injustices. Such policies and measures were appropriate and necessary and served the needs of industry, the workers and the community. They could not, however, in the opinion of the employers of the United States, be regarded as planning measures similar to those which had been stressed in the Office report.

19. The Employers' member of the Federal Republic of Germany recalled that a very high percentage of the products of the metal trades manufactured in the world came from a small number of highly industrialised countries with a free economy. His country had rebuilt its economy without programming or planning and the results obtained had been very satisfactory. Workers in the metal trades in his country had wages and a purchasing power which were among the highest in Europe, the country was in the vanguard of world production, and unemployment had disappeared several years ago. It was of course possible in a free economy to recommend and pursue a long-term goal, such for example as would check the effects of economic inflation by restrictive measures; but freedom for undertakings and trade unions was the driving force of progress and ensured the growth of employment.

20. In the opinion of the Employers' member of Canada, free competition which allowed individual undertakings to take their own economic decisions was the system which ensured both the most efficient use of resources and the provision of goods and services desired by free men. So long as the market could operate freely there was no need in Canada, a highly prosperous country, for national economic planning. The federal Government had, however, recently set up an Economic Council, which consisted of highly qualified persons and whose task would be to lay down general guide-lines for economic development of the country in the years ahead.

21. The Employers' member of Italy recalled that while the Subcommittee should discuss the role of employers' and workers' organisations in programming and planning in the metal trades, within the existing economic systems based on programming and planning, it should not draw up instructions to countries to embark on economic programming or planning. In his country the Constitution laid down the principle of the freedom of the private economy and it would be hard to reconcile this principle with a programming and planning system.

22. The Employers' member of the United Kingdom, Employers' Vice-Chairman of the Subcommittee, observed that recourse to tripartite or bipartite methods of carrying out planning or programming in industry depended on the widely differing circumstances found in different countries. While it was true that different levels of development might call for different degrees of control of the economy, the Employers did not believe that over-all planning should be done at all levels of the economy. It was, for one thing, impracticable that workers should be associated in the procedure of drawing up plans at the lower levels of production, since generally they did not have the necessary qualifications. The workers should not interfere in the management of undertakings, and representatives of employers' and workers' organisations were already fully occupied in their normal activities in resolving possible causes of dispute arising from questions relating to wages and working conditions. Planning at the international level hardly seemed to be practicable at the present time in view of the difficulties experienced in achieving economic co-operation in the countries of Western Europe.

23. The Employers' member of Japan stated that in his country the guide-lines of the national plan were drawn up by a tripartite Economic Council which consulted with experts. Plans drawn up by this Council for the various industries were a synthesis of plans drawn up by individual undertakings. There was no collective bargaining in his country at the industry level, but plans drawn up at the level of the undertakings took into account the views of their unions. Employers in Japan considered that they must remain free to decide on their own activities.

24. The Employers' member of France observed that in his country the plan, which applied to the economy as a whole, was conceived as a body of national forecasts made with the participation of the social groups and had a strong institutional character. The plan had its technical, political and psychological aspects by contributing to an understanding of the coherence of the measures contemplated, by committing the Government to a determined financial, economic and social policy and by providing better information on economic matters. The plan provided only a working hypothesis, however, which had no direct impact on the sectors of industry and undertakings. French planning was neither mandatory nor based on direct control. The fundamental rule was that of a market economy, which was an indispensable condition for development and progress because of international competition and the large number of undertakings of all sizes in the metal trades. While the history of French plans showed that their success or failure often depended on outside factors (for example Marshall Aid in the case of the first plan) and while interim plans introduced by executive decision had modified current plans, plans had nevertheless served their purpose by causing the public authorities to set up the infrastructure on which industry and the operation of the market economy must be based.

25. The Employers' member of Belgium considered that it was not for the Subcommittee to decide whether planning or programming techniques were most likely to achieve economic progress and make it keep step as far as possible with social progress. He supported consultation of workers' organisations at the national and sectoral levels of the economy on all social and economic problems, and he recalled that in his country bodies had been set up for this purpose in addition to the form of direct contact made through collective bargaining. Problems of technological development, unemployment and vocational training could be studied by these means without any need for recourse to programming or planning. There did exist in Belgium a programming office which took action after consulting representatives of the social groups and experts and which was responsible for giving economic information and drawing up a draft budget of the economy. The nature of its work, however, was merely indicative.

26. The Employers' member of India recalled that in 1947 India had introduced a planning system which today extended from the national down to the undertaking level. No new factory could be built in his country without government authorisation. In the early days employers had welcomed and supported planning, for it was imperative to make up for many years of delay and priorities had to be established. After 15 years' experience, however, some disillusionment had begun to set in. Difficulties arising in the economic life

of his country and mistakes made in the operation of the planning system convinced him that programming and planning should not be advocated as articles of faith.

27. The Employers' member of the U.S.S.R. stated that while recourse might be had to planning under different political, economic and social systems his own country was one which had for many years practised economic planning. He observed that in the last seven years industrial production had increased by 84 per cent. and 5,500 new industrial undertakings had been set up. In the U.S.S.R. the aim of planning was to base forecasts on scientific and objective estimates so as to achieve continuous growth of the national income. For this purpose planning methods were being constantly improved. Undertakings were becoming increasingly interested in attaining higher goals and improving their technology. The undertaking might be becoming more and more autonomous, but that did not impair the unity of planning policy. Government planning was perfectly compatible with the elaboration of economic goals at the undertaking level and with the broad autonomy of the undertaking.

28. The Employers' member of Yugoslavia gave an account of recent developments of programming and planning in the metal trades in his country. Changes in the economic system designed to speed up economic growth would come into effect in 1966 and were aimed at decentralising the planning of the national economy. Plans covering periods of four to seven years would be drawn up for groups of related producers on the basis of plans drawn up by undertakings and their associations. To help the undertakings in drawing up these plans, groups of experts would carry out market research and other economic analyses. Investments would be planned by the undertakings from their own resources, from loans by national banks and from foreign credits. Workers' participation in management was the result of the system of workers' self-management introduced in Yugoslav undertakings.

29. In answer to the argument that workers did not have the necessary qualifications for participation in programming and planning, particularly at the undertaking level, several Workers' members maintained that it was wrong and outmoded to think that questions of programming and planning must be dealt with exclusively by trained engineers and technicians regarded as the only persons competent in this field. Workers were as competent as anyone and should be allowed their full share in planning and programming.

30. There did, of course, exist a problem of workers' qualifications, but firstly, it did not arise only for them, and secondly, it should provide encouragement to ensure that as many workers as possible had the means necessary to increase their qualifications.

31. The Workers' members insisted that programming and planning should be carried out at all levels of the economy, particularly at the level of the undertaking. At that level councils should be set up, where they did not already exist, to study the economic and social effects of plans and programmes drawn up at the level of the undertaking and to consider such questions as production methods, the level of production and sales, etc.

32. The Workers' member of the Netherlands pointed out that in countries with a market economy free enterprise was one of the basic factors of the social progress and prosperity which prevailed today in many countries. But in conjunction with technological development the size of undertakings had increased, the means of production had developed and this growth had been so rapid that it had had a profound effect on society. Decisions taken by managers of undertakings affected not merely the persons closely connected with these undertakings, but in fact society as a whole.

33. The Workers' member of Norway recalled that under the provisions of various basic agreements governing labour-management relations in his country heads of undertakings were required to inform the workers' representatives of the development of the undertaking and the financial problems it involved. On this basis certain principles governing participation by workers in drawing up undertaking plans had been formulated. Consultation within the undertaking between management representatives and workers' representatives was particularly well developed in business corporations. Joint production committees carried out very detailed studies of the financial situation of the undertakings and the production plans. Their conclusions were passed to the management, which informed them of the decisions taken.

34. The Workers' member of the United Kingdom, Vice-Chairman of the Subcommittee, recalled that there were training courses organised in his country for trade union representatives and that the management of undertakings often saw fit to promote workers to supervisory positions. If it had been possible in war-time in his country to set up joint production committees with participation by employers' and workers' representatives there should be no obstacle to the functioning of such committees in time of peace.

35. The Workers' member of Japan pointed out that Japanese trade unions were endeavouring to get production boards established in the undertaking under collective agreements.

36. The Workers' member of France stated that under existing French legislation it was quite possible to examine planning and programming at the level of the undertaking as such by means of the works council. Hitherto, however, this particular feature of the role of works councils had been allowed to remain within the discretion of the employer alone.

37. The Workers' member of Ukraine stated that there were qualified supervisory staff in his country fully capable of participating in planning. It was desirable in his opinion to secure the widest support from workers in order to organise work and increase production. Moreover, courses could be arranged to enable workers and their representatives to make themselves familiar with the different aspects of planning. The workers' representatives in his country participated in planning at all levels from the undertaking up to the highest authorities in the country. Draft plans of undertakings were discussed at working meetings organised by the trade unions and attended by engineers, economists and workers expert in the field. The higher authorities did not adopt any plan without first having consulted the trade union organisations.

38. The Workers' member of Yugoslavia stated that in his country too planning had been practised to a very great extent. It existed at all levels from that of the undertaking and the producers' associations up to the federal level. Its basis was the interest of the undertakings, that is, the interests of the workers of each undertaking; for in his country under the system of workers' self-management the worker was not just a producer, but had managerial functions. This was of fundamental importance in meeting his various aspirations since his role was not limited to working and drawing his wages. Thus the worker aimed at constantly improving his knowledge in the field of the economy of the undertaking and not merely in the technological process of production. If planning was to be done with full factual knowledge, planning operations called for a deep knowledge of the problems involved, training of the worker-producers, and the supply of precise and relevant information to the undertakings, which should be familiar with the potential of the national and international markets and technological progress.

39. Most of the Government members who took part in the discussion were concerned mainly with giving a brief outline of the extent to which methods followed in their countries to ensure economic and social development were or were not based on the notion of programming or planning.

40. The Government member of France stated that in any one country views might differ as to the success or failure of planning. Although he himself was convinced of the merits of free enterprise and was opposed to any government intervention in economic life in a haphazard way, he pointed out that the plan in France was not merely a source of information for the metal trades. It was of course useful from this point of view by making known the Government's mid-term economic policy, the investment programmes covering several years for which the Government was responsible and detailed forecasts for each branch of activity, and at the same time by indicating the future growth of the national economy. The plan served a further purpose, however, in that it clearly brought out structural problems at the industry level (adjustment of the industries to changes in technology and the conditions of international competition, incomes policy). Speaking on his own behalf, he stressed the need to negotiate these matters either on a bipartite or on a tripartite

basis according to the preference of the employers' and workers' organisations in dealing with one problem or another. The plan was not infallible and could not in any way guarantee absolute evenness of growth from one year to the next. It was, however, surprising to see how closely mid-term forecasts were fulfilled, and it was observed that even interim plans adopted to meet emergencies had scarcely affected the carrying out of the plan over a four-year period.

41. The Government member of Italy stated that in 1962 the Minister of the Budget in his country had set up a tripartite national commission for economic programming. This body had adopted a number of conclusions, on the basis of which the Minister had proposed a draft programme for economic development. This draft programme had been forwarded for the opinion of the National Economic and Labour Council, an auxiliary body provided for in the Constitution which consisted of experts and representatives from economic and occupational circles. Bearing in mind the opinion expressed by this Council, in October 1965 the Council of Ministers had approved an economic development programme for 1966-70, which was at present before Parliament. This programme aimed at bringing about balance among the various sectors of industry; supplying material requirements in important social services such as schools, housing, public health, social security, vocational training; producing some similarity between pay for agricultural work and pay for non-agricultural work; and removing existing disparities between underdeveloped and developed areas. Increase of production in industry was one of the essential means of attaining the objectives of the plan. It also called for heavy investment. Priority must therefore be given to measures aimed at encouraging or at making more modern and productive various sectors of the economy, including several in the metal trades (machine tools, shipbuilding, etc.). It was of great interest to the metal trades, undoubtedly the most important in the country, to guide their activity within the framework laid down by the plan. In seeking to achieve this aim a very high degree of co-operation between employers' and workers' organisations would certainly be found extremely useful.

42. The Government member of Ukraine recalled that five-year plans had been operating in his country for over 40 years and had been one of the decisive factors of its development. In recent years interest in planning had increased in countries such as India and the United Arab Republic and in some countries of Western Europe. In his opinion no continuous growth of the economy could be achieved unless material and human resources were used through planning in the interests of the State. In his country planning methods, which were being constantly improved, were based on plans of two kinds: plans of five or seven years, and one-year plans.

43. The Government member of the U.S.S.R. pointed out that the development of other sectors of industry was largely conditioned by that of the metal trades, which thus had a direct impact on the material situation of all the workers. He stated that the success of planning in his country depended to a great extent on observing the principles of proportional development among the various sectors of industry and among the various undertakings within a single sector. In some rare instances in the U.S.S.R. the bodies responsible for the plan had not taken into account these considerations which had given rise to difficulties which sometimes retarded industrial development. It was precisely at removing these defects that economic reform in the U.S.S.R. was aimed. The principle of proportional development of the various sectors required that a proper balance should be kept between the various elements on which the success of the plan depended: material and financial elements, manpower, the social element and workers' welfare. Describing the machinery for drawing up five-year and short-term plans, the speaker pointed out that centralised planning in the Soviet Union also took into consideration suggestions made at lower levels, that is, by managers of undertakings and workers' organisations. Through Soviet experience a number of formulas had been developed for participation by workers in drawing up plans at the level of the various undertakings or sectors of industry, and this was contributing to a considerable improvement in planning itself. He further recalled that although planning was clearly subject to the circumstances peculiar to each country, the Subcommittee's main task was to study and compare planning and programming methods in the various countries so that

without prejudice to their social system recommendations could later be made which might serve the best interests of the workers in the metal trades.

44. The Government member of the Federal Republic of Germany observed that in his country employers' and workers' organisations participated to quite a large extent in promoting economic development, particularly in such sectors as finance, credits, economic policy, housing, research and transport. The practical results of this participation had been highly successful. Systematic planning, however, did not exist and appeared unnecessary for economic development and expansion. In countries where planning systems were thought desirable, on the other hand, it seemed normal that employers' and workers' organisations should play a very great part in drawing up plans. The Government of the Federal Republic of Germany would, however, hesitate to support recommendations of general planning at all levels.

45. The Government member of Australia stated that the Metal Trades Committee in the opinion of his Government was not a suitable forum for debating the problem of planning since it involved fundamental economic and social principles and could not be examined without reference to the political and economic systems under which these principles were applied. He stated that in several industrialised or developing countries which had had recourse to planning methods a degree of disillusion with the achievements of planning as compared with its promises had become evident. Australia did not have joint industrial planning systems like those which the Office report described, and there was a lack of strong demand from employers and workers for the establishment of such planning arrangements. This absence of any interest in planning might be attributed, in particular, to the fact that trade unions were above all concerned with immediate problems of wages and working conditions and that they were not ideally organised to participate to their best interests in concerted planning, because in the metal trades especially they had not progressed from union organisation based on crafts to organisation based on industries. Moreover, it was doubtful if they would agree even to a small extent to give up their right to advance claims. The employers would likewise be disinclined to give up their managerial rights. Despite the absence of formal detailed planning in Australia, however, there were several examples of government intervention in his country in the regulation of the economy in the form of fiscal, monetary and commercial policies and other measures aimed at maintaining economic stability and a high level of employment. Again, while there was no long-term economic plan as such, the Government for example published long-term forecasts of population and the workforce and set immigration quotas. These forecasts provided a framework for planning by the various authorities concerned with development of the infrastructure (schooling, hospitals, transport, etc.). Furthermore, there was a high degree of consultation and co-operation between the Commonwealth and state governments and the employers' and workers' organisations on a number of questions relating to the development of the Australian economy. Concerted planning arrangements, however, such as were described in the I.L.O. report, did not exist at the industry level except in the case of a few activities such as vocational training. While questioning in a general way whether parties in industrial relations had enough confidence in each other to co-operate in planning, he considered that it could bring about a greater understanding of economic realities among employers and unions and lead to agreements between them which might have a beneficial effect on their mutual relations. On the other hand, trade union members might refuse to identify themselves with leaders who had participated in joint planning, and the gap between union leadership and members might widen and have an unfortunate effect on industrial relations.

46. The Government member of Switzerland observed that although his country had not absolutely rejected planning it had not, on the other hand, established it as a national institution. Some recent steps taken by the Government and Parliament in the field of economic and social policy did have some features of planning, but mistrust of government planning was widespread in Switzerland in industrial circles and even in trade union circles, which feared that their freedom of action might be impaired. The federal Constitution provided for consultation of the economic groups concerned, and successful co-operation between these groups and the public authorities enabled a concerted policy which answered the needs of the country to be drawn up.

47. The Government member of the United States sought to clarify the notion of planning. If to have planning a government must intervene in economic life to set output goals for all sectors of the economy with some detail (even though these goals were not binding on undertakings), then there was obviously no system of comprehensive planning in the United States; the Government believed it unnecessary and inappropriate to set output goals for all industries, and even more so for undertakings. In his country, however, many measures sought to influence over-all output or output in certain industries within the scope of a systematic, coherent and long-term policy. For want of a better term these measures, whose economic goals were probably very similar to those of other countries which had formal planning systems, might also be regarded as planning measures. He gave various examples of measures of economic planning in the United States at all government levels—federal, state and local—and of techniques used to guide economic development (public investment programmes, subsidies and credits, monetary and fiscal policies, etc.). He also stated that the Government and many organisations were carrying out to an increasing extent studies of future consumer trends, development of employment and educational and training needs. The features of economic life in the United States should, however, be borne in mind: it depended on a broad national consensus, which developed only gradually, as to the goals to be achieved, on market forces and on the initiative of free private enterprise and free collective bargaining. Planning, as he understood it, could strengthen these factors, but should not supplant them. Modern human society was too complex to allow total reliance on planning, which was likely to endanger individual freedom and the development of individual responsibility, while failing to satisfy basic human needs.

48. In the course of the discussions several members of the Subcommittee from each of the three groups stressed, firstly, that it was for each country to decide what kind of economy it desired—and this was not just an economic but also a political question; secondly, that the success of planning methods largely depended on the political, economic and social circumstances in which they were applied and that these methods should therefore be adapted to the conditions and needs of the various countries; and thirdly, that the industrialising countries had to deal with particular problems which might call for special solutions from the point of view of the planning methods used to ensure their economic and social development, particularly in view of the greater importance which public undertakings often had than private undertakings in those countries.

49. Some members of the Subcommittee referred to I.L.O. action in the field of programming and planning. The Government member of Ukraine asked that the I.L.O. carry out comparative studies of the various planning methods and make specific recommendations in this connection; that it organise study tours of tripartite delegations to different countries, particularly those which had experience of planning; that it grant fellowships to enable planning specialists to visit these countries; and that courses on methods of planning be included in the programme of activities of institutes operating under the auspices of the I.L.O.

50. Several Workers' members also requested that the I.L.O. should carry out more detailed and frequent comparative studies of planning in all countries, whatever their political system or level of development, and that it should examine the social consequences of programming and planning and particularly methods aimed at ensuring participation by employers' and workers' organisations.

51. Statements were also made in the Subcommittee by two representatives of international federations who attended as observers. The representative of the International Metalworkers' Federation recalled that the resolution (No. 58) concerning programming techniques in the metal trades, adopted by the Metal Trades Committee at its last session, had been accepted unanimously with only four abstentions. This showed that the question was not so controversial as some alleged, and he did not see why the Office had emphasised that it was. Many other I.L.O. instruments had already stressed that workers should participate in drawing up economic policy. He also pointed to the need to have workers participate in the management of undertakings, particularly so as to withstand the social impact

of automation. Planning was now a human need and workers should have the right to participate both in short-term and in long-term planning, so as to avoid the effects of arbitrary decisions.

52. The representative of the World Federation of Trade Unions referred to the problem raised by an incomes policy. He noted that there existed a contradiction between the tendency to accept, or even demand, an incomes policy and the tendency to reject programming. He observed that although in some countries a policy of incomes in general was meant, in fact such a policy really related only to income in the form of wages. Finally, it was also erroneous to conceive an incomes policy based on the relationship between wages and productivity with a view to obtaining price stability. Such ambiguities and contradictions arose, in his opinion, from the very structure of the society into which it was sought to introduce an incomes policy.

Submission and Adoption of the Draft Conclusions

53. At its fourth sitting the Subcommittee requested its Working Party to prepare draft conclusions to take into account the different proposals and suggestions made in the course of its discussions. The Working Party submitted to the Subcommittee draft conclusions concerning the role of employers' and workers' organisations in programming and planning in the metal trades.

54. At its fifth and sixth sittings the Subcommittee examined the draft conclusions submitted by its Working Party.

55. The preamble and paragraph 1 of this draft were adopted without opposition.

56. In paragraph 2 the Workers' members proposed an amendment to provide that the solution of the problems mentioned in this paragraph " should call for " instead of " may call for " a co-ordinated industrial policy. This amendment was rejected by 21 votes to 25, with 5 abstentions, and paragraph 2 was then adopted without opposition.

57. Paragraphs 3 and 4 were adopted without opposition.

58. In paragraph 5 the Workers' members proposed an amendment to replace the last sentence with a sentence which would simply state: " Planning and/or programming should always be aimed at promoting social progress and the welfare of all concerned." The part of the sentence relating to creative initiative and the spirit of enterprise would thus be deleted. It was argued that this idea was already expressed in paragraph 3 of the draft conclusions. This amendment was adopted by 24 votes to 20, with 10 abstentions. Paragraph 5 as amended was then adopted without opposition.

59. Paragraph 6 was adopted without opposition, the words " which are able to co-operate " being replaced by the word " co-operating ".

60. As regards paragraph 7 the Subcommittee had before it an amendment proposed by the Workers' member of Italy, who wished to replace the text proposed by the Working Party by the following text:

Since at present all governments must have an economic and social policy and since in certain countries government participates to a considerable extent in various branches of the metal trades, methods of economic forecasting and programming may prevent intervention by the government from being made in an empirical way and allow its policy to be known in advance and carried out with coherence and continuity. They neither imply nor preclude recourse to nationalisation measures. Programming and planning should be of a scientific character and should be based on prior studies of the economic structure of different branches of industry.

This amendment was rejected by 18 votes to 19, with 27 abstentions. The Workers' members then proposed that one sentence in this paragraph, namely that which stated that methods of programming and planning " do not necessarily call for nationalisation ", be replaced with a sentence as follows: " They do not necessarily call for nor preclude nationalisation." On a proposal by the Employers' members, which was agreed to by the Workers' members,

the Subcommittee finally decided to delete from paragraph 7 the sentence which it had been proposed to amend. Paragraph 7 as amended was then adopted without opposition, after an amendment proposed by the Government member of the U.S.S.R. to delete the first sentence of paragraph 7 had been rejected by 7 votes to 43, with 11 abstentions.

61. Paragraph 8 was adopted without opposition.

62. Paragraph 9 was adopted without opposition with the insertion of the word " particularly " before " in countries in the course of industrialisation ".

63. The Subcommittee had before it two amendments to paragraph 10. The first, proposed by the Workers' members, sought to replace the first sentence of paragraph 10 by the following text:

In countries where the economy is based wholly or in part on the principle of free enterprise, any programming and/or planning will have to be carried out with the participation of the undertakings.

The second amendment, proposed by the Government member of France, was to add at the end of the first sentence of paragraph 10 the following text:

account being taken, where they exist, of over-all forecasts made at the national level.

The Workers' members having agreed to withdraw their amendment in favour of that which was proposed by the Government member of France, the Subcommittee then adopted without opposition, but with the abstention of the Workers' member of Italy, paragraph 10 as amended by the Subcommittee on the proposal of the Government member of France.

64. Paragraph 11 was adopted without opposition, the words " public control " being replaced by the words " public ownership " and the last sentence being deleted.

65. Paragraph 12 was adopted without opposition, the words " all relevant information " being replaced by the words " all information ".

66. Paragraph 13 was adopted without opposition, the words " in drawing up and putting into effect programming and/or planning measures " being replaced by the words " in drawing up, putting into effect and reviewing programming and/or planning measures ".

67. Paragraph 14 was adopted without opposition. The Workers' members stated, however, that although they agreed to this text in a spirit of compromise they wished to stress that the direct representation of undertakings in addition to employers' and workers' organisations on the committees and bodies responsible for drawing up plans and programmes should not lead to any loss of balance between the representation of employers and that of workers.

68. Paragraph 15 was adopted without opposition with the insertion of the words " particularly those " after the words " in some countries ".

69. Paragraphs 16 and 17 were adopted without opposition.

70. Before voting on the draft conclusions as a whole as amended explanations of their vote were made to the Subcommittee by certain of its members.

71. The Employers' member of Yugoslavia stated that the system of planning and programming which existed in his country differed from systems described in paragraphs 10 and 11 of the draft conclusions, and he regretted this omission since the Yugoslav system interested a growing number of countries. In Yugoslavia, whose economy was based on social ownership and the system of self-management, the free enterprises were themselves responsible for planning and programming of their production, business and investments. They made their plans and programmes on the basis of the situation of the market and with the intention of increasing their income. The planning and programming system of his country was based on the plans and programmes laid down by the free enterprises and their associations. The national plans and programmes provided for the increase of the national income

and the financial policy gave support to the free enterprises while seeking to guide their investment and development policies.

72. The Employers' member of the United States said that planning and programming in the common sense of the word as set out in the report prepared by the Office and even as defined in the draft conclusions had been rejected in his country. While repeating that he did not seek to impose his views on anyone he thought that this did not preclude him from calling general attention to the benefits of a free enterprise system. In his view, one of the most significant benefits was free collective bargaining, one for which the underlying freedom of the economy was an absolute prerequisite. To the extent that the economy in general was controlled, free collective bargaining must also be limited. When pressed by a variety of hardships, there was a temptation for some to hand over the responsibility for solutions to government. His experience would indicate that freedom of the economy, on the other hand, whatever its faults, could be a much more reliable way toward successful solutions. One danger in private groups delegating to a government the responsibility for programming and planning was the extreme difficulty—if not impossibility—of retrieving it. He stated that he had said this because he was sure that those who wished might be guided by it.

73. The Workers' member of the United States contested the statement that there was no planning or programming in the United States. In maintaining that there was, he referred in particular to a report submitted to the United Nations by the Government of the United States in 1963 which mentioned various examples of planning in the economic and social fields.

74. The Workers' member of Italy stated that he would abstain from voting on the draft conclusions because they did not sufficiently reflect the concept of planning supported by Italian trade union organisations.

75. The Subcommittee then unanimously adopted the draft conclusions with the abstention of the Workers' member of Italy.

Adoption of the Report

76. The Subcommittee, at its sixth sitting, unanimously adopted the present report.

Geneva, 16 December 1965.

(Signed) P. ARNOW,
Chairman.

(Signed) H. BUSTARRET,
Reporter.

Examination by the Committee of the Report and of the Draft Conclusions concerning the Role of Employers' and Workers' Organisations in Programming and Planning in the Metal Trades

At its eighth plenary sitting the Committee had before it the foregoing report, together with the draft conclusions concerning the role of employers' and workers' organisations in programming and planning in the metal trades.

In submitting the report and the draft conclusions Mr. BUSTARRET (Government delegate, France; Reporter of the Subcommittee on Programming and Planning) pointed out that the discussion in the Subcommittee had not been as difficult as he had at first feared, since the report had been unanimously adopted and the draft conclusions unanimously, with only one abstention.

The report showed a great variety of opinions, for it contained a summary of the different notions of programming or planning which existed in the different countries and among the different groups.

He wished to draw attention to certain paragraphs in the draft conclusions which he thought unlikely to give rise to controversy. Firstly, paragraph 3 stressed that programming and planning in the draft conclusions were used to cover not only formalised procedures by which a government set output goals as specific sectors of the economy but also policie intended to affect industry as a whole or certain sectors of it in so far as these policies were deliberate, long-term and consistent. Secondly, the interest of these methods of programming and planning in the metal trades was twofold: as stated in paragraph 2, there were problems of structural adjustment, modernisation and social assimilation for which a satisfactory solution might call for a co-ordinated industrial policy; further, as stated in paragraph 5, these methods enabled over-all forecasts to be made which were an important source of information on the possible future growth of the national economy including the metal trades. Thirdly, as stated in paragraphs 4 and 6, the implementation of a programming and/or planning policy should not have the effect of restricting the freedom of action of employers' and workers' organisations in their relations: it was necessary for management and labour to be represented, as appropriate, by their respective organisations. Finally, thanks were due to the Chairman and the Vice-Chairmen, who had maintained a calm atmosphere in the discussions, and to the secretariat for its help and co-operation in drawing up the report and the draft conclusions.

Mr. MACARTY (Employers' delegate, United Kingdom; Vice-Chairman of the Subcommittee on Programming and Planning) said that the spirit of compromise which had marked the Subcommittee's discussions was most welcome and had led to their successful conclusion. On behalf of the Employers' group he hoped that the report and the draft conclusions would be adopted by the Committee.

Mr. BARRATT (Workers' delegate, United Kingdom; Vice-Chairman of the Subcommittee on Programming and Planning) said that while the draft conclusions were not entirely what the Workers' group might have desired, this was understandable in view of the questions at issue. Paragraph 4 of the draft conclusions recalled that sincere and effective cooperation of management and labour was an essential element in the application of programming and planning. In a changing world compromise solutions were called for, as in the present case. The conclusions might serve as a cure for the ills of the metal trades throughout the world. Adding his thanks to those of previous speakers the speaker asked on behalf of the Workers' group that the report and draft conclusions be adopted.

The Committee unanimously adopted the report and conclusions (No. 64) concerning the role of employers' and workers' organisations in programming and planning in the metal trades. The text of the conclusions is reproduced below.

Conclusions (No. 64) concerning the Role of Employers' and Workers' Organisations in Programming and Planning in the Metal Trades [1]

The Metal Trades Committee of the International Labour Organisation,

Meeting in its Eighth Session in Geneva from 6 to 17 December 1965,

Recalling the resolution (No. 58) concerning programming techniques in the metal trades,

Bearing in mind the resolution concerning the concept of democratic decision-making in programming and planning for economic and social development, adopted by the International Labour Conference at its 48th Session (1964),

Having discussed the role of employers' and workers' organisations in programming and planning in the metal trades;

Adopts this seventeenth day of December 1965 the following conclusions:

1. Forecasting and guiding national economic development is increasingly claiming the attention of those who are responsible in whatever capacity for drawing up and putting into effect economic and social policy in the various branches of the economy, including the metal trades. To do this, methods of programming and/or planning are being used.

2. Programming and/or planning normally covers the economy as a whole. It is of particular interest to the metal trades by reason of the volume of their production, the

[1] Adopted unanimously.

degree of their investments, the growth in their international character, the size and skills of their workforce, their sensitivity to economic fluctuations and the fact that to a higher degree than many other industries they are subject to technological change. The ever faster pace of scientific and technological development in the metal trades, as well as measures in some areas to bring about free trade, have created and may continue to create problems of structural adjustment, modernisation and social assimilation, for which a satisfactory solution on the basis of a rising standard of living and full employment may call for a co-ordinated industrial policy.

3. While there is a clear distinction between methods involving directives to industry and methods designed as guides to enable all the participants in industry to act with a full knowledge of the over-all position, the terms " programming " and " planning " are used in the present conclusions as covering not only formalised procedures by which a government sets output goals for specific sectors of the economy but also policies intended to affect industry as a whole or certain sectors of it, in so far as these policies are deliberate, long-term and consistent. At the same time it is being increasingly realised how important it is to see that these methods of programming and/or planning should not result in preventing the undertaking from carrying on its creative activities.

4. Furthermore, the implementation of a programming and/or planning policy should not have the effect of restricting the freedom of action of employers' and workers' organisations in their relations. Their independence should always be respected. A programming and/or planning policy may, however, have an influence on their action by taking into account the requirements of such a policy, whose success largely depends on the sincere and effective co-operation of management and labour.

5. The main reason for the interest shown in methods of programming and/or planning is that they enable over-all forecasts to be made. These are an important source of information on the possible future growth of the national economy, including the metal trades. These forecasts may be useful in clarifying the situation for management and labour and in guiding their action. Programming and/or planning should always be aimed at promoting social progress and the welfare of all concerned.

6. To ensure this it is necessary for management and labour to be represented, as appropriate, by their respective organisations co-operating both with each other and with the appropriate authorities with a view to setting the general goals to be attained so as to ensure the harmonious development of the metal trades and the improvement of the working and living conditions of the workers they employ.

7. Such methods of programming and/or planning need not involve direct and mandatory intervention by the government. On the contrary, since at present all governments must have an economic and social policy, these methods may prevent intervention by the government from being made in an empirical way and allow its policy to be known in advance and carried out with coherence and continuity. Programming and/or planning should be of a scientific character and should be based on prior studies of the economic structure of different branches of industry.

8. Programming and/or planning, particularly in the metal trades, can in fact be carried out through a variety of methods, which are derived from differences in the political, economic and social structure and in the degree of development and the size of the countries concerned. It is recognised that different ideologies and methods of government and different traditions and purposes of employers' and workers' organisations may demand different approaches to effective programming and/or planning at any level. The extent of industrial development in any particular country is also an important factor.

9. Owing to prevailing social conditions, particularly in countries in the course of industrialisation, emphasis should be put on all social aspects of programming and/or planning in these countries. Improvement of workers' conditions and social benefits are necessary requisites to successful programming and/or planning goals and would ease the change from the traditional to the industrial life.

10. In countries where the economy is based wholly or in part on the principle of free enterprise, any programming and/or planning could be based on plans prepared by the separate undertakings, account being taken, where they exist, of over-all forecasts made at the national level. The successful implementation of the plans thus made, however, may call for the co-operation of management and workers, which may be obtained by procedures in conformity with the custom and practice in industrial relations in the country concerned.

11. In countries where the economy is based on public ownership of the means of production, planning is regarded as an indispensable method of running the economy. The responsibility for drawing up plans in the metal trades belongs generally to a system of economic administrative bodies ranging from the central planning body down to the level of the undertakings, all of them acting in consultation with the workers' organisations. The problem of the operational independence of undertakings in the metal trades within the structure of the plan is nevertheless receiving attention and in some cases has given rise to new methods aimed at an increased autonomy of undertakings and introducing a system of workers' participation in the management of undertakings.

12. Important conditions for successful functioning of programming and/or planning bodies are that they be convened at regular intervals and in cases of emergency and that procedures and institutions should be developed to give all concerned all information.

13. If a policy of programming and/or planning in the metal trades is to produce results, it is imperative to secure the co-operation of management and labour in this sector. It is therefore indispensable that the employers' and workers' organisations in the metal trades should be able to play a full part in drawing up, putting into effect and reviewing programming and/or planning measures at appropriate levels.

14. Suitable measures should therefore be taken, where necessary, to make arrangements to ensure such participation, for example—

(a) direct representation of undertakings and employers' and workers' organisations on the committees and bodies responsible for drawing up programmes and plans in the metal trades;

(b) participation by management and labour representatives in the metal trades on committees and bodies which have general competence in laying down national and international economic and social policy and which are therefore associated in drawing up economic and social programmes and plans of general application;

(c) agreements between employers' and workers' organisations in the metal trades aimed at social benefits for the workers.

15. It may appear desirable in some countries, particularly those in the process of industrialisation, to strengthen the structures of collective bargaining and joint consultation at the level of industry as a whole, or of particular sectors of industry, with a view to establishing certain general goals aimed at guiding the parties in their joint negotiation at the level of individual undertakings.

16. Bodies for consultation or co-operation within the undertaking and collective bargaining procedures may enable workers' representatives to make a useful contribution to the development of production programmes of undertakings and measures aimed at improving working conditions and efficient use of manpower in the metal trades. The success of this contribution largely depends on the information and consultation policy followed by the management of undertakings. When management is contemplating steps likely to affect the workforce, it should take due account of the provisions of paragraph 13 of the Termination of Employment Recommendation, 1963.

17. The conclusions (No. 55) concerning the acceleration of technological progress and its influence on the effective utilisation of manpower and the improvement of workers' income in the metal trades, adopted by the Metal Trades Committee at its Seventh Session (1962), should guide the employers' and workers' organisations participating in programming and/or planning in meeting the social effects of structural changes in the metal trades caused by technological and economic developments.

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Report of the Working Party on the Effect Given to the Conclusions and Resolutions Adopted by the Metal Trades Committee at Its Previous Sessions [1]

Composition and Officers of the Working Party

1. The Working Party on the Effect Given to the Conclusions and Resolutions Adopted by the Metal Trades Committee at Its Previous Sessions was set up by the Committee at its third plenary sitting on 8 December 1965. It was composed of three titular members and three deputy members from each group.

2. The Working Party elected its officers as follows:

Chairman and Reporter: Mr. FRANDSEN (Government member, Denmark).

Vice-Chairmen: Mr. DE SAEDELEER (Employers' member, Belgium); Mr. HORSBURGH (Workers' member, Australia).

3. The Working Party held five sittings.

Terms of Reference of the Working Party

4. At the request of the Chairman the representative of the Secretary-General explained to the Working Party its terms of reference, as laid down by paragraph 4 of article 3 of the Standing Orders for Industrial and Analogous Committees. In accordance with these provisions, the Working Party was called upon—

(a) to examine the information contained in the parts of the General Report concerning the effect given to the conclusions and resolutions adopted at previous sessions;

(b) to classify the conclusions and resolutions adopted at previous sessions with the object of facilitating the examination of the effect given to them; and

(c) to indicate—

(i) the conclusions and resolutions, or parts thereof, which are no longer of current concern; and

(ii) as regards the other conclusions and resolutions, or parts thereof, those which, for the time being, would not appear to call for further information, and those on which further information is considered desirable.

5. To facilitate it in the discharge of its first task—i.e. the examination of the information concerning the effect given to the conclusions and resolutions adopted at previous sessions—the Working Party had before it the first volume of the General Report [2] which had been prepared by the Office. Part I of that Report related to the action taken in the various countries to give effect to certain conclusions which had been adopted by the Committee at previous sessions. This part of the Report was based on information which had been communicated by member States. Part II of the same Report contained information concerning the action taken by the Office to give effect to requests which had been made by the Committee.

6. To assist the Committee in the discharge of its tasks arising out of points *(b)* and *(c)* of its terms of reference, the Office had prepared a draft classification which appeared as Appendix II to the General Report.

7. In accordance with a wish which had been expressed by the Committee at its previous session the Working Party also had before it the draft of a consolidated text covering the main conclusions which had been adopted at the previous sessions of the Committee. This draft text had, as Appendix III, also been incorporated in the General Report.

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[1] Adopted unanimously.

[2] See *General Report: Effect Given to the Conclusions of the Previous Sessions*, Report I, Item 1 *(a)* and *(b)*, International Labour Organisation, Metal Trades Committee, Eighth Session, Geneva, 1965 (Geneva, I.L.O., 1965) (mimeographed).

General Discussion

8. An exchange of views took place within the Working Party on the information which a number of governments had provided concerning the effect which had been given to the conclusions and resolutions adopted at the previous sessions. Following this discussion the Working Party expressed its thanks to the governments which had provided the information which was summarised by the Office in the General Report.

9. Of the conclusions and resolutions to which effect was to be given by the Office, three received special attention on the part of the Working Party: the resolution (No. 54) concerning the use of German and Spanish at sessions of the Metal Trades Committee (Sixth Session), the conclusions (No. 56) concerning working conditions and safety in shipbuilding and ship repairing (Seventh Session) and the resolution (No. 57) concerning tripartite action regarding vocational training in the metal trades (Seventh Session).

10. A number of members stressed the difficulties which German-speaking and Spanish-speaking delegates had encountered in following and participating in the proceedings of the session; this was because some of the working documents were not published in Spanish and none were prepared in German, while no full text of the reports prepared by the Office for the Committee existed in either of these two languages. Moreover, the new membership of the Committee—which now included an appreciable number of Spanish-speaking and German-speaking countries—warranted greater facilities being made available to delegates speaking these languages. The Working Party accordingly regretted that no action had been taken on resolution No. 54, and expressed the hope that the Director-General would examine the possibilities of improving the facilities for German-speaking and Spanish-speaking delegates.

11. As regards conclusions No. 56 and resolution No. 57, the members of the Working Party noted with regret that no practical action had been taken by the Office to give effect to the requests which the Committee had made to it at the Seventh Session. The Working Party hoped that the Director-General would speed up the necessary studies so as to establish what possibilities existed for taking action on the requests presented in conclusions No. 56 and in resolution No. 57. The Working Party trusted that the Governing Body might thus have soon before it proposals for the convocation, at an early date, of a meeting of experts to prepare a model code of safety regulations for shipbuilding and ship repairing, and of a tripartite meeting of experts on vocational training in the metal trades.

Classification of the Conclusions and Resolutions Adopted by the Committee at Its Previous Sessions

12. The Working Party then considered the most appropriate way of classifying the conclusions and resolutions adopted by the Committee at its previous sessions. For this purpose it based itself on the draft classification which had been prepared by the Office. The origins of that draft lay in the classification which had been approved by the Metal Trades Committee at its Seventh Session. That classification had, however, been adapted to meet the requirements of the new Standing Orders for Industrial and Analogous Committees, and in particular the provisions setting forth the terms of reference of the Working Party on the Effect Given to the Conclusions and Resolutions Adopted by the Committee at Its Previous Sessions.

13. The Working Party first proceeded to classify the conclusions and resolutions which had been adopted by the Metal Trades Committee at its Seventh Session—i.e. Nos. 55 to 62.

14. As regards those conclusions and resolutions to which effect was to be given in the various countries the Working Party agreed to place conclusions Nos. 55, 56 and 57 in Group C of Section I, i.e. amongst the conclusions and resolutions concerning which further information is considered desirable. On the other hand, it decided to transfer resolution

No. 58 to Group A of Section I (conclusions and resolutions which are no longer of current concern).

15. As regards those texts which had been adopted at the Seventh Session of the Committee, and which called for action by the Office, the Working Party felt it appropriate to place conclusions Nos. 55 and 56, as well as resolution No. 57, in the group of conclusions and resolutions which should continue to receive attention on the part of the Office (Group B of Section II). It felt, on the other hand, that resolutions Nos. 58, 59, 60, 61 and 62 were no longer of current concern. Accordingly, it classified these five resolutions in Group A of Section II. It was understood, however, that the Office would bear in mind the view which had been expressed by the Committee in resolution No. 59 concerning intensification of efforts by the United Nations and the specialised agencies in the field of the metal trades. With a view to ensuring the complete efficacy of these efforts the Workers' members added that the employers' and workers' organisations concerned should be associated with the carrying out of the programme which was referred to in the resolution in question.

16. The conclusions and resolutions which had already been classified at the preceding session of the Committee were next considered by the Working Party, with a view to determining whether the earlier classification should be revised. With the exception of the conclusions and resolutions to which reference is made in the following paragraphs, it was decided to maintain the classification established by the Committee at the last session, as adapted by the Office, in order to bring it into conformity with the new Standing Orders for Industrial and Analogous Committees.

17. At the request of the Workers' members, who considered as very important the resolution (No. 53) concerning a reduction of hours of work in the metal trades without reduction of income, the Working Party transferred the resolution in question from Group A of Section I to Group C of the same section (texts concerning which further information is considered to be desirable). Simultaneously, it transferred those parts of the same resolution (No. 53) which concerned the Office, from Group A to Group B of Section II (texts which should continue to receive attention on the part of the Office).

18. Concerning Group B of Section I (texts concerning which no further information appears to be required for the time being), the Workers' members considered that the resolution (No. 26) concerning minimum income security was once again of very great interest. They emphasised that even if minimum income security raised no special problem at the present time in industrialised countries, the matter was a vital one in developing countries. Resolution No. 26 ought therefore to be transferred to Group C of Section I, to enable the Office to collect further information on this subject for the next session of the Committee.

19. The Employers' members were opposed to the transfer of resolution No. 26 to Group C. They referred to the resolution concerning minimum living standards and their adjustment to the level of economic growth, adopted by the International Labour Conference at its 48th Session (1964). That resolution dealt with the question of minimum income in a more explicit fashion, and at the same time in a more general way, than did resolution No. 26 of the Metal Trades Committee; moreover, the Governing Body had already approved a number of practical measures designed to give effect to the resolution of the International Labour Conference. In these circumstances it would serve no purpose to place resolution No. 26 in the group of texts concerning which further information was desired. Indeed, a request for information on this resolution would overlap with the inquiries which would be undertaken as a result of the adoption by the International Labour Conference of the resolution on the same subject.

20. Following this exchange of views, a vote was taken on the proposal of the Workers' members for the transfer of resolution No. 26 from Group B to Group C of Section I. There were three votes in favour, three votes against, and three abstentions, and the proposal thus failed of adoption. Accordingly, resolution No. 26 was retained in Group B of Section I.

Consolidated Text of Conclusions and Resolutions Adopted by the Metal Trades Committee at Its Previous Sessions

21. There was then an exchange of views on the Consolidated Text of Conclusions and Resolutions Adopted by the Metal Trades Committee at Its Previous Sessions. This combined text is reproduced hereinafter. The Working Party expressed its satisfaction with this text and thanked the Office for carrying out the considerable work involved in preparing it. The Working Party expressed the wish that the Office take appropriate measures to ensure that this text be brought to the attention of all concerned.

22. The Working Party also asked the Office to complete the Consolidated Text by incorporating in it the conclusions and resolutions which would be adopted at the current session, and to submit this completed text to the next session of the Committee.

23. The Workers' members requested that in this completed Consolidated Text the long section on human relations should be simplified and more ample quotations should be made from texts referring to problems of wages and hours of work.

Adoption of the Draft Classification

24. The Working Party, at its fifth sitting, held on 16 December 1965, unanimously adopted the Draft Classification of the Conclusions and Resolutions Adopted by the Metal Trades Committee at Its Previous Sessions.

Adoption of the Report

25. The Working Party, at its fifth sitting, held on 16 December 1965, unanimously adopted the present report.

Geneva, 16 December 1965.

(Signed) G. FRANDSEN,
Chairman and Reporter.

APPENDIX

CLASSIFICATION OF THE CONCLUSIONS AND RESOLUTIONS ADOPTED BY THE METAL TRADES COMMITTEE AT ITS PREVIOUS SESSIONS [1]

Section I. Conclusions and Resolutions Calling for Action in the Countries

Group A. *Conclusions and Resolutions, or Parts Thereof, Which Are No Longer of Current Concern.*

No. 6. Resolution concerning industrial relations in the metal trades (First Session).
No. 7. Resolution concerning the observance of collective agreements (First Session).
No. 10. Resolution concerning production and employment (First Session).
No. 11. Resolution concerning shortages of steel, new equipment and coal in European countries (First Session).
No. 12. Resolution concerning government expenditure on capital goods, consumers' goods and services (First Session).
No. 13. Resolution concerning unemployment insurance and social security (First Session).
No. 17. Resolution concerning the implementation of proposals and resolutions adopted by the Metal Trades Committee (Second Session).
No. 19. Resolution concerning regularisation of production and employment at a high level in the metal trades (Second Session).
No. 22. Resolution concerning training and promotion in the metal trades (Second Session).
No. 26. Resolution concerning minimum income security [paragraph 2] (Second Session).

[1] Adopted unanimously.

No. 37. Resolution concerning the effect given to the conclusions adopted by previous sessions of the Metal Trades Committee [paragraph 1] (Fourth Session).

No. 46. Suggestions concerning the effect given to conclusions adopted by the Metal Trades Committee (Fifth Session).

No. 50. Suggestions concerning the effect given to conclusions adopted at previous sessions of the Metal Trades Committee (Sixth Session).

No. 58. Resolution concerning programming techniques in the metal trades [paragraphs 1 and 2] (Seventh Session).

Group B. *Conclusions and Resolutions, or Parts Thereof, concerning Which No Further Information Appears to Be Required for the Time Being.*

No. 26. Resolution concerning minimum income security [paragraph 1] (Second Session).

No. 27. Memorandum to the Governing Body on questions concerning labour-management co-operation in the metal trades (Second Session).

No. 31. Resolution concerning technical assistance in relation to the metal trades (Third Session).

No. 34. Resolution concerning human relations in metal-working plants (Fourth Session).

No. 40. Resolution concerning consultation of employers and workers by governments on matters affecting productivity in the metal trades (Fourth Session).

No. 44. Memorandum concerning practical methods of labour-management co-operation in metal-working plants (Fifth Session).

Group C. *Conclusions and Resolutions, or Parts Thereof, concerning Which Further Information Appears to Be Desirable.*

No. 3. Resolution concerning special safety services and safety committees (First Session).

No. 4. Resolution concerning education and propaganda in matters of industrial safety and health (First Session).

No. 29. Resolution concerning vocational training and promotion in the metal trades (Third Session).

No. 30. Resolution concerning systems of wage calculation in the metal trades (Third Session).

No. 36. Resolution concerning productivity in the metal trades (Fourth Session).

No. 45. Memorandum concerning the regularisation of production and employment at a high level in the metal trades [paragraphs 1 to 6 *(a)*] (Fifth Session).

No. 49. Resolution concerning automation in the metal trades (Sixth Session).

No. 53. Resolution concerning a reduction of hours of work in the metal trades without reduction of income (Sixth Session).

No. 55. Conclusions concerning the acceleration of technological progress and its influence on the effective utilisation of manpower and the improvement of workers' income in the metal trades [except paragraphs 6 and 32] (Seventh Session).

No. 56. Conclusions concerning working conditions and safety in shipbuilding and ship repairing [except paragraphs 33, 35, 36, 37 and 39] (Seventh Session).

No. 57. Resolution concerning tripartite action regarding vocational training in the metal trades [clauses *(a)* and *(b)*] (Seventh Session).

Section II. Conclusions and Resolutions Which Call for Action on the Part of the Office

Group A. *Conclusions and Resolutions, or Parts Thereof, Which Are No Longer of Current Concern to the Office.*

No. 1. Resolution concerning international standardisation of statistics of accidents and occupational diseases (First Session).

No. 2. Resolution concerning international standardisation of warning signs (First Session).

No. 5. Resolution concerning I.L.O. factual survey [of the various measures taken in the different countries for the prevention of accidents and the protection of health in the metal trades] (First Session).

No. 8. Resolution concerning studies to be undertaken by the International Labour Office [on the problems of industrial relations] (First Session).

No. 9. Resolution concerning wages and freedom of association in underdeveloped regions (First Session).

No. 10. Resolution concerning production and employment (First Session).

No. 11. Resolution concerning shortages of steel, new equipment and coal in European countries (First Session).

No. 14. Resolution concerning technological improvements and hours of work (First Session).

No. 15. Resolution concerning industrially underdeveloped regions (First Session).

No . 16. Resolution concerning the definition of " metal trades " (First Session).

No. 18. Resolution concerning the definition of " metal trades " (First Session).

No. 20. Resolution concerning long-term estimates of raw materials requirements by the metal trades (Second Session).

No. 21. Resolution concerning international consultation in the metal trades (Second Session).

No. 23. Resolution concerning technological improvements and their effect on employment (Second Session).

No. 24. Resolution concerning assistance to economically underdeveloped countries (Second Session).

No. 25. Resolution concerning assistance to countries devastated by the war (Second Session).

No. 28. Resolution concerning studies to be undertaken by the Office [regarding labour-management co-operation] (Second Session).

No. 32. Resolution concerning maintenance and repair of mechanical equipment in underdeveloped countries (Third Session).

No. 33. Resolution concerning the use of sandblasting (Third Session).

No. 35. Resolution concerning human relations (Fourth Session).

No. 37. Resolution concerning the effect given to the conclusions adopted by previous sessions of the Metal Trades Committee [paragraph 2] (Fourth Session).

No. 38. Resolution concerning the date and place of the Fifth Session of the Metal Trades Committee (Fourth Session).

No. 39. Resolution concerning the agenda of the Fifth Session of the Metal Trades Committee (Fourth Session).

No. 41. Resolution concerning the agenda of the Fifth Session of the Metal Trades Committee (Fourth Session).

No. 42. Resolution concerning a study to be undertaken by the International Labour Office for the Fifth Session of the Metal Trades Committee [on the shipbuilding and ship repairing industry] (Fourth Session).

No. 43. Resolution concerning studies to be undertaken by the International Labour Office for the Fifth Session of the Metal Trades Committee [regarding a guaranteed minimum income and means of ensuring higher and more stable earnings] (Fourth Session).

No. 45. Memorandum concerning the regularisation of production and employment at a high level in the metal trades [paragraph 6 *(b)* to *(d)*] (Fifth Session).

No. 46. Suggestions concerning the effect given to conclusions adopted by the Metal Trades Committee (Fifth Session).

No. 47. Proposals concerning the agenda of the Sixth Session of the Metal Trades Committee (Fifth Session).

No. 48. Resolution concerning hours of work in the metal trades (Fifth Session).

No. 51. Resolution concerning a study of health and safety, and of welfare in relation to health and safety, of shipbuilding and ship repair workers (Sixth Session).

No. 58. Resolution concerning programming techniques in the metal trades [paragraph 3] (Seventh Session).

No. 59. Resolution concerning intensification of efforts by the United Nations and the specialised agencies in the field of the metal trades (Seventh Session).

No. 60. Resolution concerning international co-operation in dealing with social and labour questions in the metal trades in developing countries (Seventh Session).

No. 61. Resolution concerning the agenda of the Eighth Session of the Metal Trades Committee (Seventh Session).

No. 62. Resolution concerning the agenda of the Eighth Session of the Metal Trades Committee (Seventh Session).

Group B. *Conclusions and Resolutions, or Parts Thereof, Which Should Continue to Receive Attention on the Part of the Office.*

No. 26. Resolution concerning minimum income security [paragraph 3] (Second Session).

No. 29. Resolution concerning vocational training and promotion in the metal trades (Third Session).

No. 30. Resolution concerning systems of wage calculation in the metal trades (Third Session).

No. 52. Resolution concerning technical assistance to industrially underdeveloped countries (Sixth Session).

No. 53. Resolution concerning a reduction of hours of work in the metal trades without reduction of income (Sixth Session).

No. 54. Resolution concerning the use of German and Spanish at sessions of the Metal Trades Committee (Sixth Session).

No. 55. Conclusions concerning the acceleration of technological progress and its influence on the effective utilisation of manpower and the improvement of workers' income in the m etal trades [paragraphs 6 and 32] (Seventh Session).

No. 56. Conclusions concerning working conditions and safety in shipbuilding and ship repairing [paragraphs 33, 35, 36, 37 and 39] (Seventh Session).

No. 57. Resolutions concerning tripartite action regarding vocational training in the metal trades [clauses *(c)* and *(d)*] (Seventh Session).

Examination by the Committee of the Report, with the Draft Classification, of the Working Party on the Effect Given to the Conclusions and Resolutions Adopted by the Metal Trades Committee at Its Previous Sessions

In presenting the report of the Working Party on the Effect Given to the Conclusions and Resolutions Adopted by the Metal Trades Committee at Its Previous Sessions and the draft classification at which this Working Party had arrived, Mr. FRANDSEN (Government delegate, Denmark; Chairman and Reporter of the Working Party) stated that the sittings of the Working Party were held in a good spirit of co-operation, with the aid of the two Vice-Chairmen and its members. The information provided by governments and by the Office was clearly presented. Some remarks were made regarding the resolution (No. 54) concerning the use of German and Spanish at sessions of the Metal Trades Committee, the conclusions (No. 56) concerning working conditions and safety in shipbuilding and ship repairing, and the resolution (No. 57) concerning tripartite action regarding vocational training in the metal trades. Paragraphs 9 to 11 of the report of the Working Party contained a summary of these statements and it was hoped that the Office would give effect to the requests which had been made. The Working Party had then classified the conclusions and resolutions adopted by the Committee at its previous sessions. This classification was contained in the appendix to the report. The Working Party had unanimously adopted the report and the classification.

Mr. DE SAEDELEER (Employers' delegate, Belgium; Vice-Chairman of the Working Party) said that the Employers' members of the Working Party had noted that at this session there had been broad agreement on the classification, and pointed out that the Consolidated Text of conclusions and resolutions drawn up by the Office would be useful to all those seeking information on this matter.

Mr. HORSBURGH (Workers' delegate, Australia; Vice-Chairman of the Working Party) mentioned that in paragraph 9 of the report resolution No. 54, conclusions No. 56 and resolution No. 57 had received special attention. General draft resolutions concerning the problems dealt with in the above conclusions and prepared for submission to the Committee had been withdrawn and the Workers' members were therefore pleased to have the subjects dealt with in those drafts mentioned in the Working Party's report. In paragraph 11 it was noted with regret that no practical action had been taken by the Office regarding these matters and it was hoped that the Office would expedite its work on these problems.

The Committee unanimously adopted the report and the Classification of the Conclusions and Resolutions Adopted by the Metal Trades Committee at Its Previous Sessions.

Consolidated Text of Conclusions and Resolutions Adopted by the Metal Trades Committee at Its Previous Sessions

I. Regularisation of Production and Employment

Regularisation of Production

1. Primary objectives [of the Metal Trades Committee] are to contribute by all means possible to improving the standard of living of the workers in the metal trades and to seek effective solutions for the industrial problems facing the metal trades. It is important to take measures to prevent the occurrence of slumps and thereby help to ensure social peace in the metal trades. The principal means for attaining these objectives is to achieve the regularisation of production and of employment at a high level. For this purpose it is necessary to undertake studies within each country based on factual material of the various problems affecting the metal trades, such as—

(a) co-ordination of production;

(b) modernisation of plant and equipment;

(c) provision of raw materials;

(d) relation of production and consumption levels;

(e) maintenance of effective demand;

(f) development of standardisation of parts;

(g) formulation of appropriate financial and credit policies (II/19).[1]

2. The Metal Trades Committee emphasises the world-wide necessity of achieving maximum production and employment in the metal trades. In order to achieve this it is necessary greatly to increase production, so as to permit of a high level of consumption, the payment of high wages and the stabilisation of employment at a high level (I/10 and IV/36).

3. Sharp economic crises resulting in widespread unemployment are avoidable through appropriate action. Sustained full employment can be built only on a solid foundation of adequate consumer purchasing power, of steadily rising living standards, of greater economic security, especially for the lower income groups, and of rapid economic development of undeveloped countries. Underlying economic factors affecting the demand for and production of metal trades products, though in their more technical aspects unsuitable for detailed discussion by the Metal Trades Committee, are of fundamental importance in connection with any measures which may be taken to maintain a high level of employment in the metal trades. Great importance is attached to the maintenance of a level of demand for goods and services in general, and for metal products in particular, which is high enough to overcome unemployment. Great importance is attached also to measures to promote the rapid growth of real income and the expansion of employment. Measures taken to promote these objectives should, however, take into account the danger of inflation in certain circumstances. Whenever there is a danger of the development of unemployment in metal industries manufacturing consumer goods, the Committee believes it to be important that consideration should be given in good time to the possibilities of stimulating consumers' demand for metal products by such means as (i) price reductions, which may be made possible through increasing productivity or, in appropriate cases, through reducing taxes on the sale or use of consumers' durable goods; (ii) measures to increase the volume and stability of consumer credit for the purchase of metal trades products. With a view to stabilising the investment demand for metal products coming from private enterprise, all undertakings which invest in machines and equipment, and especially large undertakings, should carefully examine the possibilities

[1] The roman numeral at the end of each relevant section of the consolidated text indicates the session of the Committee at which the text in question was adopted, while the arabic number immediately following is that of the relevant conclusions. Thus (II/19) would mean that the text in question was taken from the resolution (No. 19) concerning regularisation of production and employment at a high level in the metal trades, which was adopted by the Committee at its Second Session (Stockholm, 1947). All resolutions, statements and conclusions of the Committee have been numbered consecutively from the first resolution adopted by the first Committee. The resolutions adopted by the Committee at its first three sessions, however, do not show this numbering.

of planning their investment programmes over a period of years in such a way that these investment programmes can be carried out even if there are minor adverse changes in business conditions, and in any case will not be revised downward without careful consideration. Careful consideration should be given to the possibilities of timing purchases and investments by governments and local authorities in such a way that they have the effect of counteracting, so far as possible, fluctuations in private demand. Such timing of public expenditure requires appropriate administrative and financial measures, some of which are set forth in the Public Works (National Planning) Recommendation (No. 51) adopted by the International Labour Conference in 1937. The Committee notes that expenditure on machinery and equipment is likely to have a more direct impact on employment in the metal trades than would other types of public expenditure (V/45).

4. Governments should study the planning of their expenditures on capital goods, consumers' goods and services, so as to concentrate these in times of declining employment, and thus help to hold unemployment in the metal trades to a minimum during such periods (I/12).

5. It is important that everything possible should be done to remove obstacles to free international trade so that full benefit may be derived from technological progress, which is essential for the achievement of peace and prosperity in all countries. In this way, a practical contribution can be made to the abolition of unemployment and to the stabilisation of employment in all countries. Differences in wages between different countries should not, however, be allowed to become a major factor in international competition, which should rather be based on such factors as natural resources and technical skill (V/45).

6. Continuity of demand and national and international co-operation in assuring a continuous flow of raw materials, supplies, equipment and services are among the essential requirements of maximum production and employment. The governments concerned should study their existing policies relating particularly to taxation, industrial relations, government expenditure and foreign trade with the object of encouraging efficient production and expanding employment (I/10 and IV/36).

7. Governments of the countries represented on the Metal Trades Committee [should] consider the advisability of setting up, where such bodies do not already exist, suitable agencies to gather the necessary data, analyse them and formulate recommendations regarding the problems affecting the metal trades for the information of the country as a whole and for the guidance of the industry and of the appropriate governmental bodies (II/19).

Employment

Regularisation of Employment.

8. Security for the worker, particularly from intermittent employment, is in the interests of good labour relations. It is of the utmost importance to provide wherever and whenever possible steady employment and income for the wage earners in the industry. Stabilisation of employment, security for the worker and greater economies and efficiency in production wherever possible are objectives of mutual concern to employer and worker—each having a genuine responsibility for attempting to stabilise operations within a plant or industry so as to advance the general economic security of the country (II/26).

Organisation of the Employment Market.

9. An effective programme to overcome unemployment depends to a great extent on the organisation of the employment market. A well-organised employment market requires an efficient employment service, provision for vocational guidance and vocational training, measures to facilitate the movement of workers to jobs elsewhere, and, in some cases, measures to encourage the establishment of new industries or undertakings in areas of substantial unemployment. Measures to improve the organisation of the employment market in any of these ways should be planned and implemented after joint consultation between government officials, employers and workers (V/45).

Employment Services and Manpower Budgets.

10. The Committee calls attention to the Employment Service Convention (No. 88) and the Employment Service Recommendation (No. 83) adopted by the International Labour Conference at its 31st Session (San Francisco, 1948), which set out many of the necessary conditions for the successful operation of employment services (V/45).

11. Improvements should be made, where necessary, in employment service organisation designed to ensure that information regarding suitable vacancies is promptly made available to displaced workers, to workers threatened with displacement and, where customary, to their organisations (IV/36).

12. The Committee emphasises in particular the importance of manpower budgets (Employment Service Recommendation, [1948,] Part III). These are statements, drawn up from surveys, of labour requirements and availabilities in different industries, occupations and regions. Manpower budgets should take into account not only existing vacancies and applications for employment; they should also consider forecasts of the employment opportunities by government officials and employers' and workers' organisations. The making of manpower budgets will be facilitated if employers notify the employment service of impending lay-offs as far in advance as possible (V/45).

13. The successful preparation and implementation of programmes against unemployment require accurate, comprehensive and up-to-date statistical information (V/45).

Relocation of Workers.

14. A manpower budget may also show that there is substantial unemployment in some regions of the country concerned while there are vacancies in other regions. If these conditions are thought to justify the social costs involved in the movement of workers between regions, the employment service should facilitate the movement of workers (i) by supplying financial aid as is suggested in the Employment Service Recommendation [,1948] (Paragraph 17), and (ii) by supplying information on housing, costs of living, schools and other economic and social conditions in the regions concerned (V/45).

15. Governments and employers' and workers' organisations in the metal trades [should] take all possible measures with a view to ... arranging for the transfer of workers when rendered necessary by technological developments or other reasons with the agreement of the workers concerned and, where the workers are represented by their organisations, in consultation with such organisations (II/22).

Aid to Depressed Areas.

16. In order to prevent the growth of depressed areas it may be necessary in some instances for governments, local authorities and private groups to assist industries to establish themselves in such areas in order to provide job opportunities as well as to preserve resources already developed by the community, such as hospitals, cultural centres, social centres, etc. (VI/49).

17. In cases where the social costs of movement of workers in large numbers from one region to another would be substantial, governments, on the basis of recommendations from national employment services, may consider the desirability of adopting measures to encourage investment for the establishment of new industries or undertakings in regions of heavily localised unemployment (V/45).

II. Training

General

18. Governments and employers' and workers' organisations in the metal trades [should] take all possible measures with a view to making the best use of the physical and professional aptitudes of the workers, by means of vocational guidance, apprenticeship schemes, accelerated training and employee promotion (II/22).

Vocational Guidance

19. Vocational guidance programmes are designed primarily to give the individual worker, as a result of his free and voluntary choice, the fullest possible opportunity for personal development and satisfaction from his work. Vocational guidance programmes can contribute to the efficient organisation of the employment market by assisting young persons in the choice of their first occupations and by likewise assisting adults who desire to change their occupation in their choice of a new occupation. Such assistance should take into account individual capabilities in relation to existing occupational opportunities (V/45).

20. Vocational guidance on an individual basis should be available to assist young people in selecting training courses and choosing an occupation. Such guidance should be given by competent bodies which must be in a position to provide the necessary information concerning present and future possibilities of employment and qualifications required in an industrial society undergoing rapid transformation (VII/55).

21. There should be adequate arrangements for vocational guidance both in schools and subsequently, on the lines laid down in the Vocational Guidance Recommendation, 1949. In particular it is recommended that training for skilled metal trades should be preceded by or include a probationary period during which the apprentice should have the benefit of vocational guidance in order to see whether he is suited for the particular trade of his choice and, if appropriate, to guide him to another trade for which he is more suited (III/29).

22. Vocational guidance services should be established or expanded in order to provide suitable advice to young workers and to displaced workers on the scope of training which will most likely equip them for employment opportunities existing in their area (VI/49).

23. In connection with measures taken to promote productivity, full consideration should be given to the adoption of the best methods for the selection and placement of workers (IV/36).

Vocational Training

24. Vocational training for the metal trades should be systematic and thorough and should be organised in accordance with the principles set out in the Vocational Training Recommendation, 1939, and the Apprenticeship Recommendation, 1939.[1] Such training should be promoted in each country in which such trades exist, taking into account the special characteristics of the metal trades, the requirements of the various branches of the metal trades and of the individual undertakings and the need of the workers for facilities for both training and promotion. There should be co-operation between employers and workers in the preparation of model schemes on the basis of which training in undertakings should be organised. Employers' and workers' organisations should co-operate closely with the State in the preparation of training schemes organised or supervised by the public authorities (III/29).

25. Programmes for vocational training are of the greatest importance to the organisation of the employment market. A manpower budget may show that there are vacancies in some occupations while, at the same time, there may be unemployment in other occupations. In these conditions programmes for vocational training and retraining, while always necessary factors in social progress, become of immediate importance in overcoming unemployment. The Committee calls attention to the Vocational Training Recommendations (Nos. 57 and 88) adopted by the International Labour Conference in 1939 and 1950. As is provided in the 1950 Recommendation (paragraph 5 (3)), vocational training facilities should be sufficiently developed to include appropriate arrangements for initial, refresher, supplementary and upgrading training (V/45).

[1] In 1962 the International Labour Conference adopted the Vocational Training Recommendation, which superseded the Vocational Training and Apprenticeship Recommendations, 1939 and 1950.

26. In connection with measures taken to promote productivity, full consideration should be given to the provision of adequate training facilities, to match the requirements of the various kinds of jobs and the various categories of workers (IV/36).

27. In carrying out its task of international information on vocational guidance and training, the International Labour Office should take account of the special needs of the metal trades (III/29).

28. It is noted that the International Labour Office is already taking action to facilitate the movement of trainees from country to country to gain more experience in their particular trades, and it is strongly urged that particular attention should be given in this respect to the metal trades (III/29).

29. The Governing Body of the International Labour Office is invited to consider convening at appropriate intervals tripartite meetings of experts in vocational training in the metal trades, drawn in respect of employers and workers from their competent international organisations, to advise on all matters relating to programmes of training in the metal trades, taking into account the provisions of the Vocational Training Recommendation, 1962, and the need for programmes to be adapted in the light of technological progress (VII/57).

Apprenticeship

30. Apprenticeship, as defined in Paragraph 1 of the Apprenticeship Recommendation, 1939, should be applied to metal trades in which a high degree of skill and experience is necessary and can only be acquired on the lines of a methodical and thorough apprenticeship training. The underlying principle of all apprenticeship training should be to give each apprentice a thorough training and experience of the work of his trade, capable of safeguarding his occupational adaptability in adult life. The trades in which apprenticeship is applied should be designated in each country, taking into account the degree of skill and the length of the period of practical training required. It is suggested that a classification of trades should be prepared in each country, indicating and defining the various metal trades. Where apprenticeship training is carried out in undertakings on production work, it is desirable that, whenever possible, each undertaking should provide special apprenticeship workshops. Where apprenticeship training is provided in vocational training centres unconnected with the workshops of undertakings, part of such apprenticeship may be spent in the workshops of an undertaking. Such training centres should be adequately supplied with the necessary equipment, machine tools and materials, and the conditions of training should approximate as closely as possible and practicable to those in workshops of the undertakings for which the apprentices are being trained. Whether the training is provided in workshops or in vocational training centres, apprentices should as far as possible and practicable be encouraged to take advantage of all the facilities provided for further education and technical education, both in day classes and in their own time at evening classes. Apprenticeship training should be supervised by competent supervisors thoroughly experienced in the work of the trade or industry and also in the best methods of training and supervision. The duration of apprenticeship may vary not only as between countries because of variations in the school-leaving age and other factors, but also as between different trades in the same country, according to the age of recruitment, the skill and degree of physique required in the different trades and other circumstances. Where provision is made for the organisation of examinations and the issue of certificates of proficiency, such certificates should have validity throughout the country concerned (III/29).

Training of Adults and Retraining

31. Apprenticeship should remain the basic form of training in the industry, but it may be necessary, in the event of a shortage of skilled workers, to train adult workers. Adult workers may be trained either in undertakings or in special training centres (III/29).

Training of Supervisors and Instructors

32. Special attention should be paid to the training of supervisors and instructors in the exercise of their supervisory and instructional functions. This training should include in-

struction in psychology, methods of instruction, human relations and work methods. The training should be provided both before and after the persons concerned are appointed to positions as supervisors or instructors (III/29).

33. Governments and employers' and workers' organisations in the metal trades [should] take all possible measures with a view to—

(a) adopting the most suitable methods for training supervisory personnel;

(b) considering programmes where possible for the practical and educational training of selected workers and personnel for technical and supervisory duties by arranging for them to attend courses in other countries (II/22).

Training Methods and Programmes

34. Training methods in the metal trades should be periodically re-examined with a view to adapting them to the most up-to-date teaching methods and to new industrial processes and techniques. Model teaching programmes should be drawn up in each country for apprenticeship and, if appropriate, for the training of adult workers in the metal trades (III/29).

Training and Promotion

35. Suitable arrangements should be made to ensure training for workers to enable them to be promoted to more highly skilled jobs and to positions of greater responsibility, bearing in mind the need for ensuring plant efficiency and at the same time the workers' need for promotion opportunities. Facilities should be granted, in accordance with the possibilities and the needs of each undertaking, to workers in employment likely to qualify for promotion to attend training courses. Promotion of workers is the responsibility of the employer. However, it would be desirable that there should be co-operation between employers' and workers' organisations to lay down general rules governing the procedure for the advancement of workers to all non-managerial functions (III/29).

III. Conditions of Work

Hours of Work

36. The Governing Body of the International Labour Office is invited to consider the advisability of calling upon governments to devote their full attention to the problem of a reduction of hours of work in the metal trades without reduction of income (VI/53).

Income Security

37. Income security, if, when and wherever economically possible, is in the interest of sound labour relations. There should be continued studies of the problem of income security which would deal with the problem on a realistic basis that would safeguard the interests of the workers, employers and consumers in all countries represented on the Committee. To be constructive and lasting, any solution of this problem must be based on a realistic consideration of industrial development, economic conditions, existing legislation, current practices and the benefits of unemployment and other social insurance schemes. In connection with the study of income security there should be a review of existing legislation in such pertinent fields as social insurance and in minimum wages and hours, in order that the interrelationship may be evaluated to the end of co-ordinating their effects (II/26).

38. Governments should establish minimum social security, including unemployment benefits, so as to maintain the purchasing power of the workers at a reasonable level and for reasonable periods. Where this is not the practice, other arrangements to achieve this end should be considered jointly by employers and workers, such as severance pay, allowances during retraining, etc. (VI/49).

39. Governments should introduce and where necessary extend schemes of unemployment compensation and insurance and plans for ensuring the social security of the workers and their families (I/13).

40. It would be desirable for the [International Labour] Conference to consider the possibility of adopting guaranteed wage plans if, when and wherever economically possible, preferably through the processes of free collective bargaining, which will meet the varying conditions of different countries and of different segments of the metal trades. Any guaranteed wage plan is self-defeating, however, if it involves an employer in additional costs to the point where his ability to adjust becomes unduly limited (II/26).

Job Classification and Systems of Wage Payments

41. A classification of jobs in each branch of the metal trades should be made in each case where this is possible, and these jobs should be placed in a limited number of separate wage-rate categories on a plant-to-plant basis by agreement between the employers and workers concerned, and on a regional or national basis by agreement between organisations of employers and workers. A minimum rate should be established and secured for each category. The variety of bonuses should be limited as much as possible, on condition that a reduction in their number does not result in the elimination of social benefits provided by legislation or by agreement. All guaranteed minimum rates for piece and bonus workers should be fixed on the basis of the minimum rates mentioned above. All piece and bonus rates should be set on the basis of rules agreed by the employers and workers concerned in the case of bargaining on a plant-to-plant basis, and by the employers' and workers' organisations concerned in the case of bargaining on a regional or national basis (III/30).

42. Systems of wage calculation are in need of simplification in many cases, particularly in respect of the wage structure and of some systems of payment by results. This problem arises mainly—*(a)* where workers are commonly paid by results; *(b)* where there is both time and piece work; *(c)* where the wage structure is complex; *(d)* where many supplementary bonuses are paid; or *(e)* where a large number of administrative details affecting the calculation of wages are imposed on employers by laws and regulations (III/30).

43. The pay slips which workers receive should be as simple as possible, consistent with the inclusion of all the information necessary to enable workers readily to understand how their wages are calculated. At the time of engagement, the method of calculation of wages should be explained by the manager of the undertaking or his deputy to the workers concerned in such a manner as to avoid subsequent friction between employers and workers (III/30).

44. A limited number of systems of calculating time rates or piece rates which are simple enough to be understood by all workers to whom they apply should be worked out and adopted by the organisations of employers and workers in the different countries concerned (II/26).

45. In connection with measures taken to promote productivity, full consideration should be given to the adoption of methods of calculation of wages such that, whatever the system of payment may be, the worker may easily understand what sum is due to him (IV/36).

46. Job classification and job evaluation systems, where these exist, should be re-examined in order to take account of the new job requirements. In this connection consideration should be given to a new weighting of factors reflecting the new job requirements. Investigation should also be made of such matters as increased mental tension, perceptual fatigue and " lonely work ", as well as the additional responsibilities involved in the supervision and upkeep of equipment and machines. Existing time and motion study schemes and incentive methods should be re-examined with a view to their modification or elimination where the new processes no longer make existing methods appropriate. Consideration should be given to the need for wage adjustments to reflect accurately the revised requirements of each job (VI/49).

IV. Safety and Health

General

47. Special services should be organised by the employers and joint committes composed of employers' and workers' representatives set up in the undertakings belonging to the metal trades group to promote the prevention of accidents and the protection of health in the plants (I/3).

48. The different countries should use all suitable means, including posters, broadcasts, films, conferences, lectures, competitions, etc., to encourage and promote education respecting accident prevention and protection of health in industry, both among employers and workers (I/4).

49. In connection with measures taken to promote productivity full consideration should be given to all measures necessary for the safety, health and welfare of workers (IV/36).

Working Conditions and Safety in Shipbuilding and Ship Repairing

Responsibility.

50. The prevention of accidents and the protection of the workers' health must be the concern of public authorities and institutions and of all engaged in the shipbuilding and ship repairing industry, since occupational accidents and diseases as well as the human suffering and loss of earning capacity for the workers injured are not only to be deplored from the point of view of the worker and his family, but also from the point of view of the community as a whole, and the following measures are therefore necessary.

Legislation and Regulations.

51. Provisions established by legislation or regulations or in any other way according to national practice must lay down minimum safety measures, which should provide a general framework for the application of safety schemes.

52. These provisions must be kept up to date in order to take into account changes and technical developments.

53. The special hazards of the shipbuilding and ship repairing industries should be the subject of legislative provisions or regulations, or other equally effective measures.

54. Every worker employed in shipbuilding and ship repairing operations should be covered by the laws or other measures relating to this type of work.

55. For the purpose of securing the enforcement of legal provisions relating to the safety and protection of health of workers in shipbuilding and ship repairing and of investigating the effects of processes, materials and methods of work on the health and safety of workers, there should be a system of adequate labour inspection in conformity with the Labour Inspection Convention, 1947, and the Recommendation of the same year.

Safety Organisations in Shipyards.

56. The prime responsibility for organising safety and health in shipyards and ship repairing operations must be fully accepted by the employers, and workers must co-operate in full so that the safety arrangements may be fully effective in each undertaking.

57. Management, including where appropriate dock or harbour authorities, shipowners or shipmasters, must ensure that workplaces, working processes and the equipment used are safe and that the safety regulations are known and carried out. When work is done by subcontractors, the management of the subcontracting undertakings must also be subject to the safety regulations and accept responsibility for the safety and health of the workers engaged in such operations.

58. The provision of protective clothing and equipment as required by legislation or regulations is also the responsibility of the employer.

59. Considerations of production and urgency must not be allowed to prejudice the safety and health of workers.

60. The Occupational Health Services Recommendation, 1959, should be applied in the shipbuilding and ship repairing industry. In addition, properly qualified safety officers should be appointed to see that safety measures are applied and to exercise supervision in this field.

61. Safety committees to apply and to co-ordinate safety measures should be set up in each shipyard as an effective means of improving safety conditions. Such committees should include representatives of management and elected representatives of workers.

62. Safety measures in small shipyards, suited to their particular conditions, should be organised as far as possible on the same principles as for large shipyards.

Training of Personnel in Safety.

63. The management of shipyards should ensure that all supervisory staff are sufficiently aware of their responsibilities with regard to safety and health and should give them appropriate training in this respect so that the workers may be made fully aware of the precautions they should take in performing their work.

64. The necessary measures should be taken to ensure to workers appropriate training in order that they may become safety-conscious and carry out their work while conforming to the regulations and sound safety practices. This training should also include training in the use and maintenance in good condition of safety equipment.

65. Young people and new entrants to shipbuilding and ship repairing should have adequate training during working hours at no economic disadvantage to the workers concerned so that they may become familiar with the hazards they will meet and the protective measures required.

66. Adequate training should also be provided when new materials, machines or equipment are introduced so that all concerned may be instructed in the changing safety requirements consequent on technological change and the building of more modern types of ships.

67. Training in safety should take account of the level of education of workers and any language difficulties which may arise.

68. The high professional qualifications for safety engineers and factory doctors require appropriate training at technical schools and universities and the promotion of further studies where made necessary by the progress of science and technology.

Working Conditions.

69. It is necessary to apply the knowledge gained from experience and from scientific and technical research to facilitate the adaptation of environmental conditions to the capacities and needs of the workers, if optimum conditions of safety and health at work are to be achieved.

70. It must be recognised that reasonable working hours, appropriately spaced rest days, necessary pauses during working hours (especially in the case of arduous and dangerous work), as well as a reasonable workload, are an integral part of any accident prevention programme.

71. Working methods, jobs and technical installations should be organised in such a way as to prevent accidents.

72. Measures should be taken to ensure as far as possible the protection of workers against bad weather and to provide them with a suitable working environment.

Research.

73. It is desirable that research into work psychology and physiology should be further developed, special attention being given to the application of such research to the special problems of the shipbuilding and ship repairing industry.

The Role of Technical Safety and Health Institutions.

74. Technical safety and health institutions have an important role to play in making the results of their research activities available to all concerned in shipbuilding and ship repairing.

The Role of Employers' and Workers' Organisations.

75. Employers' organisations have an important role to play in giving every assistance in the preparation of legislation and other measures for the promotion of safety and health and in keeping management fully advised not only of their legal obligations, but also of all measures which would improve safety organisation.

76. Employers' organisations should collect the statistics of occupational accidents and diseases from their members and examine such statistics so that each undertaking may be shown how it stands in comparison with others and how it could improve its position.

77. Employers' organisations should circulate all material relating to safety and health and keep their members continuously informed of new techniques in accident prevention.

78. Employers' organisations should consult with their members and with all other organisations concerned with safety and health so that the widest possible information on this subject may be available to all who work in the industry.

79. Workers' organisations, on their side, have an important part to play in giving all necessary assistance in the preparation of legislation, regulations or safety codes. They should take positive steps to encourage strict discipline among their members in regard to safe working practices, and furnish their members, as far as possible, with all information on measures which could promote safety and health.

Collaboration.

80. There should be full collaboration at all levels between the authorities, safety institutions, including research centres, and employers' and workers' organisations on all aspects of safety and health.

81. National safety committees or other appropriate committees at the national level covering the shipbuilding and ship repairing industry as a whole should be set up in each country. These committees would have the task of improving occupational safety and health and advising the authorities in the drawing up of adequate safety measures and in their application and supervision. These committees should comprise representatives of employers' and workers' organisations, with the participation of governments as necessary.

International Action.

International Regulations.

82. The Governing Body is invited—

(a) to request the International Labour Office to convene meetings of experts with a view to the preparation of a model code of safety regulations in conformity with the outline given in the appendix and embodying the present conclusions, without prejudice to any standards already adopted by the International Labour Conference;

(b) to examine, in the light of the conclusions reached by the expert committees referred to above, the desirability of placing on the agenda of a session of the International Labour Conference the question of safety and health in the shipbuilding and ship repairing industry;

(c) to request the International Labour Office to give immediate attention to hazards such as, for example, degasification of ships, liquefied gases, explosion risks, work in confined spaces, temporary electrical installations and radiation risks due to nuclear propulsion.

Accident Statistics.

83. In order to take remedial action in areas where it is necessary, it is important to have accurate and nationally and internationally comparable statistics in order to establish the causes of accidents. Consequently, it is necessary to standardise the form in which accidents are reported, collected and summarised so that there may be a common basis of comparison.

84. The Governing Body is invited to request the International Conference of Labour Statisticians to prepare and adopt uniform standards and requirements for reporting injuries, sickness and diseases arising out of employment on shipbuilding and ship repair work, on a comparable basis.

85. The Governing Body is further invited to request governments to ensure that statistics and relevant reports are forwarded to the International Labour Office.

Circulation of Information.

86. The International Labour Office, through its competent safety bodies (the Occupational Safety and Health Division [Branch] or the International Occupational Safety and Health Information Centre) has an important part to play in all aspects of safety and particularly in the following fields:

(a) circulation to interested countries of a comparison of the legislative measures or regulations which affect safety in shipbuilding and ship repairing, whether such measures are of general application to the whole of industry or only to shipbuilding and ship repairing;

(b) circulation of the summary of such statistics so collected to interested countries and of all information of interest to safety which may result from an examination of these statistics;

(c) circulation in as concise a form as possible of all information, including safety manuals, whether of a general or particular character, relating to safety training, research and education for the benefit and guidance of safety institutions and safety personnel in general.

87. Governments, employers' and workers' organisations and other bodies interested in safety and health matters in the shipbuilding and ship repairing industry are urged to encourage wide dissemination of relevant information collected and published by the International Occupational Safety and Health Information Centre of the International Labour Office.

Technical Assistance.

88. For the introduction and implementation of occupational safety and health measures, for the inspection and establishment of safety bodies in countries in the course of industrialisation or in other countries desirous of such aid, the I.L.O., in co-operation with experts, employers' and workers' organisations, should make technical assistance available.

Points to Be Included in a Model Code.

89. The model code to be prepared by the meeting of experts referred to [in the conclusions concerning working conditions and safety in shipbuilding and ship repairing] should deal with the following points:

1. *(a)* Scope and responsibilities:
   (i) scope of the regulations;
   (ii) determination of persons responsible for safety under various circumstances, in particular in the case of employees of subcontractors and in the case of work on board a ship which is not owned by the shipyard;
   (iii) respective duties of the employer and the worker;
   (b) means of access:
   (i) to ships under construction;
   (ii) to dry docks;
   (iii) to ships at dockside or in wet or dry docks;
   (iv) to holds of ships;
   (c) ladders (in cases not covered by *(b)*);
   (d) staging (including suspended stagings): protection against falls of persons or objects;
   (e) protective measures in dry docks: fencings and rails;
   (f) ways of covering openings such as hatchways and manholes;
   (g) lifting gear and other means of handling and transport;
   (h) other machinery;
   (i) hand tools;
   (j) electrical equipment:
   (i) permanent;
   (ii) temporary;
   (k) welding operations:
   (i) oxy-acetylene;
   (ii) electric;
   (l) precautions against asphyxia, poisoning and explosions:
   (i) against shortage of oxygen;
   (ii) against toxic emanations;
   (iii) against flammable gases or vapours;
   (iv) against dangerous dusts;
   (v) in handling dangerous substances;
   (vi) particular precautions in the maintenance and repair of petroleum and gas tankers;
   (m) precautions against occupational diseases; noise abatement to prevent occupational deafness;
   (n) fire prevention and fire fighting;
   (o) lighting of workplaces:
   (i) permanent lighting of construction yards, docksides and slipways;
   (ii) temporary lighting inside ships under construction or repair;
   (p) housekeeping;
   (q) individual protective equipment;
   (r) prohibition of employment of young persons in specific jobs;
   (s) safety services and safety officers;
   (t) medical centres and first-aid posts;
   (u) sanitary facilities.
2. Inspection:
   (a) effective safety inspection;
   (b) penalties for violations.

3. Measures to take account of physiological factors:
   (a) fatigue relief;
   (b) periodical medical re-examination;
   (c) special risk prevention;
   (d) weather protection.
4. Measures to take account of psychological factors, particularly by creating and maintaining safety-mindedness in shipyards:
   (a) safety training for workers:
      (i) during apprenticeship;
      (ii) upon engagement;
      (iii) at the workplace;
      (iv) upon introduction of new technical methods or machinery;
      (v) for specific occupations;
      (vi) training for employees assuming particular responsibilities with regard to safety;
      (vii) training for first-aid officers;
   (b) propaganda in the undertaking, safety campaigns and competitions.
5. Organisation of safety:
   (a) role of shipyard managements:
      (i) top management responsibility in safety questions;
      (ii) works rules: their usefulness, items to be covered;
      (iii) safety services and safety officers: efficiency of the system and value of applying it universally;
      (iv) functions of supervisors;
   (b) collaboration between management and workers and trade unions: safety committees (composition, functions, efficiency) and safety representatives;
   (c) medical services, first aid and rescue;
   (d) organisation of safety in small shipyards, in dockside repair work, and repair or alteration work aboard ships (VII/56).

V. Labour-Management and Human Relations

Labour-Management Relations

Introduction.

90. The initiative on matters concerning industrial relations affecting the whole of industry should be properly left to the International Labour Conference. However, industry-wide regulations of the methods of collaboration between employers and workers need to be based on the practice and on the experience acquired in each industry, and the expression of the point of view of the metal trades on this subject would represent a useful contribution to the work of the International Labour Conference (II/27).

Freedom of Association.

91. At the present time it is opportune to recall one of the fundamental principles of the Declaration of Philadelphia, the Charter of the International Labour Organisation, which proclaims freedom of expression and the right of association. This principle implies for the employers and workers of the metal trades the absolute right to form themselves freely into organisations, whether federations or confederations, without previous authorisation, or to join the organisation which they prefer. This absolute right should extend to all, without distinction of sex, race or religious belief, and its exercise should not involve victimisation. The governments of States Members of the International Labour Organisation

should be asked to consider the repeal of any legislation which may prejudice the right of association reaffirmed above, and guarantee this right either by legislation or otherwise (I/6).

Bodies Dealing with Social and Economic Questions.

92. The relations established between employers and workers tend more and more to cover problems of different sorts, namely—

(a) collective bargaining leading to the conclusion of collective agreements with the object of determining wage structures and wage rates, hours of work, conditions of employment, vocational training, guarantees concerning employment and dismissal, etc.;

(b) the participation of the workers, in widely different ways, either on a national or on a factory level, in matters affecting the promotion of production in the factory and the industry as a whole.

Whereas it is of the greatest importance for the industry as a whole—

(a) to satisfy the common desire of the employers and the workers to secure the prosperity of the metal trades, on which the welfare of the workers depends;

(b) to guarantee the respective rights of the parties concerned; and

(c) to avoid confusion between respective functions, and unnecessary interference;

the Committee considers that a distinction should be made between the bodies required to deal with social questions and those required to deal with questions of a purely economic or technical character (I/6).

Bargaining Units and Means of Dispute Settlement.

93. The establishment of bargaining units, units responsible for interpreting agreements and supervising their application, and units for mediation and arbitration in case of disputes arising either before or during negotiations or again during the validity of collective agreements binding on the parties [are recommended]. According to the functions which they would be required to perform, these units might be national or regional or at factory level, it being understood that the latter would in no way take the place of the organisations [which are] parties to the collective agreements (I/6 and II/27).

94. The establishment of joint committees on the factory level with the object of maintaining and developing production without restricting the prerogatives of management should also be taken into consideration (I/6 and II/27).

95. Each collective agreement when entered into should carry an appropriate clause, providing for the resolution of such differences as may arise during its currency, whether by negotiation, mediation or arbitration (I/7).

Participation at the National Level.

96. The establishment of joint national committees for the metal trades, the object of which would be to assist the industry in maintaining its maximum efficiency by a full use of its economic, human and technical resources, should be taken into consideration (I/6 and II/27).

97. The attention of governments [is drawn to] the desirability of ensuring that representatives of employers and workers and/or their organisations are invited to participate in the work of governmental bodies which may be set up to promote higher productivity (IV/40).

Consultation and Co-operation at the Level of the Undertaking.

98. The prosperity of the metal trades and the welfare of the persons employed therein depend on the establishment or maintenance of harmonious relations between employers and workers. These relations, if they are to be permanent and satisfactory, require the closest co-operation of the employers' and workers' organisations (I/6).

99. Attention is called to the Co-operation at the Level of the Undertaking Recommendation, 1952 (No. 94), which provides that appropriate steps should be taken to promote consultation and co-operation between employers and workers at the level of the undertaking on matters of mutual concern not within the scope of collective bargaining machinery, or not normally dealt with by other machinery concerned with the determination of terms and conditions of employment. While it might be difficult to establish a list of topics not within the scope of collective bargaining machinery, the following subjects are regarded as suitable, under certain circumstances, for consultation at the level of the undertaking:

(a) information on the employment situation;

(b) accident prevention;

(c) plant welfare and social facilities;

(d) hygiene;

(e) vocational training;

(f) employees' services (V/44).

100. Among the essential conditions for successful consultation and co-operation at the level of the undertaking are the following:

(a) whatever form joint consultation may take its effectiveness will depend on the genuine willingness of the parties to co-operate; the intent of the parties is more important than the particular procedure which should apply;

(b) good faith must be constantly demonstrated by all participants, particularly in showing that it is their purpose to make effective use of existing arrangements for co-operation;

(c) co-operation must not interfere with the normal functions of the organisations of employers or of the unions as representative of workers' interests;

(d) top management should be actively associated with the form of consultation and co-operation adopted, in view of its continuing responsibility in the undertaking for decisions, taking into account legislative provisions and agreements;

(e) there should be genuine two-way communication at all levels of the undertaking (V/44).

101. Loyalty, mutual respect and a sense of " teamwork " are essential to assure more efficient operations, greater productivity and a higher standard of living for all (V/44).

102. In view of the different circumstances which prevail within each country and within each industry, it is neither feasible nor desirable to formulate any single rigid code of methods of co-operation valid for all enterprises within all countries (V/44).

Human Relations

103. All workers should be treated not simply as factors in production, but as human beings whose dignity and freedom, within the framework of their rights and duties, should be respected under all circumstances. A reciprocal spirit of cordial co-operation between top management, the supervisors and the workers of an undertaking is an essential factor in creating a better human atmosphere, improving conditions of work and the well-being of all those employed in it, ensuring its good running, and increasing its production and prosperity in the general interest. A high standard of human relations between all levels in an undertaking effectively promotes the creation of this spirit of co-operation (IV/34).

104. The attention of the Governing Body of the I.L.O. is drawn to the desirability of seeking all methods of bringing about a high standard of human relations within undertakings in the metal trades (IV/34).

105. Effective co-operation in an undertaking can be considered as the practical expression of the principles of human relations and their application. Good human relations in the undertaking imply the existence of a favourable moral and psychological climate. Good human relations are inseparable from good industrial relations. In order to ensure the development of effective labour-management co-operation in undertakings of the metal

trades, the employers' and workers' organisations concerned in the various countries at the national or local level should, in the first instance, agree on principles and general methods of co-operation. Co-operation at the plant level should be based on the participation of freely elected representatives of all workers (V/44).

106. The employers' and workers' organisations should be invited to take into account the following recommendations and suggestions. In particular these organisations should—

(a) study, define and promote human relations in metal-working plants;

(b) endeavour to imbue their members, by every means which they may consider appropriate, with a broad spirit of co-operation based on a sound mutual understanding;

(c) consider in particular, with a view to achieving the desired aim, provisions which may be contemplated in connection with physical conditions of work, safety and hygiene programmes, and the training of personnel (IV/34).

107. The employers' and workers' organisations should recognise the relationship existing between the well-being of the workers, the interest of the consumers, and the prosperity of the undertakings derived from an improvement in human relations (IV/34).

108. The employers in particular should accord their due importance to provisions concerning the role of the personnel service, the responsibility of the supervisory personnel, opportunities of promotion for the workers, and the exchange of information and the welfare of the personnel (IV/34).

109. The provisions in paragraph 106 *(c)* above could be carried out either by means of direct consultation between the management and the personnel of an undertaking, or by means of collective agreements on general lines concluded between organisations representing employers and workers, or by other appropriate means (IV/34).

110. The same recommendations should be made to top management, representatives of the workers, and all persons directly or indirectly concerned with the problem of human relations in the undertakings (IV/34).

Points for the Guidance of Employers and Workers

111. Human relations, i.e. the day-to-day relationship between all the people (workers, supervisors, members of top management) working together in a particular undertaking, require for their effective development and maintenance that, in studying, defining and promoting human relations in metal-working plants, the following points should be borne in mind, *inter alia*—

A. By employers and their organisations:

(1) recognition of the valuable part which the trade unions can play in improving human relations;

(2) the practical expression by top management of the conception of the workers as human beings taking part in a common enterprise;

(3) recognition of the continuing responsibility of top management for ensuring the promotion of the programme and its integration with the basic policies of the undertaking;

(4) a statement of objectives for each undertaking which can be wholeheartedly accepted both by management and by the workers;

(5) the development of suitable policies, through which this conception and the objectives of the undertaking may be implemented covering, *inter alia*—

(a) a sound organisational structure of the firm with clear specifications of functions, duties and responsibilities for everyone engaged in the undertaking;

(b) adequate conditions of employment: fair wages, good working conditions and the like;

(c) suitable policies for the methodical selection, placement and orientation of the workers in the undertaking;

(d) training and education for all;

(e) real and equal opportunity for advancement for all employees, with promotion from within, whenever possible, and suitable policies regarding job termination;

(f) attention to the role of supervisory personnel, to their function as representatives of top management, who are expected to explain the purposes of management to the workers and to interpret the questions and needs of workers to management;

(g) genuine two-way communication between management and workers, between individual employees, and between groups of employees at all levels of the undertaking;

(h) generally to seek every means of promoting positive co-operation in the undertaking and to seek concrete and lasting achievements of equal value for the workers and management;

(6) development of procedures and devices as part of a balanced programme to give practical effect to these policies. These include—

(a) selection procedures, and arrangements to give the new employee a friendly welcome;

(b) arrangements through meetings, talks by top management speakers, information handbooks, etc., to acquaint the new employee with his place in the undertaking, the relation of his job to the products of the undertaking, his opportunities for advancement, etc.;

(c) implementation of the policy of opportunity;

(d) development of the supervisory personnel, with particular attention to the foremen, and to their part in making human relations in the plant effective; a number of supervisory training programmes making use of discussion groups, practice sessions and other devices have been developed for this purpose;

(e) two-way communication, in particular through the use of the suggestion system and through the use of suitably selected devices, a large number of which have been given effective trial in various firms which have a sound reputation as " good places to work in ";

(f) advance information to the workers concerning all changes affecting them in any manner, thus giving them the opportunity to participate in the life of the undertaking.

B. Recognition by the employers and their organisations and by the workers and their organisations of the following principles:

(1) human relations arise from a conception of workers as people and are designed to create a sense of mutual good will and sincere co-operation among everyone in the undertaking;

(2) human relations are also a technique or an art requiring a combination of common sense and training in specialised skills on the part of those who are to put it into effect;

(3) the creation of a human atmosphere in an undertaking is a process of education; it involves the development of appropriate understandings by everyone in the plant; and this takes patience and persistence as well as skill and understanding in dealing with human beings if the final objective is to be attained (IV/34).

VI. Technological Change, Productivity and Automation

General Observations

112. A great variety of technological changes are taking place in the metal trades. These take the form—either separately or together—of mechanisation, automation, introduction of new operations, utilisation of new materials, new methods of work or new ways of organising work. The pace of these changes varies according to region, country, branch of the metal trades, undertaking and section of the same undertaking. Both pace and type of technological change vary as well according to the stage of economic development. In developing countries where technological progress appears more often through the establishment of new modern

factories than through the modernisation of existing factories, the problems are fundamentally different from those arising in industrialised countries. Any conclusion concerning technological progress and its influence on the effective utilisation of manpower and the improvement of workers' income in the metal trades should, therefore, be considered in the light of the above factors (VII/55).

Considerations on Automation

113. Whether the term " automation " is taken in a narrowly defined sense, limited to such applications as integration, feedback control and computer technology, or given a wider meaning to include all forms of technical development which make automatic production more possible, it is recognised that the phenomenon does not lend itself as yet to a satisfactory delimitation as regards its application in the metal trades, that its occurrence differs in form and in extent in different sectors of the metal trades and in different countries, and according to the size of the plant, the type of product, the market for that product and other factors. Hence, it is not at this stage possible to define in precise language the actual and full meaning of the term " automation ", although the Committee recognises the fact that it may have far-reaching and important effects on all sectors of society (VI/49).

114. Automation—as is true of all forms of rapid technological change—carries with it both the possibility of helping to raise the level of productivity in the metal trades and of promoting a higher standard of living for all sectors of the community and new employment prospects which accompany these high standards, as well as the possibility of economic and social transformations and the threat of attendant uncertainties for individual workers. The degree to which these benefits will accrue to the community and the unfavourable effects be avoided or reduced will depend largely on the intelligence with which the new techniques are applied (VI/49).

115. Automation for the equipment and machine-tool producing sectors of the metal trades in the industrialised countries holds the promise of an expanding demand for products, since these sectors of the metal trades supply the overwhelming majority of the equipment and machines which all other sectors of industry and commerce require for the application of the new technology. On the other hand, these developments, while they may create new employment opportunities, will require new types of skill and may cause labour redistribution and relocation which, in some instances, may create substantial transitional problems and, in particular, problems of re-employment. Automation in its various forms and the related new devices and techniques which are being applied in industry and commerce generally, and in the metal trades in particular, may be expected to spread to different sectors of the industry and in different countries in different forms and at different rates of speed (VI/49).

Desirability of, and Distribution of the Benefits from, Technological Change and Productivity Increases

116. A prosperous and efficient enterprise is essential if security of employment, a high standard of living and social progress are to be achieved. All therefore recognise the great importance in this respect of technological improvements, new methods and efficient equipment, from which everyone must benefit on an equitable basis (V/44).

117. In the long run, technological changes bring many benefits. These include higher productivity, particularly through the more effective utilisation of resources, a rising standard of living and stepped-up economic growth. In this context, technological progress should be considered as inevitable, necessary and desirable, deserving the support of governments, employers and workers (VII/55).

118. Automation and related technological processes are being increasingly applied in the metal trades in various countries. They hold the promise of providing in time material benefits to all sectors of the population, both in reducing many elements of industrial work drudgery and in making possible a greater degree of leisure, with resulting opportunities for recreation and education to all sectors of the working population. As such, automation

should be fully welcomed. However, like all large-scale and extensive technological innovations, the application of the new technology will have a marked impact on economic and social organisation of industry. It will also have various repercussions for management, for trade unions and for governments and impose on each of them new responsibilities and new tasks (VI/49).

119. Since the areas in which governments can render special assistance to industry and labour in connection with the problems arising from the new technology must generally be undertaken for the benefit of the community as a whole, the Metal Trades Committee has taken particular note of the measures suggested by the International Labour Conference in the resolution concerning automation which it adopted at its 39th Session (Geneva, 1956) to be taken on the national level. These apply both to measures for governments' attention as well as to measures which are for the attention of employers' and workers' organisations and, where appropriate, in co-operation with the governmental authorities concerned; they are intended to minimise the impact of automation and to ensure that the maximum benefits flow to all from its widespread adoption by industry (VI/49).

120. The purpose of applying automation and other technological developments to industrial processes in the metal trades is to raise productivity and generally to improve the standard of living. The benefits resulting from increased productivity should be fairly shared among all sectors of the population and thus contribute to the general welfare of the community, and bring to the workers a higher standard of living, greater leisure and wider opportunities for education (VI/49).

121. The proper goals of social, political and economic policy are to achieve full employment and to ensure steady progress towards higher living standards, security and dignity for all. Higher productivity in the metal trades can make a substantial contribution to these ends. The benefits of higher productivity should be equitably distributed between labour, capital and consumers (V/45).

122. Any benefits resulting from increased productivity should contribute to the general welfare of the community through a reduction in the prices of consumer goods, and bring to the workers a higher standard of living and better working conditions (IV/36).

123. In view of the advantages which may follow from increased productivity in the metal trades, including—

(1) larger supplies both of consumer goods and of capital goods at lower prices;

(2) opportunities for higher earnings;

(3) opportunities for improvements in working conditions, including the lightening of heavy labour; and

(4) a strengthening of the economic structure;

employers and all categories of workers should co-operate to bring about higher levels of productivity (IV/36).

124. It needs to be recognised that the essential end of technological progress—the general welfare—can only be achieved if the gains resulting from higher productivity are shared equitably by employers, workers and the community at large. The application of the following methods—either separately or through a combination of several of them—might serve as a basis for the equitable sharing of the fruits of technological progress. This might take the form of—

(a) the possibility of products of better quality at lower prices being made available to all;

(b) an increase in workers' income;

(c) an improvement of social security benefits;

(d) improvement in conditions of work.

The degree to which and the form in which these various improvements would be provided to workers in the metal trades should be determined by the situation and general policy prevailing in each country (VII/55).

125. While it is agreed that all members of the community should benefit from the gains resulting from technological progress, an equitable sharing of these gains will not necessarily take place automatically. Basically, the economic and social goals of workers, employers and governments in each country should determine the way in which the gains from technological progress are distributed. In the absence of an equitable sharing, the broad goals of a dynamic and expanding economy will not be realised (VII/55).

126. In the industrialised regions or nations the primary problem is to ensure that all groups in the community share equitably in the benefits of technological progress. It is of particular importance that the effects of technological progress do not lead to hardships and undue burdens for certain workers and other members of the community (VII/55).

127. All appropriate measures should be taken to avoid unemployment as a result of increased productivity (V/45).

128. In the short run technological changes may bring benefits, but often bring problems such as adjustments for workers, underemployment and unemployment. In many countries, governments and employers' and workers' organisations are taking steps, through legislation, collective agreements or otherwise, to meet such problems. But there is need for greater and more effective action to ensure that technological progress takes place with a resultant strengthening of human values and without reducing economic efficiency. Such action should include more effective policies and programmes for achieving and maintaining economic expansion and full employment (VII/55).

129. If the benefits implied in automation are to be extended to all sectors of the community—owners and management and workers of undertakings as well as the consumers generally—and its unfavourable effects minimised, consideration needs to be given in advance—as appropriate in each particular case—to the matters set out below (VI/49).

Co-operation and Consultation

130. Increased productivity can be achieved only if all employers and workers are convinced of its necessity and are prepared to take their part, in a spirit of mutual understanding, in the accomplishment of this task which is in the general interest. The increasing of productivity calls for effective measures in human and industrial relations and in the technical sphere (IV/36).

131. It has been increasingly recognised that a willingness on the part of both management and the workers' representatives to discuss in advance the installation of new production methods, and the possible impact of these changes in a particular undertaking or a particular industrial sector, is necessary to ensure a smooth transition to the new techniques with the minimum of dislocation or stress to the individuals concerned. For this purpose management will find it beneficial to inform workers, through representatives of the trade unions or through other appropriate channels where no trade union exists, at an early stage, of the plans they may have for a changeover to more advanced methods of production and to discuss the consequences of these planned changes so that no changes may be put through without taking account of their social consequences. Where automatic equipment is contemplated for a plant, various methods may be employed by preserving full employment levels. These objectives are best worked out through the process of collective bargaining where it exists (VI/49).

132. Furthermore, since by its nature automation of a process implies higher speed of production and the need for reducing interruptions in operations to a minimum, a determination by both parties to consult freely and frequently during the early stages of planning of any changes and throughout the process of changeover, as well as in regard to continuing operating problems of all kinds, will prove a major factor in ensuring efficient operation (VI/49).

133. The period of time between the initial planning for a new technological change and its subsequent implementation should be used to develop and bring into operation measures which will facilitate the adjustments required without imposing hardships on

individual workers. To ensure that the measures developed are as effective as possible, the co-operation and the assistance of workers or their organisations should be sought at this time (VII/55).

134. However they may be defined, automation and related technological developments are bringing about changes, in all sectors of the metal trades and in varying degrees in all countries, at a steadily increasing rate, which may in time have a profound impact on manufacturing processes, management methods, the organisation of industry and the relations of workers to their work. If these changes are to occur with the least hardship to the individuals affected and if their acknowledged benefits are to be made available equitably to all sectors of the community, the parties most directly concerned—employers' and workers' organisations in the metal trades—and, in appropriate fields, the governments, should anticipate the problems raised by these developments and prepare to deal with them on a sound and comprehensive basis and in a co-operative spirit (VI/49).

135. Technological change may reduce or even eliminate the income of some workers directly affected, through transfer to lower-paying jobs, through underemployment, or through unemployment. It is essential that practical steps be developed and put into effect on a co-operative basis between governments, employers and workers or their organisations, which will eliminate such income losses to the maximum extent possible. Such steps might include—

(a) adequate remuneration during periods of training and retraining so that workers can qualify for jobs which provide the same or higher income;

(b) transitional aid in the case of income losses (for example, retention in employment by unemployment insurance and other supplementary unemployment benefits);

(c) special retirement and other provisions for older workers;

(d) effective national employment exchanges;

(e) appropriate aid to permit workers to move to jobs in other enterprises, industries and localities.

Such practical steps should be implemented through legislation, collective bargaining or other means, on a co-operative basis between governments, employers and workers or their organisations and in the light of the situation and general policy prevailing in each country (VII/55).

136. Management can usefully take action to reduce the impact of the changeover to new production methods on the individual workers by such steps as—

(a) training of supervisory personnel for their new operating responsibilities, with special attention to the development of leadership skills;

(b) adopting policies and practices related to improving communication at all levels and between all levels and increasing the sense of mutual confidence and of teamwork within the plant (VI/49).

137. In connection with measures taken to promote productivity, full consideration should be given to full co-operation between all departments in each plant (IV/36).

138. In view of the desirability of ensuring that changes adopted with a view to promoting an increase in productivity shall meet with the co-operation and understanding of workers or their representatives—

(1) employers should explain to the workers concerned the purposes, nature and probable effects of changes designed to increase productivity; and

(2) workers should be free to express their views on changes which concern them and to make suggestions (IV/36).

139. Many of the questions which will need active re-examination in connection with the installation of automation techniques in individual plants are frequently dealt with through collective bargaining or other customary practices and can therefore continue to be considered through these channels (VI/49).

140. Co-operation should take place between the public authorities concerned with education, vocational training and guidance, and organisations of employers and workers in order to work out and apply the most effective and practical programmes and to ensure that technological progress occurs without endangering the effective utilisation of manpower or sacrificing human values (VII/55).

141. Studies and investigations based on sound research techniques should be undertaken in the different branches of the metal trades to determine as clearly and fully as possible the present and future training needs. The projections of training needs and other results of such studies and investigations should be disseminated to all parties concerned. Those responsible for developing training courses, both public and private, should pay particular attention to the findings of such studies and apply them to the new systems of vocational education (VII/55).

142. Technological change is affecting occupations in the metal trades and the qualifications required for them in a great many ways. Some jobs are disappearing, the qualifications needed for many others are being altered, and new jobs are being created. While it is difficult to generalise about trends in respect to unskilled, semi-skilled and some skilled occupations where the picture varies from country to country and even from one undertaking to another, it is clear that needs for highly qualified engineers and scientists, or technicians, and for certain highly skilled trades, are increasing rapidly. In many countries serious shortages of such workers exist in the metal trades and are likely to persist or even become more acute. One of the fundamental reasons why supplies of properly qualified workers have often not been sufficient to meet emerging needs is that educational and training systems have not kept pace with the shifts in job opportunities being caused by technological progress. A general basic education of as solid and wide a nature as possible should be made available to young people prior to their taking up a particular occupation in order to enable them to adapt to the changing requirements of modern industry and take advantage of future job opportunities (VII/55).

143. The programme of vocational training for each occupation or group of related occupations should be drawn up on the basis of a systematic analysis of the tasks, knowledge and vocational abilities involved, particular account being taken of foreseeable evolution and transformation. The programme of vocational training should be reviewed periodically so that it may be kept up to date in the light of technological changes which have already made their appearance or are emerging. It should provide trainees with a solid foundation of theoretical and practical knowledge in keeping with the real needs of the industry. Over and above teaching him about the precise work which he will undertake, the training should as far as possible give the trainee a general knowledge of other occupations of the branch of the metal trades concerned in order to facilitate his future occupational adjustment and promotion (VII/55).

144. The development of automation calls for increased efforts in the field of vocational training at all levels; the new production processes that will be introduced will cause an increased demand for more highly skilled workers, especially in the metal trades. Workers should be encouraged to acquire the necessary higher degrees of skill (VI/49).

145. Training programmes and facilities should be provided for adult workers, on the one hand to readapt their skills, and, on the other, to enable them to familiarise themselves with the continuous and sometimes rapid changes in techniques taking place and to improve their qualifications further in other ways as appropriate (VII/55).

146. New and more flexible systems of basic and vocational training and retraining are necessary for those whose skills and experience have become obsolete or useless to them as individuals seeking a livelihood, and for the purpose of affording justifiable opportunities to those who were insufficiently trained in their youth. Existing systems of education and training and entry into industry should be examined with a view to changes where necessary so as to ensure that every individual, irrespective of age or background, has the opportunity of rising to the highest social, cultural and economic level within his capacity. This is especi-

ally justified when individuals are unable to avail themselves of work opportunities because of limitations in their qualifications due to fortuitous circumstances for which they are not personally responsible (VII/55).

147. In order to make it possible to acquire these higher skills and to remedy the shortage of technically qualified workers which already exists in the metal trades in many countries, vocational training and retraining facilities available to all without discrimination should be developed in industrial areas where automation is likely to be extended. These facilities should be set up by governments, local authorities, industrial undertakings or private institutions, individually or collectively, in accordance with national practice. Whatever may be the form of these vocational training and retraining facilities, which will vary from country to country in accordance with the different situations, the essential point is that the principles of these training and retraining programmes should be worked out by agreement among government and employers' and workers' organisations, as appropriate (VI/49).

148. It is extremely important that a sufficient number of adequately qualified vocational and technical teachers be available. Information about teacher training techniques and arrangements needs to be made available to a greater extent, both nationally and internationally (VII/55).

Measures to Be Taken when Introducing Substantial Changes in the Industrial Process

149. Management can usefully take action to reduce the impact of the changeover to new production methods on the individual workers by such steps as—

(a) arranging the changeover during periods of high activity or expanding markets for the firm's products;

(b) timing voluntary departures and recruitment within a plant so as to reduce the problem of lay-offs when the new production systems go into operation (VI/49).

150. Measures which might be used to avoid or minimise the negative effects of adjustments are—

(a) the timing of changes so that advantage can be taken of any expected expansion in the work force or of its attribution resulting from departures and a slowing down of recruitment;

(b) the transfer of workers to other jobs in the undertaking or in another undertaking of the same company for which their qualifications are sufficient;

(c) the retraining and readaptation of workers so that they can be qualified for any new jobs which become available in the undertaking or company;

(d) the review and possible modification of legislative, collective bargaining and other provisions to ensure that workers can be moved to jobs in the undertaking or company to the greatest extent possible and without any loss of their acquired rights (VII/55).

151. Special attention should be devoted to . . . notification, wherever possible, of displacements expected to result from changes in processes or equipment (IV/36).

152. In connection with measures taken to promote productivity, full consideration should be given . . . to the simplification and standardisation of work methods with a view to bringing into employment all possible operative labour (IV/36).

153. It is essential that employers anticipate new technological changes which are likely to be adopted as early as possible so that their effects on the workers in the undertaking can be accurately assessed. Such assessments should indicate the probable effects on the number and types of workers likely to be affected and the kinds of adjustments required (VII/55).

154. Special attention should be devoted to advance planning by employers of changes in industrial processes or equipment (IV/36).

155. The management of an undertaking which changes its production methods by making them more automatic should assume responsibility for retraining the workers it employs so that they may be able, after a certain time, to carry out their new duties. Small and medium-sized undertakings which do not individually possess sufficient means to carry out such a retraining programme should be encouraged to develop such programmes in co-operation with one another or, where appropriate, with the competent authorities. Such training of an undertaking's employees for their new or changed job in the undertaking should be given without cost to the employee and at no loss of pay to him (VI/49).

156. In carrying out retraining programmes, advantage should be taken, wherever possible, of available public and private training facilities (VII/55).

157. Technological changes frequently require adjustments in the number, distribution and qualifications of workers in a particular undertaking. When this occurs, the first objective should be to make these adjustments without resorting to lay-offs or other disadvantages to the workers. Every effort should be made by employers and workers or their organisations to find and put into effect measures which will enable workers whose jobs are changing or disappearing to continue in employment (VII/55).

158. It has been noted that supplemental unemployment benefit plans, severance pay and training allowances have been utilised in several areas, and where such devices might prove beneficial to all concerned, they could be explored (VI/49).

Measures Designed to Assist Worker Mobility

159. Installation of the new processes in existing or newly established plants may create problems requiring relocation of workers. The narrowing job opportunities in a community in which an old plant is automated may make it necessary for workers to leave their homes to obtain new employment. Arrangements should be worked out to compensate a worker for the expense involved in moving himself and his family to the area in which new employment opportunities exist; reasonable assistance to the worker and his family's living will need to be made through regular weekly payments during the period of transition (VI/49).

160. It is also of the utmost importance that assistance of various kinds be available which will encourage occupational and geographical mobility. Obstacles hindering such mobility should be removed as far as possible and positive steps developed to facilitate it without undue burdens being placed on the workers concerned. Such positive steps might include readaptation allowances (for example, training and termination of employment allowances), assistance in respect of moving and resettlement costs and any other appropriate compensation (VII/55).

161. In many cases, technological changes will require the movement of workers to jobs with other employers in the metal trades or in other industries. It is of basic importance, therefore, that the rate of economic growth be sufficient to provide the required number of employment opportunities in the economy as a whole (VII/55).

162. With the development of automation technology, labour and management should examine all conditions and practices which tend to act as deterrents to mobility of the workforce (VI/49).

Assistance to Older Workers

163. Assistance should be provided to older workers in cases where they prove unable to fit into the new work situations resulting from installation of automated processes. Such assistance may mean adjustments in conditions attaching to the granting of old-age or provident fund or retirement benefits, so that displaced older workers can draw such benefit earlier (VI/49).

Wages and Hours

164. The situation existing in the metal trades in regard to shift work practices should be carefully considered and investigations should be carried out regarding the difficulties

and personal inconvenience to workers resulting from the establishment of shift work, as well as the means to reduce these where the operating requirements of the new technology make such shift work unavoidable (VI/49).

165. In the metal trades, systems of wage payment based on output have traditionally played an important role. With the technological changes occurring in production methods, manual work is being replaced by machines, whose rhythms reduce or eliminate the influence of the worker on the rate of production. As a result, traditional systems of payment may not be suitable to the new circumstances, and should in that case be reconsidered with a view to possible modification or replacement (VII/55).

Job Environment

166. Changes in production techniques and work organisation bring about modifications in conditions in the metal trades which in turn affect work performance. These modifications sometimes take the form of improvements, but sometimes also create new or more intensive difficulties. There are certain advantages immediately resulting from the application of new techniques: mechanisation of heavy labour tends to reduce physical effort; new installations can be accompanied by better facilities at workplaces offering the workers more comfort and a more healthy and agreeable environment. Less frequent direct contact with the goods being processed reduces the risk of accidents. Technological progress has also made it possible for the undertaking to improve considerably the work environment, notably through better lighting and ventilation methods, by the use of devices or arrangements which reduce or suppress noise and dust, and by the design of machines and tools that take into account human characteristics of a physiological and psychological nature. In modernising old factories and setting up new plants, undertakings should make use of the most modern and effective methods so as to create a working environment which is as safe, healthy and comfortable as possible. Particular attention should be paid to certain aspects of technological progress which may have negative effects on working conditions. Certain occupations, both in the factory and the office, tend to become routine and repetitive operations. Workers responsible for such duties often obtain little or no satisfaction from them. It also appears that the continual attention required by certain highly mechanised operations is likely to expose the workers concerned to increased nervous tension. In order to improve working conditions further and to mitigate any of the above undesirable effects of technological change, use should be made of the results of scientific research in industrial physiology and psychology. In so doing, special efforts should be made to avoid techniques and approaches which are based on too narrow and specialised a view and which may destroy the confidence of the workers. Before introducing new equipment and developing new methods of work, co-operation and consultation should take place between the research personnel, engineers and workers concerned (VII/55).

167. Management can usefully take action to reduce the impact of the changeover to new production methods on the individual workers by such steps as... giving attention to the psychological aspects of adapting the workers to new environmental conditions including—

(i) introducing the worker to his new assignment;

(ii) helping him fit into his new work group (VI/49).

Studies and Investigations

168. One of the most useful steps which can be taken at present is for all parties concerned—government, management and labour—to encourage the continuance of the various types of objectives and factual studies which have already been undertaken in several countries by a number of responsible bodies into the impact of current technological developments. Furthermore, it is desirable that these studies should be supplemented by special investigations into the effect of these developments in the several branches of the metal trades, both at the plant level and at the industry level, in as many countries as possible. Such studies will provide the best basis for intelligent planning with sound knowledge of the problems which are being encountered and of the social and economic measures which may

be found necessary for their relief. Governments and public authorities should also undertake and encourage detailed studies of the future needs of the metal trades with respect to skilled personnel, specialists, engineers and technicians. These studies should be carried out in co-operation with the organisations and institutions concerned, and should include the question of adapting technical education courses to current needs. Since automation requires continuing study, both prior to and during its installation, not only as to its development but also as to its effects, governments should assume the responsibility for broad understanding on the part of workers, industry and the public. To this end, governments could initiate periodic discussions to review the latest developments in automation as well as the measures developed to ensure the fair distribution of its benefits among all interested sections of the community (VI/49).

169. At present, with the lack of available knowledge and sometimes limited dissemination, it is hardly possible to get a complete picture of the coverage, rate of implementation and scope of technological change in the different sectors of the metal trades. Similarly, satisfactory data do not exist which would enable a sound estimate to be made of the emerging occupational structure in individual plants and in the various sectors of the metal trades, of the qualifications required for new jobs, and of the extent of displacement resulting from technological innovations. As far as future trends are concerned, the lack of information is even more marked. Nevertheless, it is essential to have such data to assist in drawing up programmes of social action on a sound basis. It is essential to assemble at the national level, with appropriate consultation at regional and local levels where necessary, both information of a general nature and data relating to particular situations, thus enabling the changes and trends in the different sectors of the metal trades to be analysed. This information would need to be made known over as wide an area as possible for the benefit of all interested organisations and institutions. This task would be greatly facilitated by close co-operation between the government services and the organisations of employers and workers concerned. Studies should be undertaken to enable future trends to be forecast and to assess foreseeable needs of an intermediate and long-term nature, in the economic, social, technological and employment fields at the national and industrial levels. The data collected should be used by those concerned to draw up appropriate programmes of social and economic action to avoid the individual hardship and dislocation referred to [previously] and to ensure the equitable distribution of the benefits of technology. Methods and techniques used for establishing this kind of evaluation and forecasting would need to be improved. At the international level, the International Labour Office could play a useful part by acting as an exchange centre for information on methods of research, results of research and outlines of new and effective types of action (VII/55).

VII. International Co-operation

General

170. In the developing countries the metal trades are in the process of being initially established rather than of being transformed technically and in other ways, as is the case generally in the industrialised countries (VII/55). The establishment and growth of the metal trades is of special importance for the economic and social development of less developed countries and can make a substantial contribution to the raising of standards of living and the provision of employment opportunities (VII/59).

171. In developing countries the need to raise the standard of living and the importance of moving towards a more industrialised society with greater economic growth will be of paramount concern. In many cases, if such requirements are to be met satisfactorily, it is essential that assistance from other countries be obtained (VII/55).

172. In view of the situation existing in countries which are insufficiently developed economically, and of the important part which the new techniques of automation can play in those countries when properly used within the framework of national programmes of economic development, governments of highly industrialised countries should favour the continuation and expansion of technical assistance programmes designed to raise the standards of living and to improve the economy of underdeveloped countries (VI/49).

173. Experience has demonstrated the urgent necessity for expansion and further application of technical assistance in all its forms (VI/52).

174. An intensified and concerted programme of action, in both developed and developing countries, should be undertaken by the United Nations and the specialised agencies concerned with a view to accelerating the growth of the metal trades in developing countries (VII/59).

175. Concerted international action to promote the rapid development of economically underdeveloped countries under conditions which ensure reasonable standards of living for the workers concerned is not only desirable for its own sake but can also make an important contribution to the widening of markets and the achievement and maintenance of high and stable levels of employment in the metal trades throughout the world. Such programmes should be planned and executed in close co-operation with the United Nations and the specialised agencies, and special attention should be given to the desirability of concentrating efforts on over-all integrated projects. Technical assistance activities of the International Labour Organisation, whether undertaken under the Expanded Programme of Technical Assistance of the United Nations and Specialised Agencies or under the regular budget of the International Labour Organisation, should be reviewed periodically by the International Labour Conference. The Committee draws attention to the resolution concerning technical assistance and the resolution concerning the international flow of capital for the economic development of underdeveloped countries adopted by the International Labour Conference at its 37th Session in 1954 (V/45).

176. The Governing Body of the International Labour Office is invited to continue and intensify, in the field of the metal trades and to the maximum degree possible, the efforts of the Organisation on programmes of technical assistance to industrially underdeveloped countries (VI/52).

177. The Governing Body of the International Labour Office is invited to instruct the Office, when examining requests for technical assistance which raise problems of concern to the metal trades, to approach, if desirable, the governments of the countries represented on the Metal Trades Committee which are particularly able to provide the technical assistance required and to invite them, in consultation with the employers' and workers' organisations which nominate the delegates to the meetings of the Metal Trades Committee, to examine ways and means of providing the best possible expert assistance in regard to the questions involved. The Governing Body is invited to take steps to ensure that such technical assistance will consist of such services as contribute to the increase of production and, through increased production, contribute to increased employment in the metal trades (III/31).

Use of Democratic Principles and Participation of Employers' and Workers' Groups

178. The Governing Body of the International Labour Office is invited to request the Director-General to—

(1) emphasise to all member States the vital importance of all programmes and plans being established upon solid democratic principles relative to both elaboration and implementation in the metal trades;

(2) encourage the public authorities in the developing countries to follow the example of the I.L.O. in the use of tripartite organs and bodies, so that employers' and workers' organisations can participate at all levels—

(a) whenever guidance or technical assistance is being extended to those countries involving the elaboration and implementation of programming techniques in the metal trades;

(b) in the carrying out by the I.L.O. of projects of technical assistance within the framework of economic, social and vocational training programmes in the metal trades; and

(3) instruct experts appointed by the I.L.O. for technical assistance projects to promote the above principles to the greatest extent possible (VII/58).

179. The Governing Body of the International Labour Office is invited to continue to ensure that the tripartite structure of the I.L.O. is fully utilised to make available the experience of the employers' and workers' organisations in the metal trades in the field of training, and to take the following steps to that end:

(a) to encourage the public authorities in developing countries to consult fully with employers' and workers' organisations whenever a technical assistance programme of vocational training is being planned and executed;

(b) to suggest to the public authorities in the countries receiving technical assistance through I.L.O. channels that they set up tripartite bodies to ensure co-operation and participation in an effective way and on a continuing basis;

(c) to ensure that experts appointed by the I.L.O. are made fully aware of the considerations in *(a)* and *(b)* above (VII/57).

Training in Industrialising Countries

180. The establishment of a new industry such as the metal trades in developing countries where the kind of workers needed to operate, maintain and manage modern machines and equipment are very scarce or non-existent creates a number of special training and other problems. These include—

(a) the need to raise an adequate proportion of the population to the levels of literacy which render vocational training more effective and which are a necessary foundation for the more advanced training needed in the highly skilled occupations;

(b) the adaptation of training facilities and methods to suit populations which are mainly agricultural and have little or no industrial tradition;

(c) the almost complete lack of teachers for the various kinds of vocational training courses needed to produce workers for newly established metal trades;

(d) the provision of the best and most efficient equipment in training institutions.

In order to help developing countries in their efforts to overcome these problems, assistance is urgently needed from industrialised countries and international organisations, such as the International Labour Organisation. Such assistance should include the provision of fully qualified training experts who can be made available for periods long enough for an effective and satisfactory job to be done. The I.L.O. is particularly competent to play a leading role in the provision of such experts; the I.L.O. could maintain a list of metal trade experts drawn from employer, worker and government spheres. Another important form of assistance, which should be extended, is the provision of opportunities for training in metal trade occupations in industrialised countries. The I.L.O. could maintain a list of training establishments, public and private, which have facilities available for training. Industrialised countries should also help developing nations in the creation of a body of competent teaching staff. All such efforts should aim at providing workers who will meet the specific needs of the new undertakings being established (VII/55).

181. Measures for international co-operation in regard to vocational training should be co-ordinated through the International Labour Organisation, which has acquired considerable experience in this field (III/29).

182. A programme should be worked out for training in the advanced countries of—

(a) a nucleus of officials from underdeveloped countries who could undertake the organisation of vocational training in their own countries;

(b) a certain number of instructors capable, on their return, of organising or developing the vocational training of instructors.

The movement of trainees between countries should be facilitated by the grant of international fellowships (III/29).

183. In addition to activities which are at present being developed, there is a need for increased attention to be given to vocational training, made necessary by the rapidly

accelerating technological changes, and to the provision of fellowships for study and experience in industrially developed countries (VI/52).

Machinery and Equipment Shipped to Developing Countries

184. In developing countries, where new machines and equipment usually have to be imported from other nations, steps should be taken by all concerned to ensure that such machines are not of an inferior standard, that they are provided with adequate safety devices and arrangements, and that their design and functioning are suitable to the conditions of the country in which they are going to be used (VII/55).

Studies of Methods Adopted in Developing Countries

185. Intensive studies should be undertaken of the methods adopted in developing countries in the setting up of new plants and industries in the metal trades so that other developing countries with similar social and economic conditions might benefit from the experience gained by the former (VII/55).

* * *

RESOLUTIONS ADOPTED

Discussion and Adoption of the Draft Resolutions

At its seventh plenary sitting the Committee had before it seven draft resolutions. These were presented by the Chairman, in his capacity as Chairman of the Steering Committee. The proceedings of the Metal Trades Committee with regard to each of these seven draft resolutions are indicated below.

1. *Draft Resolution concerning Visits by Delegations in the Metal Trades*

The Chairman explained that the original draft of this text had been submitted to the Steering Committee by the Workers' group. The Steering Committee had decided that the draft was receivable, and the majority considered it expedient to recommend that the Committee adopt the draft unchanged. However, the Employers' members and the United States Government member had indicated in the Steering Committee their intention to abstain when a vote was taken.

Mr. Arnow (Government delegate, United States) considered that the whole range of tasks entrusted to the Organisation was already a heavy burden and that if it were increased the I.L.O. would be interfering in matters which were not particularly within the scope of its responsibilities. No special reason had been given for asking the Organisation to concern itself with visits by delegations. If this resolution were adopted, there would be a risk that other Industrial Committees would do the same, and that the Organisation would incur heavy expenses. For this reason he would abstain.

Mr. Fowler (Employers' delegate, Australia; Chairman of the Employers' group) stated that the majority in his group would abstain.

Mr. Boyd (Government delegate, United Kingdom) announced that he too would abstain for the same reasons as those given by Mr. Arnow; since visits by delegations were already the subject of bilateral arrangements, there was no reason to burden the Office with this extra task.

Mr. Mazzacano (Workers' delegate, United States), speaking on his own behalf and that of Mr. Menger (Workers' delegate, United States), stated that he and his colleague would abstain.

When put to the vote, the draft resolution concerning visits by delegations in the metal trades received 53 votes in favour, none against, with 64 abstentions. There being no quorum, the draft failed of adoption.

2. *Draft Resolution concerning a Reduction in Hours of Work without Reduction of Income in the Metal Trades*

The CHAIRMAN explained that the original draft of this text had been presented to the Steering Committee by the Workers' group. The Steering Committee had considered this draft to be receivable, and the majority of the Steering Committee recommended that the Committee adopt it as it stood. However, the Employers' members of the Steering Committee had indicated that they would oppose the adoption of this draft.

Mr. MCGARVEY (Workers' delegate, United Kingdom; Chairman of the Workers' group) explained that, in adopting this draft resolution, the Committee would simply be ratifying a decision previously taken by the International Labour Conference on the subject of the reduction of hours of work without reduction of income. In so doing, the Committee would confirm the progressive spirit of tripartite meetings. In view of the modernisation and automation that was being carried out in the industry, it was necessary for the workers to co-operate fully with the public authorities and the employers in order to solve national economic problems. In the eyes of the workers, a basic prerequisite was precisely the progressive reduction of hours of work without reduction of income.

Mr. TAKEBAYASHI (Government delegate, Japan) reserved his position as regards the whole of the text, for in Japan there were a large number of small-scale enterprises in the metal trades, where hours of work could not be reduced without grave prejudice to the workers' income.

Mr. OLLERVIDES (Employers' delegate, Mexico) stressed the spirit of understanding in which the Mexican public authorities, employers and workers were trying to implement I.L.O. standards. Mexican workers knew that their employers did not deny them greater participation in national economic progress. It was, indeed, desirable that the Government and industrial undertakings should do all in their power to ensure a healthy economic position for the working classes. However, in October 1965, the Mexican employers had discussed this question and had expressed opposition to a reduction in hours of work, for technical reasons which were valid for all developing countries. In fact, any increase in wages that was not accompanied by a corresponding increase in production would result in higher production costs and would lead to a rise in the cost of living. This would strike directly at the economically weakest groups in the population. If developing countries were to advance, there was an absolute need for them to co-ordinate the efforts of employers, workers and government. The most urgent task was to improve the technical level of workers in order to raise national productivity. Only a great technical and cultural effort would enable these countries to benefit fully from their natural resources. Indeed, to compete in international markets, it was essential to have advanced technical equipment.

Mr. BOYD (Government delegate, United Kingdom) recalled that, in the vote which took place at the International Labour Conference the Reduction of Hours of Work Recommendation, 1962 (No. 116), his Government's delegates had abstained. This was because his Government considered that hours of work should be decided by collective bargaining without government intervention. He would therefore abstain.

Mr. ROSAS RODRÍGUEZ (Workers' delegate, Mexico) was anxious to reply to the Employers' delegate from his country, who had just spoken. The Mexican Congress was planning to introduce the 40-hour week with seven days' wages. It was important to increase the workers' purchasing power, rather than to reduce it, in order to create new employment possibilities for those who were unemployed and thus to enable industry to sell its products. He thought that the Mexican Parliament would vote in favour of this reform.

Mr. RAFFO (Employers' delegate, Peru) stressed that if this draft resolution were adopted neither costly investments nor the well-trained labour force—which was far from numerous in countries in course of industrialisation—would be fully utilised. The resulting rise in the cost of living would harm the greater part of the population. In his country there was a law giving a bonus, corresponding to eight hours' work, to workers who had completed 48 hours per week, which meant that seven days' pay was given for six days of actual work. Recently eight holidays had been abolished, with a view to increasing production and the workers' annual income without increasing production costs. In brief, it was a question of making the fullest possible use of workers with a high level of technical skill, and of providing

employment for unskilled workers. Any other policy would make the economic development of the country more difficult.

Mr. MAIRE (Workers' delegate, France) was convinced that all the participants were aware of the need to reduce hours of work, but, of course, in a well-considered manner. The Workers' representatives simply asked the I.L.O. to appeal to member States to follow the path marked out by the International Labour Conference at its 46th Session in 1962. As far back as 1957 the Metal Trades Committee had already discussed such a reduction in hours of work, and the decision of the 1962 session of the Conference had been much stronger. Three years had now elapsed, and it was appropriate to take up the Conference's decision again, and to address to member States what was, after all, merely an appeal.

Mr. LETTS (Government delegate, Peru) explained that the payment of a seventh day's work each week was designed, first and foremost, as a remedy for the very high rate of absenteeism on Monday mornings; in this way, workers who had completed a full week were rewarded. Furthermore, it must be remembered that in Peru, a country with Catholic traditions, the number of holidays was very high, and it had had to be reduced. For the rest, Peruvian law was in absolute conformity with international labour Conventions, which formed part of the country's statutory law. It laid down the maximum hours of work authorised, but employers and trade unions were perfectly free to agree upon reduced hours of work, and this had happened in many industrial sectors.

Mr. McGarvey was astonished at the opposition to the draft resolution, in view of the fact that it did not say that governments must reduce hours of work immediately. It simply asked that the provisions of Recommendation No. 116, which had already been alluded to, should be applied as soon as possible in the metal trades. Would the employers from Peru or Japan not accept this principle even when their respective economies had reached stability? Anyway, the workers of these two countries insisted on it. As for the United Kingdom Government delegate, perhaps he was forgetting that the Government delegates who had abstained at the 1962 session of the Conference represented a Conservative Government. The present Labour Government had drawn up a national plan which Mr. Boyd had mentioned in the sixth plenary sitting. Now, this plan foresaw the possibility of a reduction in hours of work. Opposition to the draft resolution was therefore based on a misunderstanding, and it was to be hoped that all the delegates would support this proposal in the hope of improving conditions of work throughout the world.

Mr. BLANCO MELO (Government delegate, Mexico) confirmed that his Government was planning to introduce a law to reduce hours of work to 40 per week. Even though Mexico had reached a relatively high level, it was none the less a developing country. It was therefore striving for a better social balance, and wanted to offer better conditions to those who were not yet employed. For employees in the public sector even a 37-hour week was being considered and, of course, the working day must never exceed eight hours. He was therefore able to confirm that his Government had taken the initiative in this matter.

Mr. SOLÓRZANO (Workers' delegate, Peru) confirmed that his country respected all the obligations deriving from international Conventions. In Peru, thanks to active trade unions and to the efforts for mutual understanding between the parties concerned, certain groups of workers already benefited from the 40-hour week. This was the case for 40 per cent. of the country's industrial labour. Moreover, the Parliament had approved a law whereby hours of work in the civil service would be reduced.

The resolution (No. 65) concerning a reduction in hours of work without reduction of income in the metal trades was adopted by 81 votes in favour, 39 against, with 19 abstentions. The text is reproduced below.

3. *Draft Resolution concerning Women Workers in the Metal Trades*

The CHAIRMAN explained that the original draft of this text had been submitted to the Steering Committee by the Workers' group. The Steering Committee had decided that the draft was receivable, and had then forwarded it to its drafting committee, which had made certain amendments in both the preamble and the operative part. The Steering Committee unanimously recommended that the plenary Committee adopt the draft as amended.

Mr. FOWLER (Employers' delegate, Australia; Chairman of the Employers' group) stated that his group would vote in favour of the text.

The resolution (No. 66) concerning women workers in the metal trades was adopted unanimously. The text is reproduced below.

4. *Draft Resolution concerning Labour Statistics in the Metal Trades*

The CHAIRMAN explained that the original draft of this text had been submitted to the Steering Committee by the Workers' group. The Steering Committee had declared the draft to be receivable and had forwarded it to its drafting committee. The latter had altered the order of the paragraphs in the operative part, and the Steering Committee recommended that the plenary Committee adopt the draft as amended.

Mr. FOWLER (Employers' delegate, Australia; Chairman of the Employers' group) stated that the Employers' delegates would vote in favour of the text, but that some of them had reservations to make.

Mr. DE SAEDELEER (Employers' delegate, Belgium) explained that the employers, as users of statistics, were anxious, above all, to have access to comparable statistics. As it was, both governments and international or regional organisations published statistics which were not really comparable. The Employers' delegates therefore wished the Director-General to draw the special attention of the bodies with whom he would get in touch to the need to produce easily comparable statistics.

Mr. MUKHERJEE (Employers' delegate, India) would have preferred the fourth paragraph of the preamble to the draft resolution to say not that no exact figures were available as to the number of workers employed in the metal trades in developing countries, for such data did exist, but rather that the statistics available on employment and income in these countries were inadequate.

The resolution (No. 67) concerning labour statistics in the metal trades was adopted unanimously. The text is reproduced below.

5. *Draft Resolution concerning Freedom of Association and Trade Union Rights in the Metal Trades*

The CHAIRMAN explained that the original draft of this text had been submitted to the Steering Committee by the Workers' group. The Steering Committee had declared it to be receivable and had forwarded it to its drafting committee. The latter had made a small amendment in clause *(a)* of the operative paragraph, and the Steering Committee considered it expedient that the draft resolution as amended be adopted.

Mr. FOWLER (Employers' delegate, Australia; Chairman of the Employers' group) stated that the majority of the members of his group would vote in favour of the draft.

The resolution (No. 68) concerning freedom of association and trade union rights in the metal trades was adopted unanimously. The text is reproduced below.

6. *Draft Resolution concerning Future Action of the International Labour Organisation relating to the Metal Trades*

The CHAIRMAN explained that the basic elements of this draft were originally contained in two texts submitted to the Steering Committee by the Workers' group. The Steering Committee had forwarded them to its drafting committee, which had incorporated the parts relating to future I.L.O. action into a single text. The Steering Committee unanimously recommended the adoption of clauses *(b)*, *(c)* and *(d)* of the operative paragraph, while the majority in the Steering Committee had also been in favour of clause *(a)*. The Employers' members of the Steering Committee, however, had opposed the adoption of this clause, while the United Kingdom and the United States Government members had expressed reservations. The Employers' and Workers' members of the Steering Committee were now submitting an amendment to clause *(a)*.

Mr. PURUSHOTTAM (Government delegate, India) supported the draft resolution but stated that it was wrong, in the fifth paragraph of the preamble, to speak of " the increasing liberalisation " of world trade.

Mr. LETTS (Government delegate, Peru) drew attention to a discrepancy between the Spanish version of the draft, in which the words used were " *liberalismo creciente* ", and the English version.

Mr. Purushottam added that he understood from a private comment which Mr. Letts had just made to him that the latter would also be opposed to the statement that there was an increasing liberalisation of world trade.

Mr. MCGARVEY (Workers' delegate, United Kingdom; Chairman of the Workers' group) expressed astonishment at the remarks made by the Government delegates. He took this opportunity to point out the wisdom of the late Mr. Ernest Bevin in initiating the setting up, within the I.L.O., of Industrial Committees which gave employers' and workers' representatives the chance to come to an understanding on basic principles. It was in this way that, in the case of the present draft resolution, the Employers' and Workers' delegates had been able to reach a happy agreement.

The draft amendment to clause *(a)* of the operative paragraph was adopted unanimously.

The resolution (No. 69) concerning future action of the International Labour Organisation relating to the metal trades, as amended, was adopted unanimously. The text is reproduced below.

7. *Draft Resolution concerning the Agenda of the Ninth Session of the Metal Trades Committee of the International Labour Organisation*

The CHAIRMAN explained that this draft resolution was derived from two texts, one of which had been submitted by the Workers' group and the other by the Employers' group. Having decided that these two texts were receivable, the Steering Committee had forwarded them to its drafting committee, which had combined them to make a single text. However, no agreement had been reached in the Steering Committee. The Workers' members had opposed point (3) entitled " Absenteeism in the metal trades; its causes, effects, and remedies ". After unsuccessful efforts to reach a compromise, the Steering Committee decided to submit the text concerned to the Committee, both the Employers' members and the Workers' members reserving the right to make further proposals in plenary sitting. The Workers' group had now submitted a draft amendment to the draft resolution; the object of this amendment was to replace the whole of the operative part of the draft resolution submitted by the Steering Committee.

Mr. FOWLER (Employers' delegate, Australia; Chairman of the Employers' group) noted that the draft amendment submitted by the Workers' group was designed to replace the four points in the operative part of the draft resolution by two partially new points. This would, in effect, suppress the above-mentioned point (3) which the Employers' members had proposed. Such tactics prevented normal discussion from taking place. The Employers' delegates had thought that they could rely on each of the four points in the draft resolution being considered by the plenary meeting and, if necessary, being voted on separately. In these circumstances the Employers' delegates had no option but to oppose the draft amendment submitted by the Workers' group, while protesting against these procedural tactics.

Mr. MCGARVEY (Workers' delegate, United Kingdom; Chairman of the Workers' group) rejected the insinuations of the previous speaker. It was true that they had tried to reach a compromise on the four items proposed for the agenda of the Ninth Session of the Committee, but the Employers' members of the Steering Committee had found it impossible to accept the suggestion made by the Workers' members to combine points (1) and (2) of the draft resolution into a single point. As for point (4), there had never been any argument about this. It had therefore been up to the Workers' delegates to formulate proposals, which they had done in their draft amendment, while it was up to the Employers to decide what their attitude would be to this quite normal action on the part of the Workers' delegates. There had been no sharp practice on the part of the latter, and they had always made it clear that they could not accept point (3) concerning absenteeism.

Mr. BOYD (Government delegate, United Kingdom) said that there had been a misunderstanding. In an effort to help, and basing himself on article 10, paragraph 6, of the Standing Orders for Industrial and Analogous Committees, he proposed the following subamendment to the amendment submitted by the Workers' group:

Insert, either between points (1) and (2) of the draft amendment of the Workers' group (point (2) thus becoming point (3)), or as a new point (3), the following text: " The effects on levels of remuneration and productivity, and on industrial relations, of excessive labour turnover and of irregular attendance."

He added that this problem was a matter of concern to all sides of the metal trades. In a situation of full employment there did indeed seem to be an excessive turnover of labour and, for various reasons, irregular attendance at work. Productivity went down, especially in automated undertakings. Industrial relations were harmed, as were the levels of remuneration of the great majority of the workers. The speaker therefore confidently hoped for the support of a number of Government delegates and asked the Workers' and Employers' groups to give serious consideration to this proposal and thus to preserve the unanimity which was essential for the effective working of the I.L.O.

As for the French text of the subamendment submitted by Mr. Boyd, after statements by Mr. HOULLEZ (Government delegate, Belgium), who expressed doubts about the correctness of the term " *rotation* ", by Mr. BOURSIER (Employers' delegate, France), who confirmed the indications given by the Assistant Secretary-General on the use of this term, the Chairman decided that the text of the subamendment would include the expression " *rotation des travailleurs* " as a translation of the English expression " turnover ".

As to the receivability of the subamendment, the Chairman stated, in reply to doubts expressed by Mr. Houllez, that the text in question had been given to him in writing, so that he considered that the Standing Orders had been followed.

Mr. Fowler expressed the view that the Government delegate of the United Kingdom had found a very happy solution, a text which did not arouse emotional reactions such as those provoked by the formula proposed by the Employers' members for point (3). He was therefore able to withdraw the remarks he had made on the subject of procedure, and he indicated that the Employers' group supported Mr. Boyd's subamendment.

Mr. McGarvey declared that his group could not accept the subamendment. To discuss irregular attendance at work would mean that the I.L.O. was to extend its studies to the right to strike. The terms used for point (3) had been changed, but they still implied an accusation against the workers. In these circumstances the Workers' group would abstain.

Mr. Fowler pointed out that the Employers had made it very clear, when submitting their original proposal, that they did not intend to include strikes in this point. The expression " absenteeism ", at any rate in English, did not cover strikes, and the same applied to Mr. Boyd's formula.

Mr. DÍAZ (Workers' adviser, Argentina) nevertheless considered that the term proposed led to confusion, since, basically, the idea was to punish absenteeism without giving a reason; the Workers' delegates from Argentina would therefore abstain.

Mr. JACCARD (Employers' delegate, France) explained, with a view to clearing up a misunderstanding, that there was no question of punishing of absenteeism, either in the original draft submitted by the Employers or in Mr. Boyd's subamendment. The latter had the advantage of stressing the economic and social consequences of absenteeism or irregular attendance. During the past few days the Workers' delegates had emphasised the importance of regular income for the workers; now, absenteeism was an important factor in the reduction of workers' earnings, and it would be interesting to consider together what remedies might be used against such harmful effects.

When put to the vote, the subamendment submitted by Mr. Boyd received 54 votes in favour, none against, with 76 abstentions. There being no quorum, the subamendment failed of adoption.

Mr. FOGARTY (Government delegate, Australia) stated that he would abstain when the amendment submitted by the Workers' group was put to the vote. He did not think that the various subjects suggested for the agenda of the Ninth Session of the Metal Trades Committee were really peculiar to this industry. In abstaining, he was acting in accordance with

the views of his Government on the subject of the scope of the activities of the Industrial Committees, views which had been made known to the Governing Body's Working Party on the Programme and Structure of the I.L.O.

Mr. Fowler pointed out that, in point (1) of its amendment, the Workers' group had itself taken up an earlier suggestion made by the Employers' members of the Steering Committee, but that the result did not satisfy the Employers, who would abstain.

When put to the vote, the draft amendment submitted by the Workers' group was adopted by 79 votes in favour, none against, with 55 abstentions.

Mr. LAPIERRE (Government delegate, France) wished to make it clear that the abstention of his country's Government delegates was for reasons solely connected with wording, and not for any basic reasons. It seemed to them that, while the two texts referred to identical principles, the wording of points (1) and (2) of the draft submitted by the Steering Committee was much more satisfactory than that of point (1) of the amendment; if the vote just taken had been negative, they would have asked for the four points of the operative part of the original draft to be voted upon point by point.

Mr. Fowler requested that the Committee be consulted again by a record vote. Replying to a comment by Mr. McGarvey, the Chairman declared the request to be receivable.

In the record vote the draft amendment submitted by the Workers' group was adopted by 84 votes in favour, none against, with 55 abstentions.

The resolution (No. 70) concerning the agenda of the Ninth Session of the Metal Trades Committee of the International Labour Organisation was then adopted as amended. The text is reproduced below.

TEXTS OF THE RESOLUTIONS ADOPTED

Resolution (No. 65) concerning a Reduction in Hours of Work without Reduction of Income in the Metal Trades [1]

The Metal Trades Committee of the International Labour Organisation,

Having met in its Eighth Session in Geneva from 6 to 17 December 1965,

Considering the importance attached by workers' organisations to a reduction in hours of work, in all its aspects, without loss of earnings,

Considering the effects of technological progress and new methods of production on hours of work in the metal trades and the need to create new employment opportunities for young persons,

Referring to the Reduction of Hours of Work Recommendation (No. 116), adopted by the International Labour Conference in 1962, and in particular to Paragraph 1 of this Recommendation, which requests member States to formulate and pursue a national policy designed to promote by methods appropriate to conditions in each industry a progressive reduction of normal hours of work, and to Paragraph 4, which specifies that this should happen without any reduction in the wages of the workers,

Recalling also the resolution (No. 53) on this subject, adopted by the Metal Trades Committee in 1957;

Adopts this sixteenth day of December 1965 the following resolution:

The Governing Body of the International Labour Office is invited to request the Director-General—

(a) to make an appeal to those States Members of the International Labour Organisation which have not already done so to apply in the metal trades the Reduction of Hours of Work Recommendation, 1962 (No. 116);

(b) to invite the governments of all member States to apply as rapidly as possible, in collaboration with employers' and workers' organisations, the provisions of Recommendation No. 116 in the metal trades, and to communicate to the Director-General of the International Labour Office information on the results obtained, in accordance with Paragraph 10 of the aforementioned Recommendation.

[1] Adopted by 81 votes in favour, 39 against, with 19 abstentions.

Resolution (No. 66) concerning Women Workers in the Metal Trades [1]

The Metal Trades Committee of the International Labour Organisation,

Having met in its Eighth Session in Geneva from 6 to 17 December 1965,

Considering the right of women to participate fully in the economic life of their country,

Considering the important and increasing role of women in many sectors of the metal trades,

Considering the need to provide suitable conditions of work for women, to facilitate their access to vocational training, and to ensure them jobs and opportunities for promotion at all levels,

Considering the effects of modern production techniques and the need which may arise for appropriate protective measures, and

Recalling the standards adopted by the International Labour Conference in the Conventions and Recommendations specially related to women workers,

Recalling in particular the Equal Remuneration Convention, 1951, the Maternity Protection Convention (Revised), 1952, and the Employment (Women with Family Responsibilities) Recommendation, 1965,

Recalling also the fundamental principles of non-discrimination contained in the Constitution of the International Labour Organisation, in the Universal Declaration of Human Rights and in the international labour instruments relating to vocational training and to employment;

Adopts this sixteenth day of December 1965 the following resolution:

The Governing Body of the International Labour Office is invited to request the Director-General—

(a) to undertake studies on the above-mentioned problems and on the conditions of work and life of women workers in the metal trades, in the light of the standards which have been adopted by the International Labour Organisation;

(b) to associate the workers' and employers' organisations directly concerned in the carrying out of these studies; and

(c) to include, in the General Report to be presented by the International Labour Office to the next session of the Metal Trades Committee, a chapter concerning the social problems of women workers in these trades.

Resolution (No. 67) concerning Labour Statistics in the Metal Trades [1]

The Metal Trades Committee of the International Labour Organisation,

Having met in its Eighth Session in Geneva from 6 to 17 December 1965,

Considering that statistical and other similar data are of great importance for and contribute to the proper assessment of the social situation in the metal trades in the States Members of the International Labour Organisation,

Considering that no exact figures are available as to the number of workers employed in the metal trades in the developing countries,

Considering further that the reports and other documents of the International Labour Organisation should contain more specific data as to the number of workers (men, women and young persons) in the different sectors of employment in the metal trades, according to countries and according to skills and job classifications,

Considering that wage and related income statistics should be made available to reflect the purchasing power of the workers in the different sectors of employment to facilitate national and regional comparisons,

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[1] Adopted unanimously.

Considering that because of its universal and tripartite character the International Labour Organisation is particularly suited and well-equipped to collect and publish such information,

Welcoming the general information already available in the International Labour Office's *Year Book of Labour Statistics* and its supplements;

Adopts this sixteenth day of December 1965 the following resolution:

The Governing Body of the International Labour Office is invited to request the Director-General—

(a) to extend, within the framework of the technical co-operation programmes of the International Labour Organisation and of the United Nations organisations, assistance with a view to setting up and improving statistical services, particularly in the developing countries;

(b) to search for closer co-operation from the governments, as well as workers' and employers' organisations in the States Members of the International Labour Organisation, to achieve this objective;

(c) to collect and publish labour statistics and other similar data concerning specifically workers in the metal trades.

Resolution (No. 68) concerning Freedom of Association and Trade Union Rights in the Metal Trades [1]

The Metal Trades Committee of the International Labour Organisation,

Having met in its Eighth Session in Geneva from 6 to 17 December 1965,

Considering the fundamental principles of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98),

Considering the importance of respecting trade union rights in the metal trades,

Expressing its satisfaction at the work already accomplished by the International Labour Organisation for the defence of freedom of association and trade union rights at all levels, and

Recalling in particular paragraphs 1, 2 and 3 of the operative part of the resolution concerning freedom of association and the protection of the right to organise, including the protection of representatives of trade unions at all levels, which was adopted by the International Labour Conference at its 45th Session (1961);

Adopts this sixteenth day of December 1965 the following resolution:

The Governing Body of the International Labour Office is invited to request the Director-General—

(a) to draw the attention of the governments of all member States, and through them that of the employers' and workers' organisations concerned, to the need to apply the provisions of Conventions Nos. 87 and 98 to the persons employed in the metal trades, particularly at the level of the undertakings, and to ensure the protection of workers and their representatives in these undertakings;

(b) to urge the governments and the employers' and workers' organisations concerned to denounce all cases where these Conventions are not effectively respected and implemented as regards the metal trades, making use, where appropriate, of the procedures laid down for the application of international labour Conventions and for the examination of alleged violations of freedom of association.

Resolution (No. 69) concerning Future Action of the International Labour Organisation relating to the Metal Trades [1]

The Metal Trades Committee of the International Labour Organisation,

Having met in its Eighth Session in Geneva from 6 to 17 December 1965,

[1] Adopted unanimously.

Considering that the Declaration of Philadelphia recognises the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve full employment and the raising of standards of living, and that the preamble to the Constitution of the International Labour Organisation provides amongst other objectives for the prevention of unemployment, the provision of an adequate living wage, the regulation of the hours of work, the protection of the worker against sickness and occupational disease, as well as provision for old age,

Considering that under the terms of the Declaration of Philadelphia it is the responsibility of the International Labour Organisation to examine and consider all international economic and financial policies and measures in the light of the fundamental objective that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity",

Considering that, in view of the impact of modern technology, the increasing liberalisation and changing patterns of world trade, the role that certain undertakings play in the economic life of developing countries, and the international character of capital investment in several sectors of the metal trades, such as the automotive, electrical engineering, aerospace and aluminium industries, new social problems are arising both in the industrialised and developing countries at the plant, national and international levels,

Considering that it is the task of the International Labour Organisation to further trends and measures which will contribute to the progressive improvement of the working and living conditions of the workers employed in the metal trades,

Considering that increasing similarity in the level of technology and equipment of several sectors of the metal trades makes international comparisons more readily possible and desirable,

Considering the resolution concerning the industrial activities of the International Labour Organisation, adopted by the 49th Session of the International Labour Conference (1965),

Considering that the above-mentioned resolution invites the Governing Body to request, as appropriate, the Director-General and/or the Working Party of the Governing Body on the Programme and Structure of the Organisation to devote particular attention to practical measures which would lead to the strengthening of the International Labour Organisation's activities in the industrial field,

Welcoming the recently adopted practice of submitting to the Committee on Industrial Committees of the Governing Body, in between sessions of an Industrial Committee, periodical reports on the follow-up of conclusions of that Industrial Committee;

Adopts this sixteenth day of December 1965 the following resolution:

The Governing Body is invited to request the Director-General—

(a) to assemble statistical and such other data as will enable a fair comparison to be made, taking into consideration the economic structure in each sector and country concerned, as to the remuneration, working and living conditions of workers employed in those sectors of the metal trades in which international operations are most widely practised;

(b) to study the social problems arising out of the increasingly international character of economic decisions in the metal trades;

(c) to undertake, as a needed contribution to effective manpower planning and vocational training, a study of the changes in job qualifications and contents at various stages of mechanisation and automation in the metal trades; and

(d) to prepare a study of all vocational training and productivity programmes in the field of metal trades to which the International Labour Organisation has extended its support and co-operation since the Seventh Session of the Committee (1962); to establish the extent to which the principle of tripartite participation envisaged in resolutions Nos. 57 and 58 has been put into practice; and to provide information on what steps have been taken by the International Labour Organisation to bring about effective participation where it is absent or ineffective.

Resolution (No. 70) concerning the Agenda of the Ninth Session of the Metal Trades Committee of the International Labour Organisation [1]

The Metal Trades Committee of the International Labour Organisation,

Having met in its Eighth Session in Geneva from 6 to 17 December 1965;

Recommends that, when deciding on the agenda of the Ninth Session of the Committee, the Governing Body select items from amongst the following range of subjects:

(1) the social consequences of structural changes and economic fluctuations in the metal trades, particularly on employment and workers' income, including changes in the structure of the occupational groups in these trades, in relation to the application of skills and to the training of workers in general, and in particular of older and physically handicapped workers;

(2) the betterment of the working and living conditions of workers in the metal trades, taking into account the increasing extent of international operations in these trades.

[1] Points (1) and (2) of the operative part which were submitted by the Workers' group as an amendment to the original draft resolution were adopted as a result of a record vote of 84 votes in favour, none against, with 55 abstentions. The resolution was then adopted as amended.

Interpretation of Decisions of the International Labour Conference

Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)

The German Federal Ministry of Labour and Social Affairs requested from the International Labour Office certain information concerning the interpretation of the term " worker ", as used in this Convention.

In addition, the Ministry of Health and Social Affairs of Sweden requested from the International Labour Office certain information concerning the interpretation of Article 1, paragraph 1 *(a)*, of the said Convention.

With the usual reservation that the Constitution does not give him any special authority to interpret Conventions adopted by the International Labour Conference, the Director-General of the International Labour Office transmitted, on 25 November 1964 to the German Federal Ministry of Labour and Social Affairs, and on 9 December 1965 to the Ministry of Health and Social Affairs of Sweden, the following memoranda prepared by the International Labour Office:

Memorandum Sent by the International Labour Office to the German Federal Ministry of Labour and Social Affairs

1. The German Federal Ministry of Labour and Social Affairs has asked the International Labour Office to throw light on the meaning of the term " worker " as used in the Fee-Charging Employment Agencies Convention (Revised), 1949. In particular, the question is raised whether the term covers only manual workers or refers also to salaried employees.

2. While the term " worker " occurs in several Articles of the instrument, its use in Article 1 is of primary importance for the purpose of the inquiry since it there serves to determine the scope of the instrument. Article 1 reads as follows:

> 1. For the purpose of this Convention the expression " fee-charging employment agency " means—
>
> *(a)* employment agencies conducted with a view to profit, that is to say, any person, company, institution, agency or other organisation which acts as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker; the expression does not include newspapers or other publications unless they are published wholly or mainly for the purpose of acting as intermediaries between employers and workers;
>
> *(b)* employment agencies not conducted with a view to profit, that is to say, the placing services of any company, institution, agency or other organisation which, though not conducted with a view to deriving any pecuniary or other material advantage, levies from either employer or worker for the above services an entrance fee, a periodical contribution or any other charge.
>
> 2. This Convention does not apply to the placing of seamen.

3. This Article was not changed—or discussed—at the time of the adoption of the revising Convention in 1949 and is accordingly the same as that contained in the Fee-Charging Employment Agencies Convention, 1933 (No. 34).

4. The preparatory work for Convention No. 34 reveals detailed consideration of the scope of the instrument in terms of occupations in which the use of fee-charging employment agencies was to be prohibited. The questionnaire addressed to governments asked whether a list of occupations should be specified, or whether the prohibition contemplated should be laid down in general terms as applicable to all occupations, subject to possible exceptions to be specified for certain occupations. On the basis of the replies of governments it was concluded that " the draft Convention should lay down the prohibition of employment agencies carried on for profit in general terms as applicable for all occupations (excluding seamen) but subject to possible exceptions for certain occupations " (Report I, International Labour Conference, 17th Session, pp. 95-97). It may also be noted that in this connection the report to the Conference emphasised that, subject to the exclusion of seamen, " the item on the agenda comprises within its range all occupations and forms of employment, e.g. industry, agriculture, commerce, domestic service and similar employment, professional occupations, theatrical and similar occupations, etc.".

5. It was on this basis that Article 1 of the instrument was so drafted as to refer to employers and workers in general terms (subject to the exclusion of seafarers in paragraph 2 of the Article) while Article 3 (to which Article 5 of the revising Convention may be compared) made provision for possible exceptions. No question was raised on this aspect of the definition in the discussions at the 17th Session of the Conference.

6. The information received from governments which have ratified one or both of the fee-charging employment agencies Conventions on the manner in which they are applying the provisions in question also suggests that in practice the term " worker " has been regarded as applying to all categories of workers and not only to manual workers.

7. Finally, it may not be irrelevant to note that on 15 November 1932—i.e. at a time when the preparatory work of the Fee-Charging Employment Agencies Convention, 1933, was in progress—the Permanent Court of International Justice gave an Advisory Opinion on the question whether the Night Work (Women) Convention, 1919, applied " to women who hold positions of supervision or management and are not ordinarily engaged in manual work " (see *Official Bulletin*, Vol. XVII, No. 5, pp. 179-191). It had been argued before the Court that general words, such as " persons " or " women ", used in international labour Conventions must be regarded as referring only to manual workers, since it was only with them that the International Labour Organisation was intended to concern itself. The Court found that this was not so. It pointed out that the words used in the preamble and operative articles of the Constitution of the Organisation (then Part XIII of the Treaty of Versailles) to describe the individuals who are the subjects of the Organisation's activities are not words which are confined to manual workers. " The words used are ' *travailleurs* ', ' workers ', ' workpeople ', ' *travailleurs salariés* ', ' wage earners ', words which do not exclude employed persons doing non-manual work, as perhaps might have been held to be the case if the words used had been ' *ouvrier* ' or ' labourer ' " (op. cit., p. 187). By reference to this view, and after examination of the preparatory work for the specific Convention before it, the Court held that the Convention applied to women holding positions of supervision or management and not ordinarily engaged in manual work.

Memorandum Sent by the International Labour Office to the Ministry of Health and Social Affairs of Sweden

1. The Ministry of Health and Social Affairs of Sweden has requested the International Labour Office to provide clarification as to the scope of the definition of employment agencies conducted with a view to profit contained in Article 1, paragraph 1 *(a)*, of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96).

2. Article 1, paragraph 1 *(a)*, defines employment agencies conducted with a view to profit as—

. . . any person, company, institution, agency or other organisation which acts as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer with

a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker; the expression does not include newspapers or other publications unless they are published wholly or mainly for the purpose of acting as intermediaries between employers and workers.

3. In its request the Ministry of Health and Social Affairs referred to the Swedish Act of 18 April 1935 to issue certain provisions respecting employment agencies, as amended by an Act of 30 April 1942, and indicated that the Supreme Court of Justice of Sweden had ruled in 1962 that agencies known as " ambulatory typewriting agencies " were employment agencies within the scope of this legislation, which prohibits the carrying out of placing services by private persons for purposes of gain. The Ministry stated that a committee had recently been established by the Swedish Government to review the provisions of the Act of 1935, and that in the course of the committee's work the question might arise of considering a liberalisation, so far as " ambulatory typewriting agencies " were concerned, of the provisions prohibiting the establishment of private employment agencies. Before such a liberalisation was considered, it had to be ascertained to what extent liberalisation would be possible in view of the provisions of the Fee-Charging Employment Agencies Convention (Revised), 1949, which Sweden had ratified. It would be necessary to determine in particular whether the expression " employment agency ", as used for the purposes of the Convention, covered the " ambulatory typewriting agencies " as well as other forms of hiring out of labour, as was considered to be the case in Sweden. The view of the International Labour Office was accordingly sought on this question.

4. The Ministry appended to its request a memorandum which, in addition to outlining the development of the relevant legislative provisions, described in greater detail the nature of the operations of " ambulatory typewriting agencies " as follows:

Typewriting agencies are on the whole operated in either of two ways. One working method is that the agency undertakes certain specified tasks which are then carried out under the guidance and at the responsibility of the agency by employees of the agency itself. This may be the case, for instance, as regards the typing of manuscripts, the making out of lists or tables on the basis of certain given data, or simply the copying of certain texts. The manner and the period in which the work is to be done, the quality of the work, etc., might be agreed upon more or less in detail, but within the limits set by such an agreement the agency is at liberty to carry out the work as it deems best. The main purpose of activities of this kind may be said to be *to supply products of labour* according to order. The main purpose of the second kind of typewriting agency—the so-called ambulatory typewriting agency—is, however, *to supply labour*, namely office staff in the agency's own employment. Here the person, at whose disposal staff is placed by the agency, decides what work is to be carried out and himself supervises the job. In some cases the agency may perhaps guarantee that the staff provided holds certain qualifications, but it assumes no other responsibility for the labour product than that which may arise out of the said guarantee. The staff may be placed at somebody's disposal when, for instance, a temporary need for extra labour arises. The staff is employed and paid by the agency, but only receives pay as long as it works for an outside party. From the legal point of view upheld in Sweden, ambulatory typewriting agencies as thus described are probably considered as employment agencies, whereas this is not the case in respect of typewriting agencies operated in other forms. It may of course sometimes be difficult to draw a border line between the different types of operations. The description given above of the two main ways in which the typewriting agencies are operated may in certain cases not provide sufficient guidance as to whether a given kind of activity should be considered as an employment agency or not. It is also fairly common that both of the working methods recently described are applied by one and the same agency, part of the agency's staff being engaged in the one way and another part in the other, or the entire staff rotating between the two types of work.

In its judgments of 31 December 1962 the Supreme Court set forth the circumstances specially considered by the Court in its assessment of the activities under consideration in the cases before it. In one of the cases (a limited company) these circumstances were described as follows.

The company has employed a large number of persons for the carrying out of various kinds of office work. To a considerable extent this work has then been carried out by the company's employees not in the office of the company but on the premises of other enterprises with an organisation of their own for the same kind of work. The reason for this arrangement has often been that the enterprise has suffered from a shortage of staff due to vacations, illness or a temporary increase in the normal workload; the duration of the arrangement has, in its turn, depended on how long the enterprise has been in need of outside staff. Even though the company and the enterprise may have made an agreement as to the nature of the tasks to be carried out by the company's employees, the said employees have in many cases when performing their work within the enterprise come to form

such a part of the enterprise's own organisation that the part played by the company cannot reasonably be described as anything but a mere placing of labour at the enterprise's disposal. To a considerable extent the company's employees have carried out all their work elsewhere than in the company offices. They have—albeit at their own request—worked only periodically, and when not working as employees of the company they have received no salary from the company; during such periods they have been quite free to work for another employer.

The Supreme Court ruled that the activities of the company, to the extent that they had been of the kind thus described, should be deemed to be placing services covered by the provisions of the 1935 Act.

5. It appears to be clear from the description which has been given that the agencies concerned operate with a view to profit. On this basis, it is proposed in the present memorandum to deal with the following three questions:

(a) Can an agency be considered to be a fee-charging employment agency within the meaning of the Convention where no direct contractual relationship is established between the worker and the person or undertaking for whom the services are performed and where there is a contractual relationship between the agency and the worker?

(b) If the answer to the preceding question is affirmative, are agencies of the kind referred to in the request under consideration to be regarded as fee-charging employment agencies within the scope of the Convention?

(c) If the answer to the second question is also affirmative, what would be the consequences for the operation of the agencies concerned in a country bound by the Convention?

A. Placing where No Direct Contractual Relationship Is Established between the Worker and the User of His Services, and where There Is Such a Relationship between the Placing Agency and the Worker

6. The definition of employment agencies conducted with a view to profit, contained in Article 1, paragraph 1 *(a)*, of the Convention, refers to an agency which " acts as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer ". The questions arise, firstly, whether the use of the terms " employment " and " employer " restricts the scope of the Convention to cases in which a contractual relationship is established between the worker and the user of his services, and, secondly, whether an agency can be regarded as an " intermediary " in the meaning of the Convention if the worker is under contract with the agency itself and not with the person or undertaking for whom he performs services.

7. There would seem to be nothing inherent in the terms " employment " and " employer" to give the Convention so restrictive a meaning. The Oxford English Dictionary defines the words " employ " and " employment " to mean " use the services of a person in a professional capacity or in a transaction of some special business " as well as " have or maintain [a person] in one's service ". Black's Law Dictionary [1] expressly states with reference to " employment " that " it does not necessarily import an engagement ". As far as the I.L.O.'s practice in the use of these two terms is concerned, it may perhaps be useful to refer to the explanation of the terms " occupation " and " employment " given to the Committee on Discrimination at the 42nd Session of the Conference, in connection with the question whether the proposed Convention concerning discrimination in respect of employment and occupation applied to independent workers: " in response to a question on the meaning to be attributed to the terms ' occupation ' and ' employment ' [the representative of the Secretary-General] said that in I.L.O. instruments the first term was generally used as denoting a branch of skill while the second was used in reference to the specific circumstances in which this skill was exercised." [2]

8. The view that Article 1, paragraph 1 *(a)*, of the Convention does not have so restrictive a meaning appears to be further borne out by the relevant preparatory work. As the definition of " fee-charging employment agency " was taken over unchanged from the Fee-

[1] 4th edition, St. Paul, Minnesota, 1951.

[2] See *Record of Proceedings*, International Labour Conference, 42nd Session, Geneva, 1958, para. 15, p. 711.

Charging Employment Agencies Convention, 1933 (No. 34), the necessary indications are to be found in the reports and Conference discussions relating to the earlier instruments:

(a) The initial report concerning law and practice on the question of fee-charging employment agencies, submitted to the Conference at its 16th Session in 1932, noted the wide scope of national legislation on the subject and indicated in the examination of general lines for a solution of the problem that " the function of asking for fee as an intermediary for placing workers in employment is not performed exclusively by the established commercial agencies " and that " indirect employment operations likewise carried on for gain present another feature of the trade ".[1]

(b) A similar point was made in the Committee on Fee-Charging Employment Agencies at the 16th Session of the Conference (1932). During the discussion of the questionnaire to be addressed to governments a member of the Committee pointed out that " the nature, the form or the amount of payment could not be a criterion of a fee-charging agency; fees might be charged indirectly, e.g. nurses seeking employment might be accommodated in a hostel for nurses and actually receive a small payment while they are sent out to cases for which payment is made to the hostel ".[2]

(c) The questionnaire drawn up on the basis of the Conference discussion of 1932 included several questions concerning the categories of agencies to be deemed " fee-charging employment agencies " for the purposes of the proposed Convention. In its survey of replies to the questionnaire the International Labour Office noted that " it seems clear from the replies of the governments that it is generally contemplated that the term ' agency ' should be used for the purpose of the draft Convention in its widest sense so as to comprise all forms or conditions in which placing operations are engaged in for profit " [3] and that " so far as concerns the methods of carrying on placing or recruiting operations for profit, it may be taken to be implicit that all methods which are employed for this purpose should be covered by the draft Convention ".[4] In the draft instrument submitted to the Conference a definition of " fee-charging employment agency " was accordingly proposed in which " the main element is the carrying on of placing operations with a view to profit ", and it was explained that " the intention is to give the expression ' fee-charging employment agency ' in this sense its widest scope as regards the forms which the agency may take, the frequency with which the operations are engaged in and the parties to whom the fees are charged ".[5]

(d) During the final discussion of the draft Convention at the 17th Session of the Conference in 1933 the definition of " fee-charging employment agency " proposed by the Office underwent various textual modifications, most of which are unrelated to the problem here under consideration. Two changes, however, require mentioning. The first consisted in the introduction into the definition of the words " as an intermediary " on the ground that " the idea of employment finding implied an independent intermediary between employer and worker " [6]; the intention behind this amendment was to exclude from the scope of the Convention action by an employer, or by a person in his employment, to find labour for his own purposes.[7] The other involved the replacement of the words " with a view to profit and makes any charge to either the employer or the person seeking employment " appearing in the Office draft by the words " with a view to deriving either directly or indirectly any pecuniary or other material advantage from either employer or worker ", thus emphasising the variety in forms and methods of placing for profit which it was intended to cover.

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[1] See *Abolition of Fee-Charging Employment Agencies*, idem, 16th Session, Geneva, 1932, pp. 15 and 116.

[2] See Minutes of the Committee on Fee-Charging Employment Agencies, idem, fourth sitting.

[3] See *Abolition of Fee-Charging Employment Agencies*, Report I, International Labour Conference, 17th Session, Geneva, 1933, p. 90.

[4] Ibid., p. 91. This point was restated on p. 124.

[5] Ibid., p. 125.

[6] See *Record of Proceedings*, International Labour Conference, 17th Session, Geneva, 1933, p. 551.

[7] See Minutes of the Committee on Fee-Charging Employment Agencies, International Labour Conference, 17th Session, Geneva, 1933, second sitting, third sitting, fourth sitting and eleventh sitting. See also *Record of Proceedings*, idem, p. 327.

9. Further support for the view that the question whether an agency " acts as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer " must be answered by reference to the actual nature of the transaction, rather than its form, is to be found in certain views of the Committee of Experts on the Application of Conventions and Recommendations. Thus, on several occasions the experts have concluded that labour contractors—whose activities consist in supplying workers for undertakings while generally remaining the formal employers of these workers—fall within the scope of the Convention.[1]

10. It may be concluded from all the foregoing that the Convention can apply to cases in which a contractual relationship is established between the worker and an agency, and not between the worker and the person or undertaking at whose disposal he is placed by that agency, the essential test being the nature of the transaction. The question then arises whether the transactions of agencies of the kind referred to by the Swedish Ministry of Health and Social Affairs are of such a nature as, prima facie, to bring them within the scope of the Convention.

B. Applicability of the Convention to Agencies of the Kind Referred to in the Request under Consideration

11. According to the indications supplied, the main purpose of certain agencies for hiring out labour—such as the " ambulatory typewriting agencies "—is to supply labour. Although in some cases the agency may guarantee the qualifications of the staff supplied, it assumes no other responsibility for the work. The worker is paid only while placed at the disposal of a third party and when not so placed he is free to work for any other employer. The third party at whose disposal the worker is placed decides what work is to be carried out and supervises the execution of the work. In many cases—for example when replacing employees absent on annual or sick leave or supplementing the regular workforce in cases of temporary increase in the workload—the worker becomes an integral part of the personnel of the undertaking concerned.

12. On the basis of factors such as these, it would appear that the relationship between the worker and the person or undertaking at whose disposal he is placed is such as to meet the criterion generally applied by national legal systems to determine whether an employment relationship exists, namely the power to control not only what work is to be done, but the manner in which it is to be performed.[2] It may be distinguished from cases in which not labour, but the products of labour are supplied; this distinction corresponds to the classical difference between contracts of service and contracts for services. It would thus appear to be legitimate to conclude that the agency which places the worker at the disposal of the third party " acts as an intermediary for the purpose of procuring employment for a worker or supplying a worker for an employer ".[3]

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[1] The Committee observed in 1955, with reference to the application of the Convention by Pakistan, that the definition of employment agencies conducted with a view to profit in Article 1, paragraph 1 *(a)* of the Convention " would appear to cover the labour contractors and other recruiting agents who, according to the report of the I.L.O. Survey Mission on Labour Problems in Pakistan, act as intermediaries in the sense of this definition " (see *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part IV), International Labour Conference, 38th Session, Geneva, 1955, p. 75). This view was reaffirmed by the Committee in subsequent years (idem, 43rd Session, Geneva, 1959, p. 55, and 46th Session, Geneva, 1962, p. 127).

[2] See DURAND: *Traité de Droit du Travail*, Vol. II (Paris, 1950), p. 240; HALSBURY: *Laws of England*, 3rd Edition, Vol. 25, p. 498. In a case in which a worker was temporarily hired by his regular employer to a third party and the question arose which of the employers was vicariously responsible for the damage caused by the worker, the highest English Appeal Court held that the test " by which to ascertain who is the employer at any particular time is to ask who is entitled to tell the employee the way in which he is to do the work upon which he is engaged.... It is not enough that the task to be performed should be under his control, he must also control the method of performing it " (Mersey Docks and Harbour Board v. Coggins and Griffith (Liverpool) Ltd. [1947] A.C.1, p. 17).

[3] This conclusion, reached by the Swedish Supreme Court on the basis of legislation which expressly envisages that placement may be carried on by an agency having a contractual relationship with the worker concerned, was also arrived at by the Italian Court of Cassation in 1963. With regard to the case of an undertaking which, without engaging in any transformation or itself using labour, confined its activities to placing at the disposal of third parties the services of persons in its own employment the Court held that these relationships were used to conceal an activity of intermediary and were, therefore, contrary to the legislation prohibiting intermediaries in the engagement of labour (D'Alfonso v. Lucia, Currà e Fall. Soc. A.L.S.A.S., in *Rivista di Diritto del Lavoro*, Year XVI, Nos. 3-4 (July-Dec. 1964), p. 341).

C. Obligations Imposed by the Convention in regard to Agencies of the Kind Referred to in the Request under Consideration when Falling within Its Scope

13. Having regard to the conclusion reached in the preceding section of this memorandum that " ambulatory typewriting agencies " as described by the Swedish Ministry of Health and Social Affairs may be regarded as fee-charging employment agencies within the scope of the Fee-Charging Employment Agencies Convention (Revised), 1949, consideration of the consequences which follow in a country bound by that Convention is necessary. The position will vary according to whether the country has accepted the provisions of Part II of the Convention (providing for the progressive abolition of fee-charging employment agencies conducted with a view to profit and the regulation of other agencies) or Part III (providing for the regulation of fee-charging employment agencies).

14. As regards countries bound by Part II of the Convention, Article 3, paragraph 1, provides that " Fee-charging employment agencies conducted with a view to profit as defined in paragraph 1 *(a)* of Article 1 shall be abolished within a limited period of time determined by the competent authority ". This obligation is closely related to the development of a free public employment service. The preamble of the Convention states that it is " complementary to the Employment Service Convention, 1948, which provides that each Member for which the Convention is in force shall maintain or ensure the maintenance of a free public employment service " and further records the view of the Conference that " such a service should be available to all categories of workers ". Paragraph 2 of Article 3 and Article 5 of the 1949 Convention bring out the relationship between its application and the availability of a public employment service. The former provides that fee-charging employment agencies conducted with a view to profit " shall not be abolished until a public employment service is established " (subject, in the meantime, to the measures of control and supervision laid down in Article 4). Article 5 permits exceptions to the requirement of abolition of the agencies concerned in exceptional cases for exactly defined categories of persons for whom appropriate placing arrangements cannot conveniently be made within the framework of the public employment service. The Article reads as follows:

> 1. Exceptions to the provisions of paragraph 1 of Article 3 of this Convention shall be allowed by the competent authority in exceptional cases in respect of categories of persons, exactly defined by national laws or regulations, for whom appropriate placing arrangements cannot conveniently be made within the framework of the public employment service, but only after consultation, by appropriate methods, with the organisations of employers and workers concerned.
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> 2. Every fee-charging employment agency for which an exception is allowed under this Article—
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> *(a)* shall be subject to the supervision of the competent authority;
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> *(b)* shall be required to be in possession of a yearly licence renewable at the discretion of the competent authority;
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> *(c)* shall only charge fees and expenses on a scale submitted to and approved by the competent authority or fixed by the same authority;
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> *(d)* shall only place or recruit workers abroad if permitted to do so by the competent authority and under conditions determined by the laws or regulations in force.

15. The inclusion of Article 5 was intended to provide for such special occupational categories as musicians and entertainers for whom fee-charging employment agencies exist in a large number of countries, performing functions which could not easily be taken over by the public employment service. A number of countries which have ratified the Convention make use of this exception in respect of musicians, entertainers, hotel and restaurant or domestic workers. The International Labour Office is not aware of any exception having been made in respect of a category such as part-time or casual office workers, but the possibility of such an exception would not in principle appear to be excluded. Although public services do to a certain extent cater both for vacancies of this kind and for persons seeking employment of this kind, it is possible that the arrangements do not adequately meet the needs of the persons concerned and that the public services might hesitate to undertake the additional work—testing, taking up of references, assuming responsibility for handling questions of

remuneration, taxation, social security, employment permits for foreign applicants—which may make private agencies attractive both to employers and applicants for employment.

16. If it were felt necessary to have recourse to the provisions of Article 5, any exceptions would have to be confined to "categories of persons, exactly defined by national laws or regulations", in respect of whom the competent authorities were satisfied that appropriate placing arrangements could not conveniently be made within the framework of the public employment service. Before deciding upon any exception, the organisations of employers and workers concerned would have to be consulted. All exceptions would have to be subject to the measures of supervision and control specified in paragraph 2 of Article 5.

17. In the case of countries bound by Part III of the Convention, the obligations in regard to fee-charging employment agencies conducted with a view to profit are limited to measures of control and supervision. These are laid down in Article 10, and correspond to the provisions applicable under Article 5, paragraph 2, to agencies in respect of which exceptions have been made under Part II of the Convention (see text in paragraph 14 above).

Equality of Treatment (Social Security) Convention, 1962 (No. 118)

The Department of Labour of Canada requested from the International Labour Office certain information in regard to Articles 5 and 6 of the Equality of Treatment (Social Security) Convention, 1962.

With the usual reservation that the Constitution does not give him any special authority to interpret Conventions adopted by the International Labour Conference, the Director-General of the International Labour Office transmitted, on 22 December 1965, to the Department of Labour of Canada the following memorandum prepared by the International Labour Office:

Memorandum by the International Labour Office

1. The Department of Labour of Canada has requested the International Labour Office to provide certain information regarding the precise scope of Articles 5 and 6 of the Equality of Treatment (Social Security) Convention, 1962.

Article 5 of the Convention

2. This Article reads as follows:

1. In addition to the provisions of Article 4 [1], each Member which has accepted the obligations of this Convention in respect of the branch or branches of social security concerned shall guarantee both to its own nationals and to the nationals of any other Member which has accepted the obligations of the Convention in respect of the branch or branches in question,

[1] Article 4 of the Convention reads as follows:

1. Equality of treatment as regards the grant of benefits shall be accorded without any condition of residence: Provided that equality of treatment in respect of the benefits of a specified branch of social security may be made conditional on residence in the case of nationals of any Member the legislation of which makes the grant of benefits under that branch conditional on residence on its territory.

2. Notwithstanding the provisions of paragraph 1 of this Article, the grant of the benefits referred to in paragraph 6 (*a*) of Article 2—other than medical care, sickness benefit, employment injury benefit and family benefit—may be made subject to the condition that the beneficiary has resided on the territory of the Member in virtue of the legislation of which the benefit is due, or, in the case of a survivor, that the deceased had resided there, for a period which shall not exceed—

(a) six months immediately preceding the filing of claim, for grant of maternity benefit and unemployment benefits;

(b) five consecutive years immediately preceding the filing of claim, for grant of invalidity benefit, or immediately preceding death, for grant of survivors' benefit;

(c) ten years after the age of 18, which may include five consecutive years immediately preceding the filing of claim, for grant of old-age benefit.

3. Special provisions may be prescribed in respect of benefits granted under transitional schemes.

4. The measures necessary to prevent the cumulation of benefits shall be determined, as necessary, by special arrangements between the Members concerned.

when they are resident abroad, provision of invalidity benefits, old-age benefits, survivors' benefits and death grants, and employment injury pensions, subject to measures for this purpose being taken, where necessary, in accordance with Article 8.[1]

2. In case of residence abroad, the provision of invalidity, old-age and survivors' benefits of the type referred to in paragraph 6 *(a)* of Article 2 [2] may be made subject to the participation of the Members concerned in schemes for the maintenance of rights as provided for in Article 7. [3]

3. The provisions of this Article do not apply to benefits granted under transitional schemes.

3. In its request for clarification of the scope of Article 5 the Canadian Department of Labour referred to the requirement of that Article that benefits be granted to nationals and non-nationals " when they are resident abroad ", and sought confirmation that, if Canada ratified the Convention in respect of any of the branches of social security mentioned in Article 5, benefits under that branch would have to be paid to Canadian residents in Canada, or beneficiaries living in the United States or France, without any restriction.

4. Any decision as to the conformity of a country's legislation with a particular Convention must rest, in the first instance, with the government of the country concerned, subject, in case of ratification, to the procedure established by the International Labour Organisation for the examination of reports supplied by member States under article 22 of its Constitution. The present memorandum is accordingly limited to certain indications as to the scope of the relevant provisions of the Equality of Treatment (Social Security) Convention, 1962, which may facilitate the task of the government concerned in reaching a conclusion.

5. Before proceeding to an examination of the provisions of Article 5 of the Convention, it may be useful to review briefly the general structure of the instrument. Following the definitions and provisions concerning the acceptance of the Convention for individual branches of social security contained in Articles 1 and 2, Article 3 [4] lays down the general principle of equality of treatment between nationals and non-nationals and the restrictions

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[1] Article 8 of the Convention reads as follows:

The Members for which this Convention is in force may give effect to their obligations under the provisions of Articles 5 and 7 by ratification of the Maintenance of Migrants' Pension Rights Convention, 1935, by the application of the provisions of that Convention as between particular Members by mutual agreement, or by any multilateral or bilateral agreement giving effect to these obligations.

[2] Article 2, paragraph 6*(a)*, of the Convention refers to " benefits other than those the grant of which depends either on direct financial participation by the persons protected or their employer, or on a qualifying period of occupational activity ".

[3] Article 7 of the Convention reads as follows:

1. Members for which this Convention is in force shall, upon terms being agreed between the Members concerned in accordance with Article 8, endeavour to participate in schemes for the maintenance of the acquired rights and rights in course of acquisition under their legislation of the nationals of Members for which the Convention is in force, for all branches of social security in respect of which the Members concerned have accepted the obligations of the Convention.

2. Such schemes shall provide, in particular, for the totalisation of periods of insurance, employment or residence and of assimilated periods for the purpose of the acquisition, maintenance or recovery of rights and for the calculation of benefits.

3. The cost of invalidity, old-age and survivors' benefits as so determined shall either be shared among the Members concerned, or be borne by the Member on whose territory the beneficiaries reside, as may be agreed upon by the Members concerned.

[4] Article 3 of the Convention reads as follows:

1. Each Member for which this Convention is in force shall grant within its territory to the nationals of any other Member for which the Convention is in force equality of treatment under its legislation with its own nationals, both as regards coverage and as regards the right to benefits, in respect of every branch of social security for which it has accepted the obligations of the Convention.

2. In the case of survivors' benefits, such equality of treatment shall also be granted to the survivors of the nationals of a Member for which the Convention is in force, irrespective of the nationality of such survivors.

3. Nothing in the preceding paragraphs of this Article shall require a Member to apply the provisions of these paragraphs, in respect of the benefits of a specified branch of social security, to the nationals of another Member which has legislation relating to that branch but does not grant equality of treatment in respect thereof to the nationals of the first Member.

based on reciprocity to which this principle is subject.[1] Article 4 [2] elaborates this principle by laying down the specific rule that equality of treatment as regards the grant of benefits shall be accorded without any condition of residence, also, however, subject to certain qualifications. The preparatory work preceding the adoption of the Convention brings out that Article 4 is intended to ensure—subject only to the specific exceptions which it permits—that any residence condition which may govern the grant of benefit shall apply without distinction to a ratifying State's own nationals and to nationals of any other State to whom, under Article 3, equality of treatment is due.[3] The provisions of Articles 3 and 4, dealing with the question of *equality of treatment as between nationals and non-nationals*, are supplemented by the provisions of Articles 5 and 6, which go beyond this aspect of the question by defining the obligations of a ratifying State regarding *the payment of benefits to beneficiaries (or in respect of children) resident abroad.*[4] The scope of these provisions will be examined in greater detail below.

6. As indicated above, the object of Article 5 is to guarantee the transfer to beneficiaries resident abroad of the pensions and death grants to which it relates. The following may be noted in regard to its provisions:

(a) Article 5 does not apply to all types of benefit in respect of which the obligations of the Convention may be accepted, but only to invalidity benefits, old-age benefits, survivors' benefits and death grants, and employment injury pensions;

(b) the obligations under Article 5 in respect of any particular branch of social security in respect of which a ratifying State has accepted the Convention are limited to its own nationals and the nationals of any other State which has accepted the Convention for that branch;

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[1] It may be noted that, under Article 3, paragraph 1, formal reciprocity is required only to the extent of ratification of the Convention by the other State concerned, irrespective of whether its obligations have been accepted in respect of the same branch or branches of social security. On the other hand, Article 3, paragraph 3, permits a State to refuse equality of treatment as regards any branch of social security to nationals of another State which has legislation relating to that branch but does not grant equality of treatment in respect thereof to the nationals of the first State. The purposes underlying these provisions were explained as follows in the report of the Committee on Social Security at the 46th Session of the International Labour Conference: " The Committee considered that it was desirable, on the one hand, to extend equality of treatment within the national territory of a Member to all the branches in respect of which the said Member had ratified the Convention, for nationals of any Member who has accepted the obligations of the Convention, with the particular purpose of not placing at a disadvantage the nationals of States where social security was as yet little developed. The Committee was prepared to admit, on the other hand, that it was reasonable to include a proviso making it possible to discriminate against nationals of a Member which refuses to grant to non-nationals within its territory equality of treatment in respect of a branch of social security covered in its laws " (See *Record of Proceedings*, International Labour Conference, 46th Session, Geneva, 1962 (Geneva, I.L.O., 1963), para. 17, p. 755).

[2] For the text of Article 4 see footnote 1 on previous page.

[3] In commenting on the provisions which ultimately became Article 4, paragraph 1, the International Labour Office indicated that they meant that " equality of treatment of nationals and non-nationals must not be limited by a condition of residence imposed on non-nationals alone. This does not mean, however, that benefits must in all cases be accorded to non-nationals without any condition of residence, which would be paradoxical in cases where the national legislation imposes such a condition on its own nationals " (See *Equality of Treatment of Nationals and Non-Nationals in Social Security*, Report V (2), International Labour Conference, 46th Session, Geneva, 1962, p. 23. As regards Article 4, paragraph 2, it was at the same time noted that the periods of residence referred to in regard to benefits under certain non-contributory schemes " do not really constitute specific standards, merely stating the limits for derogations permissible in granting the benefits concerned to non-nationals ", and that " these derogations to the principle of equality of treatment could not result in more favourable treatment for foreigners than for nationals " (ibid., pp. 27 and 28).

[4] It will be noted that both Articles 5 and 6 begin with the words " In addition to the provisions of Article 4... ". These words were introduced to make it clear that the Articles in question and Article 4 lay down separate obligations in all cases where the aim of the former has not already been achieved through application of Article 4 (see *Equality of Treatment of Nationals and Non-Nationals in Social Security*, Report V (1), International Labour Conference, 46th Session, Geneva, 1962, p. 26, and idem, Report V (2), p. 30). It was also indicated that the provisions of paragraph 1 of Article 5, " which go beyond the strict limits of legal equality of treatment, were conceived ... in order to make it compulsory to provide the benefits listed in this paragraph to beneficiaries living abroad even in cases where national legislation does not cover such a contingency and where the provisions of Article 4 concerning equality of treatment cannot therefore serve for the same purpose ".

(c) where an obligation arises under Article 5 to pay benefits abroad, this obligation must be complied with, irrespective of where the beneficiary resides. The basic decision of principle on this question was taken during the first discussion of the Convention at the Conference in 1961, namely that " the provision of benefit abroad should be made subject to a condition of reciprocity based solely on the nationality of the beneficiary, irrespective of the situation of his country of residence with regard to the Convention ".[1] This decision was confirmed during the second discussion of the Convention in 1962, when the Committee on Social Security rejected a proposal that the obligation laid down in Article 5 should be limited to cases " where the beneficiaries were resident within the territory of a member State which had accepted the obligations of the Convention ". It was then pointed out that " it would not be fair to make the rights of the beneficiaries dependent upon their place of residence "; some members of the Committee also stressed " the social advantages of the principle of personal rights to benefit "[2];

(d) in the case of invalidity, old-age and survivors' benefits payable under non-contributory schemes, payment to beneficiaries resident abroad may, by virtue of paragraph 2 of Article 5, be made subject to the participation of the States concerned in schemes for the maintenance of rights as provided for in Article 7 [3];

(e) by virtue of paragraph 3 of the Article, the provisions of Article 5 do not apply to transitional schemes;

(f) the precise nature of the measures to be taken by governments to implement the requirements of Article 5 may vary. This is recognised in the reference in paragraph 1 to " measures for this purpose being taken, where necessary, in accordance with Article 8 ".[4]

Article 6 of the Convention

7. This Article reads as follows:

In addition to the provisions of Article 4, each Member which has accepted the obligations of this Convention in respect of family benefit shall guarantee the grant of family allowances both to its own nationals and to the nationals of any other Member which has accepted the obligations of this Convention for that branch, in respect of children who reside on the territory of any such Member, under conditions and within limits to be agreed upon by the Members concerned.

8. In its request for clarification of the above provisions the Canadian Department of Labour referred in particular to the words " children who reside on the territory of any such Member " and inquired whether the Member mentioned in this phrase was the State granting the allowances, the State of nationality of the beneficiary, or a third ratifying State. With reference to the final phrase of the Article (" under conditions and within limits to be agreed upon by the Members concerned "), clarification was sought as to the obligation of a ratifying State to negotiate bilateral agreements with the other States concerned if the latter wished to conclude such an agreement.

9. As already indicated, Article 6 goes beyond the obligations laid down in Articles 3 and 4 of the Convention dealing with equality of treatment as between nationals and non-nationals in the strict sense, by defining the obligations of a ratifying State regarding the payment of family benefit in respect of children resident abroad. The following points may be noted in regard to its provisions:

(a) Article 6 applies only to States which have accepted the obligations of the Convention in respect of family benefit;

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[1] See Report V (1), op. cit., para. 39, p. 12, and Report V (2), op. cit., p. 32.

[2] See *Record of Proceedings*, op. cit., para. 34, p. 757.

[3] For the text of Article 7 see footnote 3 on p. 397.

[4] It was considered unnecessary to add to the paragraph a mention, as suggested by one government, that its requirements might be met by unilateral decision, since it was considered clear that this was one of the methods by which its provisions could be implemented (see Report V (2), op. cit., p. 31).

(b) as in the case of Article 5, the obligations of a ratifying State under Article 6 are limited to its own nationals and the nationals of any other State which has accepted the obligations of the Convention in respect of the branch concerned (i.e. family benefit);

(c) in contrast to Article 5, which requires benefits within its scope to be paid wherever the beneficiary resides, Article 6 requires family allowances to be paid only in respect of children who reside on the territory of a State having accepted the obligations of the Convention in respect of family benefit. The discussions in the Committee on Social Security in 1962 show that the reference in Article 6 to residence " on the territory of any such Member " was intended to cover residence on the territory either of the State granting the allowances or of any other State having accepted the obligations of the Convention in respect of family benefit.[1] This meaning is made explicit in the French text of the Convention, which refers to children residing " *sur le territoire de l'un de ces Membres* " (" on the territory of any one of these Members ") [2];

(d) the allowances mentioned in Article 6 are to be granted " under conditions and within limits to be agreed upon by the Members concerned ". The report of the Committee on Social Security at the 46th Session of the Conference indicated that the aim of the Article was not to establish " a direct obligation arising only from the ratification of the Convention, but merely an indirect obligation, conditional on the conclusion of agreements among the member States concerned as to the conditions and the limits within which the guarantee referred to should be applied ". The Committee further indicated that this obligation was conceived in the same spirit as that contained in Article 7, which implied " that the Members concerned should undertake to apply the principle stated in this Article by reaching an agreement to this effect whatever its nature or form, and that the failure to reach such agreement, duly noted, should not be construed as a failure to carry out the contractual obligations contained in the Article ".[3] As generally in relation to the implementation of obligations under international instruments, the States concerned would have to endeavour in good faith to reach agreement on the subject-matter of Article 6, and their action in this regard would be subject to examination by the bodies responsible for supervising the application of ratified Conventions;

(e) it is to be noted that Article 6 does not cover all family benefits, but only " family allowances ". When it was inserted by the Committee on Social Security during the second discussion of the Convention in 1962, it was noted that the expression " family allowances " was used to cover " periodical payments granted as compensation for expenditure for the maintenance of children, exclusive of certain special allowances, especially those granted to mothers remaining at home " [4];

(f) finally, it may be noted that Article 6 covers both contributory and non-contributory benefits.

10. In conclusion, it would appear that a State which accepts the obligations of the Convention in respect of family benefit would have to seek in good faith to conclude agreements with other States which have accepted the Convention in respect of that branch, with a view to ensuring, on the conditions and within the limits laid down in such agreements, that family allowances are granted to its own nationals and to the nationals of any such other Member in respect of children who reside on its own territory or on the territory of any other State which has accepted the obligations of the Convention in respect of family benefit.

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[1] See *Record of Proceedings*, op. cit., para. 37, p. 758.

[2] Under Art. 21 of the Convention the English and French versions are equally authoritative.

[3] See *Record of Proceedings*, op. cit., para. 37, p. 758. It may be noted that certain Model Clauses for multilateral or bilateral agreements were appended to the Proposed Recommendation concerning equality of treatment of nationals and non-nationals in social security (which was not adopted for lack of a quorum) with a view to facilitating the conclusion of agreements of the kind mentioned above. However, it was repeatedly stressed, and recalled in the preamble to the Model Clauses themselves, that they " were intended purely as a guide and that Members might make use of them in full or in part according to their needs " (ibid., para. 66, p. 762, and Annex to the Proposed Recommendation, preamble, p. 767).

[4] Ibid., para. 37, p. 758.

* * *

11. A final consideration which may be borne in mind in regard to the application of the Convention generally, including the provisions which have been reviewed in this memorandum, is the possibility of flexibility provided by Article 9 of the Convention, which reads as follows:

The provisions of this Convention may be derogated from by agreements between Members which do not affect the rights and duties of other Members and which make provision for the maintenance of rights in course of acquisition and of acquired rights under conditions at least as favourable on the whole as those provided for in this Convention.

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INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

Vol. XLIX, No. 4 *October 1966*

INFORMATION

Membership of the International Labour Organisation

Nepal

On 30 August 1966 the Director-General of the International Labour Office received the following communication:

Kathmandu, 18 August 1966.

Sir,

I have the honour to inform you on behalf of His Majesty's Government of Nepal that the Kingdom of Nepal hereby formally accepts the obligations of the Constitution of the International Labour Organisation in accordance with paragraph 3 of article 1 of the Constitution of the Organisation, and solemnly undertakes fully and faithfully to perform each and every of the provisions thereof.

His Majesty's Government shall bear their share of the expenses of the International Labour Organisation in accordance with the provisions of the Constitution of the Organisation, and make the necessary arrangements concerning their financial contribution with the Governing Body.

Accept, Sir, the assurances of my highest consideration.

(Signed) Kirti Nidhi BISTA,
Minister for Foreign Affairs.

This communication was acknowledged by the Director-General on 31 August 1966.

As appears from the information given above, Nepal, which is a Member of the United Nations, became a Member of the International Labour Organisation on 30 August 1966 by virtue of article 1, paragraph 3, of the Constitution of the International Labour Organisation.

Indonesia

In the report on the 162nd Session of the Governing Body of the International Labour Office [1] it was indicated that Indonesia had given notice of its intention to withdraw from the International Labour Organisation. That notice was received on 25 March 1965 and would, in accordance with article 1, paragraph 5, of the Constitution of the Organisation, have taken effect on 25 March 1967.

[1] See *Official Bulletin*, Vol. XLVIII, No. 3, July 1965, p. 233.

On 6 September 1966 the Director-General of the International Labour Office received the following communication:

Djakarta, 6 August 1966.

Sir,

By letter of 8 March 1965 the Government of Indonesia submitted a notice of withdrawal of the Republic of Indonesia from the International Labour Organisation. It was emphasised in that letter that Indonesia would continue to uphold the lofty principles of international co-operation as laid down in the Constitution of the I.L.O. though it felt constrained at that stage and under then prevailing circumstances to withdraw its membership from the International Labour Organisation.

I am now happy to inform you on behalf of my Government that Indonesia is ready to resume active participation in the work of the International Labour Organisation. I would accordingly be grateful if you would regard this letter as superseding the notice of withdrawal of 8 March 1965 which has not yet taken effect.

The Republic of Indonesia confirms its formal acceptance of the Constitution of the International Labour Organisation.

Accept, Sir, the assurances of my highest consideration.

(Signed) Adam MALIK,
Minister for Foreign Affairs.

This communication was acknowledged by the Director-General on 8 September 1966.

As appears from the information given above, Indonesia's membership in the International Labour Organisation will continue without interruption.

Implementation of Instruments Adopted by the International Labour Conference [1]

Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1 and 3), 1964 [2]

Ratifications or Acceptances

The following ratification of the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1 and 3), 1964, has been communicated to the Director-General of the International Labour Office.

ITALY

The ratification by Italy of the Constitution of the International Labour Organisation Instruments of Amendment (Nos. 1 and 3), 1964, was received by the Director-General of the International Labour Office on 12 July 1966.

The instrument of ratification of these texts is as follows:

(Translation)

THE PRESIDENT OF THE REPUBLIC

To all those to whom these presents may come, greeting!

An Amendment No. 1 and an Amendment No. 3 to the Constitution of the International Labour Organisation having been adopted at Geneva respectively on 6 and on 9 July 1964, and consisting of the following text:

[Here follows the text of the Instruments of Amendment.]

We, having seen the said Amendments and approving them in all and every part, have accepted, ratified and confirmed them, and do now hereby accept, ratify and confirm them and promise to observe them and ensure their strict observance.

In faith whereof, We sign these presents with Our hand and have affixed Our seal thereto.

Done at Rome this tenth day of June in the year nineteen hundred and sixty-six.

(Signed) Giuseppe SARAGAT.

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[1] Report III (Part III), which has been laid before every session of the Conference since 1950, contains a summary of the information supplied by governments in accordance with article 19 of the Constitution of the International Labour Organisation on the measures taken by member States to bring Conventions and Recommendations before the competent authorities and on relevant action taken by these authorities.

[2] For the text of these Instruments of Amendment see *Official Bulletin*, Vol. XLVII, No. 3, July 1964, Supplement I, pp. 5-12.

Ratifications of International Labour Conventions and Declarations concerning the Application of Conventions to Non-Metropolitan Territories

[NOTE: *The publication of information concerning the ratification and application of international labour Conventions does not imply any expression of view by the International Labour Office on the legal status of the State having communicated a ratification or declaration, or on its authority over the territories in respect of which such ratification or declaration is made; in certain cases these may present problems on which the I.L.O. is not competent to express an opinion.*]

BRAZIL

Ratification of the Radiation Protection Convention, 1960 (No. 115), and the Final Articles Revision Convention, 1961 (No. 116).

The ratification by Brazil of Conventions Nos. 115 and 116 was registered by the Director-General of the International Labour Office on 5 September 1966.

The text of the instrument of ratification of these Conventions is as follows:

(Translation)

I, Humberto de Alencar CASTELLO BRANCO,

President of the Republic of the United States of Brazil,

Hereby inform all those who see the present instrument of ratification that at the 44th and 45th Sessions of the General Conference of the International Labour Organisation, there were adopted, on 22 June 1960 and 26 June 1961 respectively, Convention No. 115 concerning the protection of workers against ionising radiations and Convention No. 116 concerning the partial revision of the Conventions adopted by the General Conference of the International Labour Office at its first 32 sessions for the purpose of standardising the provisions regarding the preparation of reports by the Governing Body of the International Labour Office on the working of Conventions, the originals of which are deposited with the Office of the said Organisation;

And the National Congress having approved the foregoing Conventions by means of Legislative Decree No. 2 of 1964, I hereby ratify them, declare them to be fully effective and undertake that they shall be inviolably observed;

In faith whereof, I have signed these presents and affixed thereto the seal of the Republic and have caused them to be countersigned by the Minister of State for Foreign Affairs.

Given in the Palace of the President in Brasilia on the twenty-fifth day of May, nineteen hundred and sixty-four in the hundred and forty-third year of Independence and the seventy-sixth year of the Republic.

(Signed) H. CASTELLO BRANCO.
(Countersigned) V. DA CUNHA.

In conformity with Article 3, paragraph 3 *(c)*, of the Radiation Protection Convention, 1960 (No. 115), the following declaration was appended to the instrument of ratification:

(Translation)

1. Broadly speaking, Brazilian legislation on the protection of workers against ionising radiations covers two categories of workers: firstly, civilian or military employees of the Federal Government and employees of autonomous public corporations, and secondly, workers subject to the Consolidated Labour Laws.

2. The first group—employees of the Federal Government—are partly covered by Act No. 1234 dated 14 November 1950 and the regulations issued thereunder, which refer solely to *occupational exposure* to radiation, i.e. cases where workers are directly exposed to radiation because of the special nature of their employment.

Act No. 1234 entitles these workers to a special bonus, shorter working hours, additional holidays and facilities for sick leave in the event of occupational injury or disease, while the regulations issued thereunder contain health and safety standards, exposure tables and details concerning the arrangements for enforcement and supervision.

3. The second group—workers subject to the Consolidated Labour Laws—are not covered by any legislation specifically dealing with protection against ionising radiations, but are covered by certain general provisions, namely:

3.1. Cash bonuses are payable to workers employed in conditions classified as unhealthy under Legislative Decree No. 2162 dated 1 May 1940 and section 187 of the Consolidated Labour Laws; in addition, Order No. 262 of the Ministry of Labour and Social Welfare dated 6 August 1962 lays down maximum and average standards of toxicity for various occupations involving exposure to ionising radiations. Act No. 4589 dated 11 December 1964 gives the National Department of Occupational Safety and Health, which forms part of the Ministry of Labour and Social Welfare, powers to regulate occupational safety and health standards and to classify certain conditions as unhealthy. The same enactment makes the department of labour in each state responsible for enforcing its provisions in its own area.

3.2. Under Act No. 3807 dated 26 August 1960 (the Social Insurance Act) special retirement conditions are granted to workers exposed to ionising radiations; details are given in Decree No. 53831 dated 25 March 1964.

3.3. Details concerning compensation and other benefits in the event of occupational disease are given in Legislative Decree No. 4449 dated 9 July 1942 and Decree No. 1361 dated 12 January 1937, which also apply to diseases caused by ionising radiations.

Order No. 10 was issued by the Director of the Actuarial Department of the Ministry of Labour and Social Welfare on 23 November 1964 approving the schedule of occupational diseases given in the sole paragraph of section 2 of Legislative Decree No. 7036 dated 10 November 1944 and section 102 *(a)* of the regulations issued thereunder, approved by Decree No. 18809 dated 5 June 1945, Part XIV of which classifies all diseases caused by ionising radiations as occupational in character.

3.4. Work in occupations involving the use of ionising radiations for medical purposes, as well as the conditions in which such work is performed, are subject to approval and supervision by the National Medical and Pharmaceutical Control Department of the Ministry of Health.

4. General safety standards concerning ionising radiations and, in particular, the prescribing of maximum permissible doses and standards for the marking and transport of radioactive materials, are at present the responsibility of the National Nuclear Energy Commission, which has power to set and enforce standards at the federal level (Act No. 4118 dated 27 August 1962), but has not yet issued any instructions in this respect.

In the absence of any specific Brazilian legislation and in view of the principle that ratified Conventions have the status of national legislation, Brazil observes the recommendations of the International Atomic Energy Agency, to which it belongs by virtue of Legislative Decree No. 42155 dated 27 August 1957 issued in pursuance of Legislative Decree No. 24 dated 24 July 1957.

CYPRUS

Ratification of the Employment Injury Benefits Convention, 1964 (No. 121), and the Employment Policy Convention, 1964 (No. 122).

The ratification by Cyprus of Conventions Nos. 121 and 122 was registered by the Director-General of the International Labour Office on 28 July 1966.

The communications from the Minister of Labour and Social Insurance which constitute the instruments of ratification of these Conventions are in terms similar to those of the communication which constitutes the instrument of ratification of the Unemployment Convention, 1919 (No. 2).[1]

[1] See *Official Bulletin*, Vol. XLIX, No. 1, Jan. 1966, p. 40.

MEXICO

Declaration concerning the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106).

The ratification by Mexico of Convention No. 106 was registered by the Director-General of the International Labour Office on 1 June 1959. Following this ratification, the Mexican Government has communicated, in conformity with Article 3, paragraph 1, of the Convention, a declaration specifying that the provisions of the Convention shall also apply to persons employed in the establishments referred to in the said paragraph. This declaration was registered on 29 June 1966.

NETHERLANDS

Ratification of the Employment Injury Benefits Convention, 1964 (No. 121).

The ratification by the Netherlands of Convention No. 121 was registered by the Director-General of the International Labour Office on 2 August 1966.

The text of the instrument of ratification of this Convention is in terms similar to those of the instrument of ratification of the Sickness Insurance (Industry) Convention, 1927 (No. 24).[1]

NIGER

Ratification of the Equal Remuneration Convention, 1951 (No. 100), and the Social Security (Minimum Standards) Convention, 1952 (No. 102).

The ratification by Niger of Conventions Nos. 100 and 102 was registered by the Director-General of the International Labour Office on 9 August 1966.

The text of the communication from the Minister of the Civil Service and Labour, which constitutes the instrument of ratification of these Conventions, is as follows:

(Translation)

Niamey, 4 August 1966.

Sir,

With reference to your letter ACD 2-201 dated 26 July 1966, I have the honour to confirm that the Government of the Republic of Niger has ratified the following international labour Conventions:

Equal Remuneration Convention, 1951 (No. 100).

Social Security (Minimum Standards) Convention, 1952 (No. 102).

With regard to Convention No. 102, I wish to add, in accordance with Article 2 *(b)* of the instrument in question, that ratification applies to the following parts:

V — old-age benefit,

VI — employment injury benefit,

VII — family benefit,

VIII — maternity benefit.

I shall be obliged if you will consider the present communication as a formal instrument of ratification of the foregoing Conventions in accordance with article 19, paragraph 5 *(d)*, of the Constitution of the International Labour Organisation.

With the assurance of my highest consideration,

(Signed) AMADOU ISSAKA,
Minister of the Civil Service and Labour.

[1] See *Official Bulletin*, Vol. XLIX, No. I, Jan. 1966, p. 41.

NORWAY

Conditional Ratification of the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109).

The conditional ratification by Norway of Convention No. 109 was registered by the Director-General of the International Labour Office on 30 August 1966. This ratification is subject to the condition that the Convention will become applicable to Norway after its entry into force for Denmark, the Federal Republic of Germany, Sweden and the United Kingdom.

The text of the instrument of ratification is as follows:

(Translation)

We, OLAV,

King of Norway,

Hereby make known:

That having seen and examined the Convention concerning wages, hours of work on board ship and manning (revised 1958), adopted by the General Conference of the International Labour Organisation at its 41st Session in 1958,

We approve, ratify and confirm the said Convention and undertake to ensure that it is observed according to its form and tenor.

The ratification does not apply to Part II, Wages.

The ratification shall not be considered effective until the said Convention has entered into force in all the following countries: Denmark, the Federal Republic of Germany, Sweden and the United Kingdom of Great Britain and Northern Ireland.

In faith whereof we have signed the present instrument of ratification and caused the seal of the Kingdom to be affixed thereto.

Done at the Royal Palace in Oslo on the twenty-fifth day of March One thousand nine hundred and sixty-six.

In the absence of His Majesty the King:

(Signed) HARALD.

(Countersigned) John LYNG,

Minister of Foreign Affairs.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Ratification of the Employment Policy Convention, 1964 (No. 122); and Declarations concerning the Unemployment Convention, 1919 (No. 2); the Workmen's Compensation (Agriculture) Convention, 1921 (No. 12); the Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16); the Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19); the Seamen's Articles of Agreement Convention, 1926 (No. 22); the Sickness Insurance (Industry) Convention, 1927 (No. 24); the Sickness Insurance (Agriculture) Convention, 1927 (No. 25); the Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32); the Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42); the Unemployment Provision Convention, 1934 (No. 44); the Convention concerning Statistics of Wages and Hours of Work, 1938 (No. 63); the Labour Inspection Convention, 1947 (No. 81); the Social Policy (Non-Metropolitan Territories) Convention, 1947 (No, 82); the Employment Service Convention, 1948 (No. 88); and the Migration for Employment Convention (Revised), 1949 (No. 97).

The ratification by the United Kingdom of Convention No. 122 was registered by the Director-General of the International Labour Office on 27 June 1966.

The text of the instrument of ratification of this Convention is as follows:

Whereas a Convention (No. 122) concerning employment policy was adopted at Geneva on the ninth day of July One thousand nine hundred and sixty-four by the General Conference of the International Labour Organisation at its Forty-eighth Session, which Convention is, word for word, as follows:

[Here follows the text of the Convention.]

The Government of the United Kingdom of Great Britain and Northern Ireland, having considered the Convention aforesaid, hereby confirm and ratify the same and undertake faithfully to perform and carry out all the stipulations therein contained.

In witness whereof this Instrument of Ratification is signed and sealed by Her Majesty's Principal Secretary of State for Foreign Affairs.

Done at London the Third day of June, One thousand nine hundred and sixty-six.

(Signed) Michael STEWART.

In addition, the Director-General of the International Labour Office registered, on the dates indicated below, the following declarations communicated under article 35 of the Constitution of the International Labour Organisation, concerning the application to certain non-metropolitan territories of the international labour Conventions mentioned below:

Convention No. 2.

Applicable with the following modifications: Swaziland [1]—5 September 1966: *Article 1.* Accepted in principle but cannot be fully implemented at present owing to shortage of staff. *Article 3.* Excluded as there is as yet no system of unemployment insurance.

Decision reserved: British Virgin Islands—22 August 1966.

Convention No. 12.

Decision reserved: Seychelles—5 September 1966.

Convention No. 16.

Applicable without modification: British Honduras [2]—22 August 1966.

Convention No. 19.

Applicable with the following modifications: Bermuda [2]—5 September 1966: *Article 1 (1).* Persons in the civil employment of Her Majesty and of the Government of the United States of America who have been engaged in a place outside the islands and do not have Bermudian status or are not ordinarily resident in the islands are excluded. *Article 1 (2).* The transfer of funds is permitted only within Her Majesty's Dominions; there is, however, an arrangement with the Government of Portugal in regard to workers from the Azores. There is no such arrangement with any other State Member of the International Labour Organisation.

Convention No. 22.

Decision reserved: British Virgin Islands—22 August 1966; Fiji—5 September 1966.

Conventions Nos. 24 and 25.

Decision reserved: British Virgin Islands—22 August 1966.

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[1] This declaration supersedes a declaration of decision reserved of 18 February 1963.

[2] This declaration was communicated under Article 1 (4) of the Labour Standards (Non-Metropolitan Territories) Convention, 1947 (No. 83), and will become effective when this Convention comes into force. It supersedes a declaration of decision reserved registered on 27 March 1950.

Convention No. 32.

Decision reserved: St. Helena—5 September 1966.

Conventions Nos. 42 and 44.

Decision reserved: British Virgin Islands—22 August 1966.

Convention No. 63.

Applicable without modification: Mauritius [1] (excluding Part II)—5 September 1966.
Decision reserved: British Virgin Islands—22 August 1966.

Convention No. 81.

Applicable without modification: Hong Kong [1] (excluding Part II)—11 July 1966; British Honduras [2] (including Part II)—22 August 1966.

Convention No. 82.

Applicable with the following modifications: Fiji [3]—11 July 1966: *Articles 16 and 19 (2).* Excluded.

Convention No. 88.

Applicable with the following modifications: Swaziland [4]—5 September 1966: *Article 6* (d). Excluded as there is as yet no system of unemployment insurance.

Convention No. 97.

Applicable without modification: British Honduras [5] (excluding Annexes I, II and III)—5 September 1966.

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[1] This declaration supersedes a declaration of application with modifications of 22 March 1958.
[2] This declaration supersedes a declaration of 20 November 1963 by which Part II was excluded.
[3] This declaration supersedes a declaration of application with modifications of 27 March 1950.
[4] This declaration supersedes a declaration of decision reserved of 22 March 1958.
[5] This declaration supersedes a declaration of decision reserved of 5 January 1961.

Office Publications and Documents

International Labour Review

The following, in addition to the regular section " Current information " and the Bibliography, are the contents of recent issues of the *International Labour Review*:

August 1966 :

Social and cultural factors in management development:

The socio-cultural setting of management in the United Kingdom, by Rosemary Stewart.

Social and cultural factors in management development in India and the role of the expert, by Kamla Kapur Chowdhry.

Socio-cultural aspects of management in Japan: historical development and new challenges, by Shin-ichi Takezawa.

Social and cultural factors in management development: extracts from the conclusions of a meeting of experts.

September 1966 :

" Cooperación popular ": a new approach to community development in Peru, by Jaime Llosa Larrabure.

The Minimum Wage Act in Argentina, by Arnaldo R. Campañó.

Social and cultural aspects of integrated rural development in some West African countries, by Albert L. Godart.

Organised industry and planning in the Netherlands, by P. S. Pels.

Industrialisation and structural changes in employment in the socialist countries, by Antoni Rajkiewicz.

October 1966 :

The 50th Session of the International Labour Conference, June 1966.

Towards equality of opportunity in India, by P. M. Menon.

Trade unions and economic and social development in the Maghreb, by Anisse Salah-Bey.

The system of remuneration in the Soviet merchant marine, by E. Korsakov.

Legislative Series

The July-August issue of the *Legislative Series* contains texts promulgated in 1965 dealing with the following subjects.

Labour legislation :

Belgium 2 (1965): Wages.
Bolivia 1 (1965): Trade unions.
Chile 2 (1965): Seafarers and dockers.
Finland 1 (1965): Hours of work (amendments).
Norway 1 (1965): Hours of work.
Syrian Arab Republic 1 (1965): Inspection.

Social security legislation :

Italy 1 (1965): Employment injury insurance.

This issue contains a list of recent labour legislation, the table of contents, 1964, and the Annual Supplement (Indexes), 1964.

Bulletin of Labour Statistics

The *Bulletin of Labour Statistics* contains the usual data on employment, unemployment, wages, hours of work and consumer prices.[1]

Reports Prepared for the International Labour Conference (51st Session)

In preparation for the 51st Session of the International Labour Conference (June 1967) the International Labour Office has published the following report.

Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning Old-Age, Invalidity and Survivors' Pensions [2]

The first chapter of the present report summarises the proceedings of the 50th Session of the Conference relating to the revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning old-age, invalidity and survivors' pensions (extracts from the report of the Conference Committee, Proposed Conclusions submitted by the Committee, discussion by the Conference in plenary sitting). The second chapter contains the text of a proposed Convention and a proposed Recommendation prepared by the Office on the basis of the Proposed Conclusions.

Studies and Reports

Prices, Wages and Incomes Policies in Industrialised Market Economies [3]

This study concerns certain problems of wage policy in industrialised countries aiming at high employment and steady growth of production and incomes, largely in the framework of a market economy. Its chapters cover the following subjects: wages and economic stability; effects of inflation; causes of inflation and the fixing of prices and wages; some mechanics of inflation; wage policy—methods and institutions; criteria of wage adjustment in national wage policy; some problems of national wage policy; policy for non-wage incomes; and steps towards stability—improving wage systems.

The main purpose of the study is to stimulate thought and discussion on a number of important and controversial questions. The views expressed are those of the authors and not necessarily those of the I.L.O.

Mimeographed Documents [4]

I.L.O. Technical Assistance Mission Reports

Asia :

Report on the I.L.O. Seminar on the National Planning of Vocational Training for Countries of the Asian Region (Kuala Lumpur, 16-28 November 1964) (ILO/TAP/AFE/R.13).

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[1] *Bulletin of Labour Statistics*, 3rd quarter, 1966 (Geneva, I.L.O., 1966), 87 pp. Price: 90 cents; 6s. 3d.

[2] *Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning Old-Age, Invalidity and Survivors' Pensions*, Report IV (1), International Labour Conference, 51st Session, Geneva, 1967 (Geneva, I.L.O., 1966), 99 pp. Price: $1; 7s.

[3] Turner, H. A., and Zoeteweij, H.: *Prices, Wages and Incomes Policies in Industrialised Market Economies* Studies and Reports, New Series, No. 70 (Geneva, I.L.O., 1966), 172 pp. and 11 tables. Price: $2; 14s.

[4] Limited quantities of these documents are available; copies are obtainable from the I.L.O., Geneva.

Afghanistan :

Co-operative organisation and legislation (ILO/TAP/Afghanistan/R.8).

Brazil :

La formation professionnelle hôtelière (vocational training in the hotel industry) (OIT/TAP/Brésil/R.9).

Ceylon :

Industrial co-operatives (ILO/TAP/Ceylon/R.27).

Management accounting problems in state industrial corporations (ILO/TAP/Ceylon/R.28).

Guatemala :

La misión inter-agencias sobre colonización en Guatemala (the inter-agency land settlement mission in Guatemala) (OIT/TAP/Guatemala/R.12).

Iraq :

Workers' education in Iraq (ILO/OTA/Iraq/R.11).

Lebanon :

La visite d'une mission mixte d'experts en relations professionnelles (visit of a joint mission of labour-management relations experts) (OIT/OTA/Liban/R.8).

Libya :

The first actuarial review of the pension branch of the National Social Insurance Institution (I.N.A.S.) (ILO/TAP/Libya/R.9).

Malawi :

Co-operative education and training (ILO/TAP/Malawi/R.1).

Malaya :

The development of the National Apprenticeship Scheme (ILO/TAP/Malaya/R.8).

Morocco :

La situation et le développement du mouvement coopératif (situation and development of the co-operative movement) (OIT/TAP/Maroc/R.15).

Tunisia :

La gestion, l'inspection et le financement des coopératives (management, inspection and financing of co-operatives) (OIT/TAP/Tunisie/R.14).

La réorganisation des services de l'emploi (reorganisation of the employment services) (OIT/TAP/Tunisie/R.15).

Turkey :

La mécanisation actuelle et la future gestion par un ensemble électronique au sein de l'Institut des assurances sociales (present mechanisation and future management in the Social Insurance Institute by means of an electronic installation) (OIT/TAP/Turquie/R.27).

DOCUMENTS

Judgments Given by the Administrative Tribunal of the International Labour Organisation

Text of the Judgment Given in the Case of: Deschamps against International Labour Organisation

INTERNATIONAL LABOUR ORGANISATION

ADMINISTRATIVE TRIBUNAL

Sixteenth Ordinary Session (Geneva, 1-11 October 1966)

Registry's translation, the French text alone being authoritative.

In re Deschamps — Judgment No. 91

The Administrative Tribunal,

Considering the complaint against the International Labour Organisation drawn up by Mr. Roger Deschamps, dated 30 July 1965 and actually despatched, accordingly to the postmark, on 9 August 1965, the reply of the I.L.O. dated 10 November 1965, the rejoinder of the complainant dated 15 February and 31 March 1966, and the observations of the I.L.O. on this rejoinder, dated 26 April 1966;

Considering article VII, paragraph 2, of the Statute of the Tribunal, together with article 6, paragraph 3, of the Rules of Court of the Tribunal;

Having examined the documents in the dossier, oral proceedings having neither been requested by the parties nor ordered by the Tribunal and the complainant's offer to appear personally being unnecessary to the disposition of the case;

Considering that the material *facts* of the case are as follows:

A. After discharging the duties of textiles handicraft expert in Morocco for the I.L.O., the complainant, whose original appointment, made for one year on 12 April 1959, had been extended on successive occasions, was appointed on 1 December 1962 for a period of 11 months as principal textiles expert in a project for training textile and leather-work instructors which was an extension of the project to which he had previously been assigned.

B. Differences arose between the complainant and the head of this new project, who had taken up his appointment in March 1963, as a result of which Mr. Deschamps addressed a memorandum to the Resident Representative of the Technical Assistance Board at Rabat on 2 May 1963, setting out his grievances and indicating his intention of submitting a complaint to the Director-General of the I.L.O. and, possibly, of requesting its transmission to the Administrative Tribunal. The Resident Representative advised Mr. Deschamps not to institute proceedings and no further action was taken on the matter by either party.

C. On 10 May 1963 the complainant was informed that the I.L.O. did not propose to renew his appointment, and when the complainant expressed surprise at such a decision which appeared to indicate lack of confidence in him, whereas reports on his work had never

been anything but favourable and the project was to continue for several years longer, he was informed, on 14 June 1963, that under article 4.6 *(d)* of the I.L.O. Staff Regulations, while fixed-term appointments were renewable, " an official thus appointed is not entitled to assume that his contract will be renewed or that it will be converted into a different type of contract ", and that " fixed-term appointments terminate without notice at the date specified in the contract of employment ". The complainant's service came to an end on 31 October 1963 and, although he states that in the course of a visit to Geneva he handed a copy of his note of 2 May to the Chief of the Technical Service to which he was responsible, he made no formal appeal.

D. On 28 January 1965 the complainant wrote to the Director-General of the I.L.O. stating that after having accepted the decision taken he had learnt that the Chief of the Mission and one of his former colleagues had been relieved of their duties after a year's service, and that this afforded a presumption of the falsity of the slanderous reports made by those persons in respect of the complainant, to which reports he attributed the non-renewal of his appointment. Consequently he asked for a review of his case and requested " that his file should be purged of the dishonest statements which had been the cause of an unfair decision ". On 25 February 1965 he was sent a reply pointing out that the documents in his file, and particularly his last annual report, contained favourable evaluations, so that the reference to " dishonest statements " of which Mr. Deschamps's record should be " purged " was difficult to understand.

E. On 15 April 1965 the complainant pressed his request and mentioned his wish to bring the matter before the Tribunal, and on 30 April 1965 he was informed of the procedure to be followed for that purpose. Following a letter addressed to the President of the Tribunal on 23 May 1965 setting out the complainant's grievances and his desire to submit them to the Tribunal, the Statute and Rules of Court of the Tribunal and the forms for submission of complaints were sent to the complainant on 28 May, and a complaint was filed, dated 30 July 1965 and actually despatched on 9 August 1965. The complainant prays the Tribunal to recognise that he had given notice of his case on 2 May 1963, that the absence of offers of further appointments which he had hoped to receive confirmed that he had been arbitrarily dismissed, that this dismissal was in contradiction with the favourable evaluation of his services made on 25 February 1965, and asks that the points raised in his letter to the President of the Tribunal be considered. The International Labour Organisation prays that the complaint be dismissed as irreceivable, both because of the nature of the relief sought by the complainant and because of the late submission of the complaint.

Considerations

1. Article VII, paragraph 2, of the Statute of the Tribunal provides that to be receivable a complaint must have been filed within 90 days after the complainant was notified of the decision impugned.

2. The complaint was drawn up on 30 July 1965 and despatched on 9 August 1965, the latter date alone being taken into account for the application of article VII, paragraph 2, of the Statute of the Tribunal, as provided by article 6, paragraph 3, of the Rules of Court. It follows that, whatever may be the decision actually impugned, the complaint was filed more than 90 days after the notification of the last of these decisions, and accordingly is not receivable.

3. The complainant's statement of his grievances against his chief which he submitted to the Resident Representative in Rabat on 2 May 1963 could not have the effect of bringing the matter before the Tribunal, since it referred only to a possible intention and, moreover, was not meant for the Tribunal itself.

4. In so far as the complaint might relate to the legality of the non-renewal of the complainant's appointment, the decision not to renew his appointment was communicated to the complainant on 10 May 1963 and took effect on 31 October 1963.

5. In so far as the complaint might relate to the I.L.O.'s letter of 25 February 1965, even assuming that this might have implied a new decision relating to the request for the

removal of certain documents from the complainant's personal file, rather than confirmation of the decision not to renew his contract which, being a confirmatory decision, could not have formed the starting point for the time limit within which an appeal must be filed, it is sufficient to note that any such time limit ran from 25 February 1965.

6. It is likewise to no purpose that the complainant pleads ignorance of the conditions governing the filing of appeals to the Tribunal, since he had been furnished at the time of his appointment with a copy of the I.L.O. Staff Regulations, article 13.2 of which provides for appeal to the Administrative Tribunal " as provided in the Statute of the Tribunal ". Moreover, when provided with a copy of the Statute of the Tribunal itself, the complainant still allowed more than 90 days to elapse before filing his complaint.

7. As regards the arguments based on equity which the complainant puts forward in favour of a review of his grievances, the Tribunal cannot take these arguments into account since the time limit provided for in the Statute of the Tribunal is mandatory; it is binding on the complainant and cannot be extended by the Tribunal.

DECISION

For the above reasons,

The complaint is dismissed as irreceivable.

In witness of this judgment, delivered in public sitting in Geneva on 11 October 1966 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed):

M. LETOURNEUR. André GRISEL. DEVLIN.

Jacques LEMOINE.

Text of the Judgment Given in the Case of: Varlocosta-Patrono against Food and Agriculture Organisation of the United Nations

INTERNATIONAL LABOUR ORGANISATION

ADMINISTRATIVE TRIBUNAL

Sixteenth Ordinary Session (Geneva, 1-11 October 1966)

Registry's translation, the French text alone being authoritative.

In re Varlocosta-Patrono — Judgment No. 92

The Administrative Tribunal,

Considering the complaint against the Food and Agriculture Organisation of the United Nations drawn up by Mrs. Anna Varlocosta-Patrono on 9 September 1965, brought into conformity with the Rules of Court on 21 September 1965, and the Organisation's reply of 14 December 1965;

Considering article VIII of the Statute of the Tribunal, articles 301.00 and 301.0913 of the F.A.O. Staff Regulations, and sections 314.221, 340.231, 331.332 and 303.138 of the F.A.O. Manual;

Having heard in public sitting, on 4 October 1966, Mr. Jacques Mercier, counsel for the complainant, and Mr. G. Saint-Pol, agent of the Organisation;

Considering that the material *facts* of the case are as follows:

A. The complainant entered the service of F.A.O. on 23 September 1956 as a stenographer under a contract of indefinite duration. She was assigned successively to 32 different

posts for periods of varying but generally short duration, and none of the services to which she was assigned wished to keep her on permanent assignment. The reports on her work vary, but several of them are unfavourable.

B. In the course of her employment the complainant was given several warnings. On 28 November 1960 she was informed that in spite of certain hesitations she would be granted her annual increment, but that if her performance continued to fall short of the normal standard the question of her continued employment by F.A.O. would arise. As shown by a memorandum of 20 October 1964, the complainant was informed that if she did not secure a permanent assignment her appointment would have to be terminated. Furthermore, the annual increment due to her on 1 September 1964 was withheld.

C. On 29 December 1964 the complainant was informed that as she had never been selected for permanent assignment to any post she could no longer continue to act merely as a replacement and that her appointment would therefore be terminated on 31 January 1965 in the interests of the Organisation, under Staff Regulation 301.0913.

D. The complainant appealed to the Director-General, and by a decision of 1 February 1965, the decision to terminate her appointment was confirmed, but on the ground of unsatisfactory service in virtue of section 314.221 of the F.A.O. Manual, while the period of notice was altered to begin as from the date of this new decision. The new decision was based on the same facts as the previous one.

E. The complainant appealed to the Appeals Committee of F.A.O., which recommended that the decision to terminate the appointment should be confirmed, but on the ground of the interests of the Organisation instead of unsatisfactory service. This recommendation was accepted by the Director-General, and on 9 June 1965 the complainant was informed that her appointment had been terminated under Staff Regulation 301.0913, as specified in the original decision, and no longer for unsatisfactory service.

F. In her complaint to the Tribunal the complainant prays for the rescinding of the sections of the F.A.O. Manual under which she had been refused access to the full text of the Appeals Committee report, and the production of various documents, and for the quashing of the decision to terminate her appointment, on the ground of incorrect application of Staff Regulation 301.0913 which had been invoked to effect in a disguised manner the termination of her appointment for unsatisfactory service, which termination was unjustified, and of the retroactive character of the decision of 9 June 1965. The Organisation prays the Tribunal to dismiss the complaint.

CONSIDERATIONS

On the production of documents:

1. The complainant has requested the production of various documents, namely the reports relating to her service in the Organisation, an offer of employment on the World Food Programme, and the full text of the report of the Appeals Committee to the Director-General. The Organisation has complied with these requests, a fact which the complainant does not deny.

On the rescinding of section 331.332 of the Administrative Manual of the Organisation:

2. Section 340.231 of the Organisation's Manual distinguishes between two kinds of documents classified as " restricted material ", namely " privileged " and " non-privileged " material. Unlike " non-privileged " material, " privileged " material marked " confidential " may not be communicated to staff members. In accordance with Manual section 331.332 the reports of the Appeals Committee are classified as " privileged restricted ". Moreover, while Manual section 303.138 provides for the communication to the officials concerned of the recommendations in Appeals Committee reports, it makes no mention of the communication of the reasons on which these recommendations were based.

3. The complainant's request for the rescinding of section 331.332 is not receivable. Under article VIII of its Statute, the Administrative Tribunal may order the rescinding of the decision impugned or the performance of the obligation relied upon. There is nowhere

any reference to the rescinding of a general provision, by whomsoever it may have been issued. Hence, when a complainant prays for the rescinding of such a provision, the Administrative Tribunal must confine itself to considering the legality of the provision and, if it is found to be invalid, to rescinding the decision by which it was applied or the consequential decisions. Thus, in the present case the Tribunal must consider whether, as the complainant claims, section 331.332 is in contradiction with a general principle of law, and if so, whether the decision impugned should consequently be rescinded.

4. It is, of course, a general principle that every official has the right to be heard before a final decision detrimental to his interests is taken. This right applies even where not expressed in a definite text, and it implies that every official shall have the opportunity of consulting the documents needed to defend his legitimate interests. In particular, an official who is the subject of a decision which can be brought before the Administrative Tribunal may require access to all the documents on which that decision was based, and specifically to the full text of the Appeals Committee's report to the Director-General. It is in fact the examination of this report that will enable him to make an informed estimate of his chances of a successful appeal to the Administrative Tribunal. It is unnecessary to consider whether the Organisation might, in clearly exceptional circumstances, withhold from the official concerned certain parts of the report which it regarded as confidential, since in the present case there was obviously nothing secret in any part of the report which has been produced.

5. It follows from what is said above that in transmitting to the complainant only the recommendations of the report, without the reasons stated therein, the Organisation ignored the official's right to be heard. The violation of this right cannot, however, entail the rescinding of the decision impugned unless it actually affected the sense of the decision. In other words, the complainant cannot base her claim on the refusal to allow her access to the full report of the Appeals Committee unless she would either have been discouraged by the report from filing her complaint with the Administrative Tribunal, or have been deprived of the possibility of defending her legitimate interests before the Tribunal. However, neither of these possibilities arises. Even if she had been informed of the contents of the report as a whole the complainant would certainly have filed the present complaint, which is based on arguments quite unconnected with those put forward by the Appeals Committee. On the other hand, as a result of the production of the full report during the present proceedings the complainant has been able to rely on it to submit any arguments which she considered suitable to support her claim. It follows that, while the right to be heard was ignored, at the administrative proceedings stage, this did not in fact affect the sense of the decision complained of and, consequently, does not involve the quashing of that decision.

On the decision concerning termination:

6. Under Staff Regulation 301.0913 the Director-General may terminate the appointment of a staff member who, like the complainant, holds an appointment of indefinite duration if in his opinion such action would be in the interests of the Organisation. In accordance with Staff Regulation 301.00 the Director-General specified the scope of Staff Regulation 301.0913 by inserting into the Manual a Regulation 314.221, which provides that a staff member whose services are unsatisfactory may be terminated after a written warning.

7. Although the complainant has produced a certain number of favourable reports, it is clear from several other documents that during her eight years of service in the Organisation she had had 32 assignments, without ever having attained the standard of competence proper to her grade, that she had thus shown herself to be unfit for any permanent assignment, and that before the first decision to terminate her appointment she had received written warning of the consequences of her unsuitability, in particular by a memorandum of 2 October 1964. It follows that the complainant could legitimately have been terminated for unsatisfactory service under Staff Regulation 314.221.

8. While it is true that the Director-General abandoned his reliance on this regulation, to which he had referred in his earlier decision, and based the decision impugned on Staff Regulation 301.0913, it should be noted that the complainant not only agreed to this change of motivation, but herself requested it. In her memorandum to the Appeals Committee, after criticising the date at which her services were terminated, she complained of having

been terminated on 1 February 1965 for unsatisfactory services and thus having been, as it were, penalised for having appealed against the first decision based on Staff Regulation 301.0913. Still more, while claiming that " the slur of unsatisfactory service " was in no way justified, she begged that she should be freed from this reproach which might reduce her chances of finding employment in another organisation. She thus implicitly asked that if the termination of her appointment were to be maintained it should be based on Staff Regulation 301.0913. It is hardly fitting, therefore, that she should now challenge the application of this provision.

On the retroactivity of the decision impugned:

9. Although the decision impugned is based on Staff Regulation 301.0913, whereas that of 1 February 1965 refers to Staff Regulation 314.221, both these decisions are based on the same facts and provide for the termination of the complainant's appointment. The last decision, taken as a result of the complainant's appeal and after recommendation of the Appeals Committee, confirms the solution adopted earlier. In taking this decision on 9 June 1965, therefore, the Director-General acted correctly in fixing the date previously decided upon, namely 5 March 1965, as the date at which the complainant's services should terminate. Contrary to the complainant's submission, the maintenance of this date did not result in giving retroactive effect to the decision impugned.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 11 October 1966 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed):

M. LETOURNEUR. André GRISEL. DEVLIN.

Jacques LEMOINE.

Text of the Judgment Given in the Case of: Saini against Food and Agriculture Organisation of the United Nations

INTERNATIONAL LABOUR ORGANISATION

ADMINISTRATIVE TRIBUNAL

Sixteenth Ordinary Session (Geneva, 1-11 October 1966)

In re Saini Judgment No. 93

The Administrative Tribunal,

Considering the complaint against the Food and Agriculture Organisation of the United Nations, drawn up by Mr. T. S. Saini on 3 November 1965, and the Organisation's reply of 27 May 1966;

Considering article VIII of the Statute of the Tribunal, article 301.136 of the Staff Regulations of F.A.O. and section 370.831 of the F.A.O. Manual, as well as Staff Rule 303.131;

Having disallowed the hearing of witnesses prayed for by complainant as being unnecessary for the disposition of the present case;

Having heard, in oral proceedings, on 3 and 4 October 1966, Mr. Jacques Mercier, counsel for the complainant, and Mr. G. Saint-Pol, agent of the Organisation, as well as Mr. Saini, who was questioned by the Tribunal;

Considering that the material *facts* of the case are as follows:

A. Complainant entered the service of the Organisation on 6 January 1962 and, after serving in the Sudan and subsequently in Rome, was then given a fixed-term appointment, in the next higher grade, to serve as a forestry expert in Jordan from 1 January 1964 to 5 January 1967.

B. In the course of the year 1964, difficulties arose between complainant and the manager of the project to which Mr. Saini was assigned, which gave rise to an extensive correspondence, visits to Jordan by headquarters officials, and discussions at headquarters with the project manager, and the Organisation states that, in view of the deterioration of the relationship between the complainant and his chief, it came to the conclusion that one or both officials should be removed from Jordan and reassigned.

C. When complainant visited Rome on 22 and 23 December 1964, on the occasion of his return from home leave, he was informed orally of the decision to reassign him and was instructed to return to Amman for the period necessary to complete his field work and to wind up his personal affairs, whereafter he would return to Rome for analysing the data collected in Jordan and for reassignment. Complainant accepted this arrangement and returned to Amman.

D. After his return to Amman, the Organisation, on the advice of the Resident Representative in Amman, notified complainant that he should return to Rome not later than 25 January 1965. During the same period, complainant pressed his complaints against the project manager, and the Resident Representative urged F.A.O. to call both the project manager and Mr. Saini to Rome, and to give the latter an opportunity to state his case. Both officials proceeded to Rome, where extensive discussions were held.

E. Complainant then expressed dissatisfaction with the manner in which the management of the Jordan forestry project and his charges against the project manager were being investigated. On 1 February 1965, complainant wrote to the chief of the headquarters technical unit supervising the project that discussions had not been pursued and that he was proposing to fly back to Amman the following day. On the same day, complainant was notified in writing that he should remain in Rome until further notice and " occupy himself " with assignments to be given to him in that technical unit. The note added that, as complainant had been warned to wind up his affairs in December and had had over a month in Amman to do so, he should have been prepared to remain in Rome. The question of his return to Jordan would be considered once a definite decision had been made concerning his future assignment.

F. On 2 February 1965 complainant saw a cable from the Resident Representative in Amman indicating that Mrs. Saini was unwilling to travel without her husband's authority, and complainant immediately protested, in writing, against this unwarranted interference in his personal affairs. Although it is established that F.A.O. cabled the Resident Representative not to interfere with Mrs. Saini's arrangements, the protest was left unanswered. On 7 February 1965 complainant received a letter from his wife saying she had been visited by the Deputy Resident Representative, who had urged her to fly to Rome, and complainant immediately proceeded to Amman, leaving behind him a note in which, after recalling his grievances, he claimed that the discussions so far held had been fruitless, that he was being detained in Rome while he and now his wife were being subjected to pressure, that he had come to Rome for discussions rather than for the purpose of reassignment, as envisaged in December 1964, and that, as a matter of moral duty, he was returning to Amman.

G. On 9 February 1965 the Resident Representative in Amman cabled F.A.O., mentioning the return of Mr. Saini and requesting instructions. On 11 February, acting on instructions from F.A.O., the Resident Representative notified complainant that he had left Rome against orders, that he was directed to return immediately to Rome for further discussions, and that any refusal or delay in returning would constitute a serious breach of discipline. On 13 February 1965 complainant cabled that the work he had been detained in

Rome to perform was neither part of his present contract nor of his terms of reference and therefore constituted a breach of contract by F.A.O., that his return to the duty station provided for in his appointment was no breach of discipline, and that any orders contrary to contractual clauses were in breach of contract. He added that he had already agreed to be reassigned, and was awaiting at his current duty station further details concerning his new assignment. On 19 February 1965 complainant was notified that the Director-General had decided to terminate his services with the Organisation as of 28 February 1965 in the interests of the Organisation in accordance with Manual section 370.831, clause (vi), and was informed of the financial and administrative arrangements consequent upon this decision.

H. When complainant was informed of the sums to be paid to him upon termination of his appointment, he pointed out that his salary, as calculated, did not include the annual increment which would have been payable in respect of the year 1964 and, in reply to his inquiry, was advised, on 17 March 1965, that having regard to his conduct and to the events which led to the termination of his appointment no increment could be awarded. Complainant protested and, on 23 April 1965, appealed against the decision to withhold his increment.

I. Following internal appeals and the final confirmation of the decision to terminate his appointment, complainant instituted proceedings before the Tribunal and claims—*(a)* that he was denied access to documents essential to the presentation of his case and, in particular, to the full text of the report of the F.A.O. Internal Appeals Committee, that the provisions of the Manual on which F.A.O. relied to refuse access to these documents should be quashed, and that the Tribunal should order the relevant documents to be produced; *(b)* that the decision to terminate his appointment in the interests of the Organisation be quashed, and that he be reinstated and paid compensation and costs or an indemnity for failure to reinstate him; and *(c)* that the annual salary increment in respect of the year 1964 was unlawfully withheld and should be restored. The Organisation prays for the dismissal of the complaint under each of these three heads.

Considerations

On the termination of complainant's appointment:

1. Staff Regulation 301.136 empowers the Director-General to determine the salary rates and the terms and conditions of employment applicable to field project personnel. Having regard to the generality of its terms, this provision must be regarded as applicable to such field project officers who hold fixed-term appointments as well as to those who hold other types of appointments. The Director-General exercised the power thus conferred upon him in promulgating section 370 of the F.A.O. Manual. Complainant's contract provided that he was appointed as a field project officer. Consequently, the Director-General correctly considered that the provisions of Manual section 370 and, more particularly, section 370.831 were applicable and relied on them to terminate complainant's appointment. Section 370.831 provides that experts may be terminated " (i) for abolition of post, no appropriate reassignment being available in the programme; (ii) if for reasons of health he is incapacitated for further service; (iii) if his services prove unsatisfactory; (iv) for misconduct; (v) for reason of unsuitability for a post or assignment, no appropriate reassignment being available in the programme (acceptability to a government is a condition of suitability); and (vi) if, in the opinion of the Director-General, termination would be in the interests of the Organisation ". Complainant submits that the Organisation by relying on clause (vi) of the above provision invoked the interests of the Organisation in order to effect the termination of his appointment for disciplinary reasons without making and proving a charge and without following the procedure applicable to such cases; whereas the Organisation pleads that it could legitimately invoke the interests of the Organisation to terminate complainant's appointment notwithstanding that it could also have invoked one or more of the other causes set forth in section 370.831.

2. It follows that the question before the Tribunal is what is the extent of the power given to the Director-General by clause (vi) of Manual section 370.831. If the power is read by itself, it is apparently absolute. But it must be considered together with the other provisions

of the section. If clause (vi) is read as granting an absolute power, all the other provisions in the section are superfluous, since in each of the five preceding cases it would inevitably be in the interests of the Organisation to terminate the appointment. Moreover, if the power is absolute, it could be used to substitute the test of the Director-General's opinion for the test of fact; the Organisation would not have to prove, for example, that misconduct had been committed but only that the Director-General believed that it had.

3. For these reasons, the power in clause (vi) cannot be read as an absolute power exercisable in all cases, but must be read subject to a condition limiting the type of case in which it can be exercised. The condition must be framed in the light of the fact that the power will normally be used in the case of a satisfactory officer, since an unsatisfactory officer can normally be dealt with under the preceding provisions of the section. Extraordinary circumstances may arise in which the interests of the Organisation are threatened by the retention of even a valued servant, and in such a case the Director-General must have the right to terminate. This in the opinion of the Tribunal is, having regard to the context of clause (vi), the scope of the power.

4. It is for the Organisation to satisfy the Tribunal that such extraordinary circumstances exist. If the Organisation satisfies the Tribunal of this, the power arises. It is then for the Director-General to decide whether in these circumstances the interests of the Organisation require the termination of the officer's appointment, and the Tribunal will not interfere with that decision unless, on the one hand, it may have been taken by a person without authority, or in an irregular form, or there has been a failure to comply with recognised procedure, or, on the other hand, it is tainted by an error of law or based upon materially incorrect facts, or essential material elements have been left out of account or obviously wrong conclusions have been drawn from the evidence in the dossier.

5. In the present case the Organisation has failed to satisfy the Tribunal that any extraordinary circumstances existed. The facts which are relied on as justifying the termination are the inability of the complainant to get on with his superiors and colleagues and in February 1965 his refusal to obey lawful orders. These facts, if proved, might justify action under clause (iv) or (v) of the section, but not under clause (vi). Accordingly, the Tribunal concludes that the Director-General had no power to terminate the complainant's appointment under clause (vi) and finds that, on this count, the complaint is well founded, and that it is therefore unnecessary to the disposition of the case to consider the question of access to documents.

6. Article VIII of the Statute of the Tribunal provides that if the Tribunal is satisfied that the complaint was well founded it shall order the rescinding of the decision impugned or the performance of the obligation relied on. If such rescinding or execution is not possible or advisable, the Tribunal shall award the complainant compensation for the injury caused to him. Having regard to the circumstances of the case, the Tribunal considers the rescinding of the decision impugned to be inadvisable and considers that complainant should be awarded compensation for the injury he has suffered. After an appraisal of all the circumstances of the case, and having regard to the attitude of the Organisation towards complainant prior to ordering his return to Rome and chiefly to the attitude of complainant after being directed to return to Rome, the Tribunal considers that the proper amount to award Mr. Saini as compensation is one thousand United States dollars.

On the withholding of increment:

7. The Organisation contends in the first place that the claim is time-barred inasmuch as the complainant was informed by the letter of 17 March 1965 that no increment was to be granted and his appeal was not lodged until 23 April 1965. According to Staff Rule 303.131, such appeals must be lodged within two weeks after the notification of the decision impugned. The complainant asserts that the letter of 17 March 1965 was a reply to an inquiry, and that the decision not to grant an increment was not notified before 13 April, so that his appeal of 23 April was lodged within the prescribed two-week time limit. In the opinion of the Tribunal the terms of the letter of 17 March 1965, even if constituting an explanation rather than a notification, were unambiguous; the complainant was thereby put on notice that the increment was not being granted and put in a position to lodge an

appeal. Consequently, his appeal of 23 April is, as the Organisation submits, time-barred and cannot be considered. It follows that his claim under this head must fail.

On costs:

8. As complainant was represented by counsel and as the Tribunal made no order to hear him personally, F.A.O. was not required to defray his costs of travel. The Tribunal notes that F.A.O. voluntarily paid one-half of complainant's air fare and makes no further award in this respect.

9. As the complaint has partly succeeded, an appropriate proportion of the costs incurred in connection with it should be awarded against the Organisation.

DECISION

For the above reasons,

1. The complaint for wrongful dismissal is well founded.

2. The rescinding of the decision impugned being inadvisable, compensation in the amount of one thousand United States dollars is awarded to Mr. Saini against the Food and Agriculture Organisation of the United Nations for the injury caused to him.

3. The costs incurred by the complainant in connection with the present complaint are awarded against the Organisation in the amount and in the proportion to be determined by order of the President of the Tribunal.

4. The remainder of the prayer for relief is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 11 October 1966 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed):

M. LETOURNEUR. André GRISEL. DEVLIN.

Jacques LEMOINE.

Text of the Judgment Given in the Case of: Prasad against Food and Agriculture Organisation of the United Nations

INTERNATIONAL LABOUR ORGANISATION

ADMINISTRATIVE TRIBUNAL

Sixteenth Ordinary Session (Geneva, 1-11 October 1966)

Registry's translation, the French text alone being authoritative.

In re Prasad
(Execution of Judgment No. 90)

Judgment No. 94

The Administrative Tribunal,

Considering the application of the Food and Agriculture Organisation of the United Nations of 21 December 1965, the submissions of Mr. Ram Prasad of 4 March 1966, and the Organisation's further observations of 7 April 1966;

Considering this Tribunal's Judgment No. 90 [1] of 6 November 1965;

[1] See *Official Bulletin*, Vol. XLIX, No. 1, Jan. 1966, pp. 166-168.

Considering article VI, paragraph 1, second clause, and article VIII of the Statute of the Tribunal;

Having examined the documents in the dossier, oral proceedings having neither been requested by the parties nor ordered by the Tribunal;

Considering that the material *facts* of the case are as follows:

A. By Judgment No. 90, of 6 November 1965, the Administrative Tribunal quashed the decision of the Director-General of the Food and Agriculture Organisation of the United Nations to terminate the appointment of Mr. Prasad for unsatisfactory services.

B. On 21 December 1965 the Food and Agriculture Organisation made an application to the Tribunal in which it was submitted that, as no oral proceedings were to be held in the original case, and as the Organisation therefore had had no opportunity to make oral submission concerning the possibility or advisability of reinstating the complainant, should the Tribunal find for him, the Organisation assumed that the Tribunal would, ex officio, make provision, in its judgment, for alternative relief by way of indemnity, should the Organisation find it impossible to give full effect to Judgment No. 90 by reinstating the complainant, and therefore made no submissions in this connection. However, after a full review of the position following Judgment No. 90, the Organisation found that, having regard to the fact, further particularised in the observations of 7 April 1966, that there no longer existed, within the limited establishment of its New Delhi Sub-Regional Office, any vacant post in the grade formerly held by complainant, it was impossible to reinstate Mr. Prasad. Accordingly, the Organisation prayed the Tribunal, by reference to article VIII of its Statute, to decide that, in lieu of reinstatement, Mr. Prasad should be awarded compensation for the prejudice suffered as a result of the Organisation's decision to terminate his appointment, and submitted particulars concerning Mr. Prasad's salary and allowances while in the service of F.A.O.

C. When the application of F.A.O. was communicated to him for observations, Mr. Prasad submitted that, in his complaint, he had prayed for the quashing of the decision complained of, and for reinstatement; that the Organisation was bound to take into account this prayer for relief; and that it was its responsibility to request the Tribunal, before judgment was given, to take into consideration the fact that no vacancy existed and to rely on article VIII of the Statute of the Tribunal to request that, in case the complaint were held to be well founded, alternative relief be granted by way of indemnity. In conclusion, Mr. Prasad submitted that the Organisation's application was in violation of article VI of the Statute of the Tribunal and that the Tribunal should dismiss it and order F.A.O. to honour Judgment No. 90.

CONSIDERATIONS

1. Under article VIII of the Statute of the Tribunal " In cases falling under article II, the Tribunal, if satisfied that the complaint was well founded, shall order the rescinding of the decision impugned or the performance of the obligation relied upon. If such rescinding of a decision or execution of an obligation is not possible or advisable, the Tribunal shall award the complainant compensation for the injury caused to him."

2. It follows from this provision that where the Tribunal is satisfied that a complaint by an official praying for the quashing of an administrative decision is well founded, the Tribunal can either quash the decision or, if it considers that the reinstatement of the official concerned, which is the necessary consequence of the quashing of the decision, is not possible or advisable, award compensation, the choice between these alternatives being made either in the light of written or oral observations of the parties or of its own motion.

3. By Judgment No. 90 of 6 November 1965 the Tribunal quashed the decision of 18 March 1965 dismissing Mr. Prasad, thereby finding that his reinstatement was possible and not inadvisable; this judgment, which disposes of the issues raised, is final, and the Organisation cannot reopen these issues.

4. Moreover, Mr. Prasad's reinstatement was possible at the date on which the judgment was given, since, according to the Organisation's own admission, the period of appointment of his successor would expire on 31 December 1965, and it will again become possible on

31 December 1966 upon the expiry of that successor's new period of appointment, execution of the judgment being a valid reason for non-renewal of his appointment. On the other hand, having regard to the nature of the employment in question, the Organisation was not obliged, in any event, to reinstate the complainant in the identical post he had occupied, but might have offered him any other substantially equivalent post; in particular, the fact that the G.2 level post held by Mr. Prasad had been converted in the interests of the service to a G.1 post would not have prevented an offer of this post to Mr. Prasad, the Organisation being entitled, in the event of his refusing it, to draw the appropriate conclusions.

5. Consequently, the Organisation must comply with the judgment given and pronounce the reinstatement of Mr. Prasad as from the date at which his employment was illegally terminated, and this implies that, in addition to the payment of arrears of salary, the Organisation must offer him either the same post or one substantially equivalent.

DECISION

For the above reasons,

The application of the Food and Agriculture Organisation of the United Nations is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 11 October 1966 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto attached their signatures to these presents, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed):

M. LETOURNEUR. André GRISEL. DEVLIN.

Jacques LEMOINE.

Text of the Judgment Given in the Case of: L'Evêque against International Telecommunication Union

INTERNATIONAL LABOUR ORGANISATION

ADMINISTRATIVE TRIBUNAL

Sixteenth Ordinary Session (Geneva, 1-11 October 1966)

Registry's translation, the French text alone being authoritative.

In re L'Evêque Judgment No. 95

The Administrative Tribunal,

Considering the complaint against the International Telecommunication Union drawn up by Mr. Charles L'Evêque on 7 March 1963, brought into conformity with the Rules of Court on 8 April 1963;

Considering order No. 76[1], dated 11 September 1964, by which the Tribunal, before giving judgment—(1) ordered the hearing as witnesses of Messrs. Robert Ward, Georges Chamot, Jean-Pierre Christinat, Alf. S. Winter-Jensen and Jean-Paul Bernard; (2) decided that Mr. Ward should reply, in accordance with the conditions laid down in paragraph 3 of article 14 of the Rules of Court, to the questions drawn up by the Tribunal on the proposals of the parties; (3) decided that the other witnesses proposed by the complainant should be examined by the Tribunal at a hearing on a date to be fixed subsequently; (4) authorised I.T.U. to request the hearing of witnesses in a position to testify as to the facts of the case;

[1] See *Official Bulletin*, Vol. XLVIII, No. 1, Jan. 1965, pp. 123-124.

(5) instructed the Registrar of the Tribunal to take all the measures necessary to give effect to the present decision;

Considering the documents in the dossier relating to supplementary measures of investigation, and specifically the order of 25 October 1965 concerning the hearing as witness of Mr. Ward in the United States and the reference to the State Department of the United States of questions raised by the I.T.U. in regard to any diplomatic immunity that might apply to Mr. Ward, as well as the order of 18 May 1966 calling, at the request of the President of the Bar Association of South Carolina, commissioned by the Tribunal to interrogate Mr. Ward, for the production of a document in I.T.U.'s possession, together with I.T.U.'s memorandum of 26 July 1966 explaining the reasons invoked against producing this document;

Considering the Statute and Rules of Court of the Administrative Tribunal;

A. Considering that the complainant requested the quashing of a decision of 7 August 1962 by which the Secretary-General of I.T.U. terminated his appointment during his probationary period, on the ground that the decision impugned was taken for reasons extraneous to the interests of the service, and, in particular, to the complainant's professional qualifications, and consequently asked that compensation be granted to him in an amount equal to the salary and allowances which would have been paid to him up to the end of his probationary period, together with the costs incurred in connection with the present complaint;

B. Considering that I.T.U. prays for the dismissal of the complaint, asserting that the decision impugned was taken in application of article 9.1, paragraph *(a)* (3), of the Staff Regulations which provides that a probationary official's appointment may be terminated at any time if, in the opinion of the Secretary-General, this is in the interests of the Union, and that this measure was taken exclusively on account of the professional incompetence of the complainant;

C. Considering that, as noted in order No. 76 referred to above, the parties being opposed with regard to the facts, the Tribunal has carried out a full investigation of the case, both *ex officio* and at the request of the parties;

D. Considering that, by an instrument filed with the Registrar on 7 September 1966, the complainant, having regard to the fact that he had accepted I.T.U.'s offer to settle the case out of court by paying the whole amount of the compensation claimed, namely the sum of 14,930.50 Swiss francs, which had been deposited with his counsel, together with such legal costs and fees as the Tribunal might order, declares that he has withdrawn any claim whatsoever with respect to the relief prayed for in his complaint.

DECISION

1. Mr. L'Evêque's withdrawal of suit is hereby recorded.

2. The amount of the costs and fees of the complainant's legal counsel to be borne by I.T.U. is fixed at 5,300 Swiss francs.

In witness of this judgment, delivered in public sitting in Geneva on 11 October 1966 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto attached their signatures to these presents, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed):

M. LETOURNEUR. André GRISEL. DEVLIN.

Jacques LEMOINE.

Text of the Judgment Given in the Case of: Jurado against International Labour Organisation

INTERNATIONAL LABOUR ORGANISATION

ADMINISTRATIVE TRIBUNAL

Sixteenth Ordinary Session (Geneva, 1-11 October 1966)

Registry's translation, the French text alone being authoritative.

In re Jurado — Judgment No. 96

(No. 17—Termination of Appointment)

The Administrative Tribunal,

Considering the complaint against the International Labour Organisation drawn up by Mr. Cesáreo Jurado, on 10 August 1966, in which he prays—(1) for the quashing of the decision of the Director-General of the I.L.O. on 29 July 1966 to terminate his services on 31 August 1966 or to pay him an indemnity equal to three months' salary; (2) for the President of the Tribunal to order various preliminary measures; (3) that Judges Letourneur, Grisel and Armbruster should not try the case; and (4) for the award of compensation under nine different heads;

Considering the reply of the Organisation of 9 September 1966 which submits that the complaint should be dismissed;

Considering articles VI, VII and VIII of the Statute of the Tribunal and articles 1.1 to 1.7 and 12.8 of the Staff Regulations of the International Labour Office;

Having examined the documents in the dossier, whereupon the oral proceedings requested by the complainant were found to be unnecessary to the disposition of the case and were disallowed;

CONSIDERATIONS

On the objection to the composition of the Tribunal:

1. Neither the fact that two of the judges who sat in the case previously brought by Mr. Jurado before the Tribunal, which gave rise to Judgment No. 70 [1] delivered by that Tribunal on 11 September 1964, have been called upon to hear a further case brought by the same complainant nor the fact that one of these judges is of Swiss nationality or sits on the Supreme Court of that country can be regarded by itself as a valid ground for objection to these judges.

On the request for preliminary measures:

2. Mr. Jurado, complaining of the duress and intimidation with which he is faced and may continue to be faced on the part of the I.L.O., prays the President of the Tribunal to take all necessary measures to guarantee his complete independence and the free exercise of his rights. The fact that the proceedings are being conducted by the Tribunal itself affords the complainant every necessary guarantee; moreover, the Tribunal finds no evidence whatsoever of duress or intimidation on the part of the I.L.O.

3. Complainant's submission that the President of the Tribunal should make an order to authorise him to communicate the dossier of the case to the Spanish Government does not fall within the competence of either the President or the Tribunal. Finally, Mr. Jurado

[1] See *Official Bulletin*, Vol. XLVIII, No. 1, Jan. 1965, pp. 111-116.

asks the President of the Tribunal to order the International Labour Office to acknowledge as its own the document attached to the letter of the Director-General of 25 July 1966, but the Organisation in its reply fully acknowledges the said document.

On the decision complained of:

4. While complainants have an absolute right to apply to the Administrative Tribunal, within the jurisdiction assigned to it, without any restriction and are allowed great freedom in supporting their claims, both in form and in substance, this right and this freedom are granted to ensure respect for their terms of appointment.

5. By his repeated complaints against decisions which, in general, did not affect his rights as an official, by reverting on several occasions to allegations which the Tribunal had already dismissed, by applying to the Tribunal for the purpose of lending force to the wild and unnecessarily wounding allegations which he has repeatedly made against the Organisation and the Swiss authorities, Mr. Jurado has entirely perverted from its proper purpose the right of appeal to the Administrative Tribunal afforded to I.L.O. officials and has affronted the dignity of his Organisation and of the Tribunal.

6. In these circumstances the complainant's behaviour, in which he persisted over a period of several years in spite of warnings from the Organisation and from the Tribunal, showed repeated infringements by him, in particular of article 1.1, 1.2 and 1.7 of the Staff Regulations, and was of a nature to throw public discredit on the Organisation; it thus constituted serious misconduct which under article 12.8 of the Staff Regulations was such as legally to justify his summary dismissal without notice.

7. If the procedure laid down by the above-mentioned article was not followed, this was at the formal request of the complainant who in a letter dated 28 July 1966 stated his express desire to be able to file a complaint directly with the Tribunal against any decision that might be taken to terminate his appointment.

8. Even assuming that the conditions specified in article 12.8 referred to above were not fulfilled and that no other basis could be found for the decision impugned, there could be no question of quashing that decision, but only of awarding Mr. Jurado compensation which, in the circumstances of the case, could not exceed the amount which the Organisation has seen fit to award him *ex gratia.*

On the award of compensation (heads (a) *to* (c), (f) *and* (i)*):*

9. The submissions under these heads must be dismissed as a consequence of the dismissal of the submissions regarding the decision complained of.

On the award of compensation (head (d)*):*

10. Whereas Mr. Jurado claims an indemnity of 50,000 Swiss francs for the prejudice caused to his health, the attitude of the I.L.O., which remained not only impeccable throughout, but was also benevolent, cannot in any way be regarded as being such as to affect adversely the health of the complainant.

On the award of compensation (heads (e) *and* (g)*):*

11. The assertions relied upon for the claims under these two heads are manifestly erroneous in fact and misconceived in law, and the above claims must be set aside.

On the award of compensation (head (h)*):*

12. These submissions must be dismissed as unfounded partly because no compensation can be granted to a complainant for the work he carried out personally for the purpose of defending his own interests and also because dismissal of the submissions under the other heads involves the dismissal of any claim for reimbursement of expenses actually incurred in the preparation of the complaint.

On the submissions concerning the award of a certificate of service:

13. Complainant does not adduce any evidence whatsoever of the existence of any decision of the Organisation to refuse a certificate of service. The submissions under this head are therefore not receivable.

DECISION

For the above reasons,

The complaint is dismissed.

In witness of this judgment, delivered in public sitting in Geneva on 11 October 1966 by Mr. Maxime Letourneur, President, Mr. André Grisel, Vice-President, and the Right Honourable Lord Devlin, P.C., Judge, the aforementioned have hereunto subscribed their signatures, as well as myself, Lemoine, Registrar of the Tribunal.

(Signed):

M. LETOURNEUR. André GRISEL. DEVLIN.

Jacques LEMOINE.

GENERAL INDEX
FOR 1966

GENERAL INDEX[1] FOR 1966

[1] The figures in bold-face type refer to the numbers of the *Official Bulletin*; the letter S, followed where necessary by a roman numeral, indicates the number of the supplement(s); the letters SS designate special supplements; and the light-face figures refer to the pages of the number or the supplement(s) thereto.

No. 1: January 1966, pp. 1-168; Supplement, pp. 1-104; Special Supplement, pp. 1-536. No. 2: April 1966, pp. 169-248; Supplement, pp. 1-82. No. 3: July 1966, pp. 249-402; Supplement I, pp. 1-57; Supplement II, pp. 1-116; Special Supplement, pp. 1-87. No. 4: October 1966, pp. 403-458.

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INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

SUPPLEMENT

Vol. XLIX, No. 1 *January 1966*

Reports of the Governing Body Committee on Freedom of Association

EIGHTY-FIFTH REPORT

INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

SUPPLEMENT

Vol. XLIX, No. 1 *January 1966*

Reports of the Governing Body Committee on Freedom of Association

Eighty-fifth Report [1]

INTRODUCTION

1. The Committee on Freedom of Association set up by the Governing Body at its 117th Session (November 1951) met at the International Labour Office, Geneva, on 8 and 9 November 1965, under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body. The members of the Committee of Belgian and Brazilian nationality were not present during its examination of the cases relating to Belgium (Case No. 281) and Brazil (Case No. 385) respectively.

[1] For the First, Second and Third Reports of the Committee on Freedom of Association see International Labour Organisation: *Sixth Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1952), Appendix V; for the Fourth, Fifth and Sixth Reports, see idem: *Seventh Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1953), Appendix V; for the Seventh, Eighth, Ninth, Tenth, 11th and 12th Reports, see idem: *Eighth Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1954), Appendix II; for the 13th and 14th Reports, see *Official Bulletin*, Vol. XXXVII, 1954, No. 4; for the 15th and 16th Reports, see ibid., Vol. XXXVIII, 1955, No. 1; for the 17th and 18th Reports, see ibid., Vol. XXXIX, 1956, No. 1; for the 19th, 20th, 21st, 22nd, 23rd and 24th Reports, see *ibid.*, Vol. XXXIX, 1956, No. 4; for the 25th and 26th Reports, see *ibid.*, Vol. XL, 1957, No. 2; for the 27th and 28th Reports, see ibid., Vol. XLI, 1958, No. 3; for the 29th to 45th Reports, and communications relating to the 23rd and 27th Reports, see ibid., Vol. XLIII, 1960, No. 3; for the 46th to 57th Reports, see ibid., Vol. XLIV, 1961, No. 3; for the 58th Report, see ibid., Vol. XLV, No. 1, Jan. 1962, Supplement; for the 59th and 60th Reports, see ibid., Vol. XLV, No. 2, Apr. 1962, Supplement I; for the 61st to 65th Reports, see ibid., Vol. XLV, No. 3, July 1962, Supplement II; for the 66th Report, see ibid., Vol. XLVI, No. 1, Jan. 1963, Supplement; for the 67th and 68th Reports, see ibid., Vol. XLVI, No. 2, Apr. 1963, Supplement I; for the 69th, 70th and 71st Reports, see ibid., Vol. XLVI, No. 3, July 1963, Supplement II; for the 72nd Report, see ibid., Vol. XLVII, No. 1, Jan. 1964, Supplement; for the 73rd to 77th Reports, see ibid., Vol. XLVII, No. 3, July 1964, Supplement II; for the 78th Report, see ibid., Vol. XLVIII, No. 1, Jan. 1965, Supplement; for the 79th to 81st Reports, see ibid., Vol. XLVIII, No. 2, Apr. 1965, Supplement; and for the 82nd to 84th Reports, see ibid., Vol. XLVIII, No. 3, July 1965, Supplement II.

2. In accordance with the procedure laid down in paragraph 12 of its 29th Report, as amended by paragraph 5 of its 43rd Report, the Committee recommends the Governing Body to examine the present report at its 163rd Session.[1]

3. The Committee considered—*(a)* 57 cases in which the complaints had been communicated to the governments concerned for their observations, namely the cases relating to Sudan (Case No. 191), Singapore (Case No. 194), Thailand (Case No. 202), United Kingdom (Southern Rhodesia) (Cases Nos. 251 and 414), Portugal (Case No. 266), Chile (Case No. 271), Libya (Case No. 274), Belgium (Case No. 281), Burundi (Cases Nos. 282 and 401), Cuba (Cases Nos. 283, 329 and 425), United Kingdom (Aden) (Case No. 291), United Kingdom (Case No. 292), Spain (Cases Nos. 294, 383, 397 and 400), Republic of South Africa (Cases Nos. 300, 311 and 321), Ghana (Case No. 303), Greece (Case No. 309), Peru (Case No. 335), Greece (Case No. 341), Panama (Case No. 349), Dominican Republic (Case No. 350), Greece (Case No. 353), Mexico (Case No. 358), Dominican Republic (Case No. 360), Colombia (Case No. 363), Congo (Leopoldville) (Case No. 365), Portugal (Case No. 370), Federal Republic of Germany (Case No. 371), Haiti (Case No. 373), Honduras (Case No. 381), Brazil (Case No. 385), Guatemala (Case No. 396), Argentina (Case No. 399), Upper Volta (Case No. 403), United Kingdom (British Guiana) (Case No. 406), Dominican Republic (Case No. 411), United Kingdom (St. Vincent) (Case No. 415), Cameroon (Case No. 418), Congo (Brazzaville) (Case No. 419), United Kingdom (Aden) (Case No. 421), Ecuador (Case No. 422), Honduras (Case No. 423), Portugal (Case No. 432), Ecuador (Case No. 433), Paraguay (Case No. 441), Guatemala (Case No. 442), Colombia (Case No. 452), Greece (Case No. 453) and Bolivia (Case No. 456); and *(b)* one complaint relating to Bolivia (Case No. 443), nine relating to the Dominican Republic (Case No. 447) and one relating to El Salvador (Case No. 450), and also seven further complaints relating to Brazil (Case No. 385) and nine relating to Paraguay (Case No. 441), which were submitted to the Committee for opinion prior to being communicated to the governments concerned.

Cases the Examination of Which the Committee Has Adjourned

(a) *Case Which the Committee Considers to Be Urgent.*

4. The Committee adjourned until its next session its examination of the case relating to Cameroon (Case No. 418), in which further information previously requested from the government concerned was received only after the close of the session of the Committee, and in which further allegations have been submitted by the complainants.

(b) *Other Cases.*

5. The Committee adjourned until its next session the cases relating to Thailand (Case No. 202), Portugal (Case No. 266), Cuba (Cases Nos. 283, 329 and 425), United Kingdom (Case No. 292), Greece (Case No. 309), Panama (Case No. 349), Dominican Republic (Case No. 350), Greece (Case No. 353), Dominican Republic (Case No. 360), Colombia (Case No. 363), Federal Republic of Germany (Case No. 371), Honduras (Case No. 381), Guatemala (Case No. 396), Upper Volta (Case No. 403) and Honduras (Case No. 423), on which it is still awaiting further information previously requested from the governments concerned, and the cases relating to Mexico (Case No. 358), Portugal (Case No. 432) and Ecuador (Case No. 433), with respect to which the Committee has asked the Director-General to obtain further information from the governments concerned before it formulates its recommendations to the Governing Body. With regard to the case relating to Guatemala (Case No. 396), the Committee took note of a communication from the government concerned stating that the information requested would be furnished when it became available; with regard to the case relating to Panama (Case No. 349), the Committee took note of a

[1] The 85th Report of the Committee on Freedom of Association was examined and approved by the Governing Body at its 163rd Session (November 1965).

communication from the government concerned stating that it was awaiting information from the competent authorities; with regard to the cases relating to Colombia (Case No. 363) and the Federal Republic of Germany (Case No. 371), the Committee took note of communications from the governments concerned stating that the matter was under consideration.

6. The Committee adjourned until its next session the case relating to Bolivia (Case No. 456), in which it has not yet received the observations of the government concerned, and the cases relating to Colombia (Case No. 452) and Greece (Case No. 453), in which it is awaiting the observations of the governments concerned on further complaints or information submitted by the complainants.

7. The Committee also adjourned until its next session the cases relating to Singapore (Case No. 194), United Kingdom (Southern Rhodesia) (Cases Nos. 251 and 414), Belgium (Case No. 281), Ghana (Case No. 303) and Haiti (Case No. 373).

Cases in Which the Committee Submits Its Conclusions to the Governing Body

8. In the present report the Committee submits for the approval of the Governing Body the conclusions which it has now reached concerning the remaining cases before it, namely the cases relating to Sudan (Case No. 191), Chile (Case No. 271), Libya (Case No. 274), Burundi (Cases Nos. 282 and 401), United Kingdom (Aden) (Case No. 291), Spain (Cases Nos. 294, 383, 397 and 400), Republic of South Africa (Cases Nos. 300, 311 and 321), Peru (Case No. 335), Greece (Case No. 341), Congo (Leopoldville) (Case No. 365), Portugal (Case No. 370), Brazil (Case No. 385), Argentina (Case No. 399), United Kingdom (British Guiana) (Case No. 406), Dominican Republic (Case No. 411), United Kingdom (St. Vincent) (Case No. 415), Congo (Brazzaville) (Case No. 419), United Kingdom (Aden) (Case No. 421), Ecuador (Case No. 422), Paraguay (Case No. 441), Guatemala (Case No. 442), the complaints relating to Bolivia (Case No. 443), Dominican Republic (Case No. 447) and El Salvador (Case No. 450) and the further complaints relating to Brazil (Case No. 385) and Paraguay (Case No. 441), which were submitted to the Committee for opinion. These conclusions may be briefly summarised as follows:

(a) the Committee recommends that the complaints relating to Bolivia (Case No. 443), Dominican Republic (Case No. 447) and El Salvador (Case No. 450), and the further complaints relating to Brazil (Case No. 385) and Paraguay (Case No. 441), which were submitted to it for opinion, should, for the reasons indicated in paragraphs 9 to 14 of this report, be dismissed as irreceivable under the procedure in force, without being communicated to the governments concerned;

(b) the Committee recommends that, for the reasons indicated in paragraphs 15 to 58 of this report, the cases relating to Chile (Case No. 271), Portugal (Case No. 370) and Paraguay (Case No. 441) should be dismissed as not calling for further examination;

(c) with regard to the cases relating to the Republic of South Africa (Cases Nos. 300, 311 and 321), Greece (Case No. 341), United Kingdom (British Guiana) (Case No. 406), Dominican Republic (Case No. 411) and United Kingdom (St. Vincent) (Case No. 415), the Committee, for the reasons indicated in paragraphs 59 to 246 of this report, has reached certain conclusions to which it wishes to draw the attention of the Governing Body;

(d) with regard to the cases relating to Sudan (Case No. 191), Libya (Case No. 274), Burundi (Cases Nos. 282 and 401), United Kingdom (Aden) (Case No. 291), Spain (Cases Nos. 294, 383, 397 and 400), Peru (Case No. 335), Congo (Leopoldville) (Case No. 365), Brazil (Case No. 385), Argentina (Case No. 399), Congo (Brazzaville) (Case No. 419), United Kingdom (Aden) (Case No. 421), Ecuador (Case No. 422) and Guatemala (Case No. 442), the Committee, for the reasons indicated in paragraphs 247

to 552 of this report, has presented an interim report stating certain conclusions to which it wishes to draw the attention of the Governing Body.

COMPLAINTS WHICH THE COMMITTEE RECOMMENDS SHOULD BE DISMISSED AS IRRECEIVABLE UNDER THE PROCEDURE IN FORCE

9. The Director-General has received, either directly or through the United Nations, a number of complaints which are not receivable by virtue of various provisions in the existing procedure.

10. The complaints in question are irreceivable for one or other of three reasons: *(a)* three because they emanate not from workers' or employers' organisations [1] but, as regards one of them, from an individual, as regards the second, from a non-occupational association, and, as regards the third, from a political party which exists, moreover, in a country different from that referred to in the complaint; *(b)* one because it emanates from an international organisation of workers not having consultative status with the I.L.O. and not having affiliates in the country concerned [2]; *(c)* 23 because they emanate from national organisations of workers in countries other than those to which the complaints relate, having no direct interest in the matters raised in the allegations.[3]

11. So far as the first of these three categories is concerned, the Director-General has received a communication dated 17 May 1965 from Dr. Aníbal Aguilar Peñarrieta, former Minister of Labour of Bolivia now in exile in Peru, who, in his own name, formulates allegations of infringements of trade union rights in Bolivia (Case No. 443); a communication dated 18 July 1965, from the "Eudianum" Library and Centre for Philosophical Studies (Bolivia), containing allegations of infringements of trade union rights in the Dominican Republic (Case No. 447); and a communication dated 18 October 1965 from the Christian Democratic Party of El Salvador containing allegations of infringements of trade union rights in Brazil (Case No. 385).

12. So far as the second category is concerned, the Director-General has received a communication dated 8 September 1965 emanating from the Trade Union International of Metallurgical and Mechanical Workers' Unions and containing allegations of infringements of trade union rights in Brazil (Case No. 385).

13. With regard to complaints falling within the third category, the Director-General has received—

(a) five communications containing allegations of infringements of trade union rights in Brazil (Case No. 385) forwarded by the following organisations on the dates indicated: Puerto Rican Federation of Democratic Trade Unions (28 September 1965), Bolivian Trade Union Action (28 September 1965), Uruguayan Trade Union Action (29 September 1965), Autonomous Trade Union Movement of Nicaragua (1 October 1965) and Union of Workers in the Dyeing Industry (Mexico) (21 October 1965);

(b) nine communications containing allegations of infringements of trade union rights in Paraguay (Case No. 441) forwarded by the following organisations on the dates indicated: Bolivian Trade Union Action (17 May 1965), Trade Union Action of Antioquia (Colombia) (19 May 1965), Unitary Workers' Movement of Chile (19 May 1965), National Union of Christian Workers of El Salvador (19 May 1965), Federation of Christian Workers of the Isthmus (Panama) (19 May 1965), Federation of Christian Workers and Peasants of Costa Rica (19 May 1965), Central Federation of Workers of Guatemala (22 May 1965), Authentic Labour Front (Mexico) (24 May 1965) and the Guiana Confederation of Workers and Peasants (27 May 1965);

[1] See First Report, para. 14.

[2] See 29th Report, para. 9.

(c) eight communications containing allegations of infringements of trade union rights in the Dominican Republic (Case No. 447) forwarded by the following organisations on the dates indicated: Revolutionary Transport Organisation (Cuban organisation in exile in the United States) (9 July 1965), Federation of Christian Workers and Peasants of Costa Rica (10 July 1965), Social Federation of Christian Peasants of Guatemala (12 July 1965), Trade Union Action of Antioquia (Colombia) (13 July 1965), Uruguayan Trade Union Action (14 July 1965), Christian Confederation of Workers (Paraguay) (22 July 1965), Christian Trade Union Movement of Peru (23 July 1965) and Christian Federation of Peasants of El Salvador (28 July 1965);

(d) a communication containing allegations of infringements of trade union rights in El Salvador (Case No. 450) forwarded by the Federation of Peasants of Guatemala on 23 July 1965.

14. The Committee recommends the Governing Body to decide that, for the reasons indicated in paragraph 10 above, the complaints referred to in paragraphs 11 to 13 above are not receivable under the procedure in force.

Cases Which the Committee Considers Do Not Call for Further Examination

Case No. 271:

Complaints Presented by the Chilean Confederation of Industrial and Commercial Workers and the Chilean Confederation of Privately Employed Clerical Workers against the Government of Chile

15. The Committee has already made several interim reports to the Governing Body on this case.[1] At the May (1965) Session it submitted the following recommendation in paragraph 124 of its 83rd Report:

> The Committee notes with interest the communication received from the Government, which quotes the operative part of the Supreme Court's judgment. Nevertheless, in view of the fact that the Court also refers to the judgments of first and second instance, which appear to have contained a detailed analysis of the reasons for the measures taken against Mr. Sánchez Ossandón in the light of *de facto* and *de jure* aspects of the case, the Committee recommends the Governing Body, in order to secure all the material needed to come to a conclusion on this case, to request the Government to be good enough to forward copies of these judgments and their grounds.

16. The 83rd Report was approved by the Governing Body at its 162nd Session (May-June 1965) and the request contained in paragraph 124 thereof was communicated to the Government by letter dated 8 June 1965.

17. The original complaint figures in a communication dated 25 August 1961 which was sent to the I.L.O. by the Chilean Confederation of Industrial and Commercial Workers. The same organisation gave supplementary information in a letter of 20 October 1961. The Confederation of Privately Employed Clerical Workers submitted a complaint to the same effect in a letter dated 4 October 1961. The above communications, and further information provided by the Chilean Confederation of Industrial and Commercial Workers in a letter of 31 January 1962, were transmitted to the Government in due course.

18. The Government of Chile sent its first reply on 20 November 1961.

19. Chile has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

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[1] See 61st Report, paras. 42-54; 66th Report, paras. 447-471; 70th Report, paras. 175-208; 83rd Report, paras. 112-124.

Allegations relating to the Dismissal of a Trade Union Officer

20. The complainants alleged that Mr. Enrique Sánchez Ossandón, President of the Chilean Confederation of Industrial and Commercial Workers and a member of the Central Mixed Wages Commission, who was employed by Madeco S.A. (a copper-manufacturing company), was dismissed from that undertaking for having come to Geneva to attend the 45th Session of the International Labour Conference, as Chilean Workers' adviser, in June 1961. They stated further that Mr. Sánchez Ossandón was appointed as adviser under Decree No. 412 of 2 June 1961; that on the same day he informed Madeco of his appointment, sent a copy of the communication to the Labour Inspectorate and asked the Ministry of Labour to notify Madeco of the appointment, which was done by official letter on 5 June; that Madeco, in reply to the Ministry's letter, said the company reserved all its rights in regard to the situation which Mr. Sánchez Ossandón had created by absenting himself from work without his employer's permission. The complainants attached copies of various documents in support of their complaint and added that when Mr. Sánchez Ossandón returned to Chile and reported to the Madeco Company to resume his duties, he was not allowed to enter and was informed that his services were terminated; he reported this to the Labour Inspectorate on 2 August and, at the same time, lodged a request with the labour court to be reinstated, since he enjoyed trade union privilege through being a member of the Central Mixed Wages Commission and Chairman of the Confederation of Metal Workers' Unions. Mr. Sánchez Ossandón brought the case to the notice of the Ministry of Labour which, according to the complainants, made representations to Madeco but could not induce it to change its attitude. The complainants alleged that the attitude of Madeco was merely a continuance of a campaign of persecution against Mr. Sánchez Ossandón on the sole ground of his trade union activity.

21. In its reply of 20 November 1961 the Government stated that as soon as the competent authorities were informed of the matter they instructed the labour services to investigate the facts and to demand compliance with the rules protecting trade union officers; that in view of the undertaking's refusal to reinstate Mr. Sánchez Ossandón the provincial labour inspectorate laid information with the labour courts for contravention of the existing rules, which forbid dismissal or suspension of trade union officers without previous judicial permission; and that in a letter to the Ministry of Labour the Managing Director of Madeco contended that Mr. Sánchez Ossandón had not been dismissed but that his employment contract had lapsed for statutory reasons, namely frequent absence from work and abandoning his post when he went to Geneva.

22. At its sessions in October 1962 and May 1963 the Committee examined the additional information which had been sent by the Government at the Committee's request. This indicated that although Madeco had eventually been fined in the proceedings taken by the labour authorities, Mr. Sánchez Ossandón had not been reinstated in his employment or received any compensation, since the proceedings to that effect which he had taken against the company before the labour courts were still pending.

23. By letter of 21 December 1963 the Government stated that the court of first instance had not granted Mr. Sánchez Ossandón's application and that he had lodged an appeal; when a final decision had been reached the Government would forward a copy. While awaiting further information the Committee decided, at its 35th, 36th, 37th, 38th and 39th Sessions, to postpone examination of the case and ask the Government to forward the necessary information as soon as possible.

24. At its 40th Session the Committee took note of a further communication from the Government, dated 17 March 1965; it reported that the decision of the court of second instance had been partly favourable to Mr. Sánchez Ossandón, but that the other party had appealed to the Supreme Court, which, in a judgment given on 3 July 1964, had confirmed all the findings of the court of first instance. Moreover, as the judgments of the courts of first and second instance—copies of which had not been sent by the Government—might contain elements of value with a view to reaching a conclusion on the case, the Committee

recommended the Governing Body, in paragraph 124 of the 83rd Report, to request the Government to forward copies of those judgments and their grounds.

25. By letter dated 20 August 1965 the Government of Chile sent copies of the two judgments, issued respectively on 30 October 1963 (in first instance) and 8 May 1964 (in second instance).

26. Perusal of the judgment given in first instance, and subsequently endorsed by the Supreme Court, shows that claims by Mr. Sánchez Ossandón against Madeco accumulated during the proceedings. He first requested reinstatement in a post from which he had been transferred to another at a lower level or, failing this, that his contract be held to have been terminated and the company be ordered to pay him compensation; in that claim Mr. Sánchez Ossandón accused the company of engaging in a systematic campaign of persecution by reason of his trade union activities. In a second claim the plaintiff asked that the company be ordered to reinstate him in the post from which he had been dismissed on his return from Geneva and to pay the remuneration corresponding to the period following his dismissal or, failing this, that his contract be held to have been terminated and the company be ordered to pay him compensation.

27. In the relevant passages (grounds) of the judgment it is stated that the transfer operated by the undertaking, although it involved a lower level of responsibility, neither broke the contract of employment nor infringed Mr. Sánchez Ossandón's privilege as a trade union officer, since in the former connection the terms of the contract did not require him to be employed in the particular post for which he had been engaged, nor had his remuneration been affected by the transfer, and in the latter connection the plaintiff could continue to act as a member of the Central Mixed Wages Commission. There is no proof, the court continues, that the reduction in Mr. Sánchez Ossandón's level of responsibility was part of a systematic campaign to obstruct his work as a trade union representative. He, on his side, was repeatedly late for his work, or left early, or was absent; these were serious breaches of his contract of employment and amounted to reason for lapse of the contract under section 164, item 10, of the Labour Code. It is further stated that the plaintiff failed to attend his work, without justification, on 17 and 18 May 1961, this being a reason for lapse of the contract under item 1 of the same section. However, the court considers that the contract could not be declared terminated for the above reasons because the plaintiff resumed his work without protest on the company's part. On the other hand, in the case of the plaintiff's voyage to Geneva in order to attend the 45th Session of the I.L.O. Conference in the capacity of Workers' adviser, it is a matter of record that the said session ended on 29 June 1961 and that the plaintiff returned to work on 2 August. The plaintiff's absence from his work for the duration of the Conference—the grounds for the judgment continue—and a few days before its beginning and a few days after its close, was justified because article 40 of the Constitution of the I.L.O., of which Chile is a Member, provides that delegates to the Conference shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation. However, the court considers that a delay of 32 days in returning to work was not justified, and that it would have been proper to return by 16 July, the date at which a witness who had also attended the 45th Session of the Conference stated in evidence that he had returned. The court does not accept as valid the reasons adduced by Mr. Sánchez Ossandón to justify his late return. It further considers that the orders issued in the proceedings taken by the Provincial Labour Inspectorate because of the arbitrary dismissal of Mr. Sánchez Ossandón could not affect the present judgment, since those proceedings related only to the company's action in dismissing its employee without going through the statutory forms.

28. The operative part of the judgment rejects Mr. Sánchez Ossandón's applications and is unfavourable to the company only in that it declares the contract between the parties to be deemed terminated as at 16 July. The plaintiff is exonerated from payment of costs.

29. The Committee notes from the documents communicated by the Government that the reason for termination of the contract of employment between Mr. Sánchez Ossandón

and Madeco has been found, by effective judgment of a competent court of law, to be that for which provision is made in item 1 of section 164 of the Labour Code of Chile, namely—

The following shall be deemed to be reasons for the lapse of the contract:

(1) desertion by the employee of his post for two consecutive days without due cause;

. . . . . .

30. The Committee observes that Mr. Sánchez Ossandón appears to have enjoyed the safeguards of due process of law throughout the long proceedings which closed with the Supreme Court's judgment of 3 July 1964.

31. The Committee notes further, with satisfaction, that in handing down its judgment the court had regard to the principle stated in article 40 of the Constitution of the I.L.O. respecting the privileges and immunities which should be enjoyed by delegates to the International Labour Conference. The Committee also recalls an observation which it made when examining in its 70th Report the allegations put forward in the same case by the Chilean Confederation of Industrial and Commercial Workers with regard to the non-submission of applications for membership of the Workers' delegation to the Conference through fear of reprisals by employers; the Government, it then observed, had described Mr. Sánchez Ossandón's situation as exceptional and declared that the public authorities had taken and would take all the steps in their power to safeguard the employment security of trade union officers to the degree allowed by existing legislation.

32. The Committee accordingly recommends the Governing Body to take note of the additional information provided by the Government in its letter of 20 August 1965 and to decide that the case does not call for further consideration.

Case No. 370:

Complaint Presented by the World Federation of Trade Unions against the Government of Portugal

33. The complaint of the World Federation of Trade Unions (W.F.T.U.) is contained in a communication dated 25 October 1963 addressed to the Secretary-General of the United Nations and transmitted by him to the International Labour Organisation. The Government furnished observations on the complaint by a communication dated 30 May 1964.

34. Portugal has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

35. The complainants allege in general terms that the mere request for freedom of association and trade union activity are crimes punishable by law and that thousands of democrats are serving heavy sentences for strike action or crimes of opinion, over 100 of them being condemned to life imprisonment by virtue of the Security Measures Law, which enables imprisonment to be extended indefinitely, after the original sentence has been served, for three years at a time, on the mere proposal of the political police.

36. In support of these general allegations the complainants cite one specific case, that of Mr. Manuel Rodriguez da Silva, described as a " metallurgical worker and trade union leader ". He is alleged to have been arrested in 1936, interned without trial for nine years and arrested again in 1950; the complainants state that he is still in detention, after more than 23 years in prison, by virtue of the Security Measures Law, although the sentence imposed in 1950 has long been completed.

37. In its reply dated 30 May 1964 the Government denied that the mere request for trade union freedom or exercise of trade union activity was punishable, and stated that under Legislative Decree No. 39660 of 20 May 1954 all persons exercising their civic and political rights are entitled to establish associations of a non-secret character, the objectives of which do not involve any prejudice to the rights of other persons, the common weal, the interests of the community or the principles on which the moral, economic and social order of the nation are based. The Government denied that any prisoners accused of acts connected with crimes were in any penal institution. In the Government's view the allegations made allusion to persons convicted of subversion. Such persons, where supplementary imprisonment was imposed for security reasons, were released after less than three years of such imprisonment; others, said the Government, served no supplementary imprisonment, while others again were released after serving only half of the main term to which they had been sentenced.

38. The Government stated that Mr. Manuel Rodriguez da Silva was one of the only three persons among those serving terms of supplementary imprisonment for security reasons in whose cases it was considered necessary not to limit the supplementary imprisonment to three years. In his case security imprisonment began on 5 March 1958 and he was released on 8 January 1964.

39. At its meeting in November 1964 the Committee decided to request the Government to inform it, firstly, by what authority the sentence on Mr. Manuel Rodriguez da Silva had been imposed, and, secondly, what precisely were the acts with which he had been charged. The Government replied to this request by a communication dated 7 April 1965.

40. In this communication, which was examined by the Committee at its meeting in May 1965, the Government stated that Mr. Rodriguez da Silva was sentenced by the Lisbon Criminal Court, on 24 April 1951, to four years' solitary confinement, with 15 years' loss of political rights, for offences punishable under sections 169, 172 and 173 of the Penal Code, commuted on appeal, on 4 July 1951, to two years' imprisonment followed by eight years' assignment to forced residence. On 15 March 1954 the Third Criminal Court in Lisbon sentenced him to a further six months' imprisonment for offences under sections 169, 216 (5), 219 and 233 of the Penal Code, three months' remission being granted under Decree No. 40144. He completed his sentence on 4 March 1958 and then began to serve his period of assignment to forced residence until his release on 8 January 1964.

41. The Committee, as indicated in paragraph 252 of its 83rd Report, observed that under section 169 of the Penal Code the import, manufacture, possession, purchase, sale or supply, on any grounds whatsoever, or the transport, storage, use or carrying of prohibited weapons or explosive devices or materials, in an unlawful manner, or in a manner contrary to the rules laid down by the competent authorities, is deemed to be a punishable offence if those responsible intend them to be used, or are aware that they will be used, for the commission of a crime against the external or internal security of the State. Section 172 prescribes the penalties for acts preparatory to crimes against the external or internal security of the State, while section 173 deals with conspiracy or plotting with a view to the commission of such crimes. Sections 216 and 219 are concerned with the forging of documents, while section 233 prescribes penalties for the use of a false name with a view to escaping by any manner or means the lawful surveillance of the public authorities, or to causing any manner of harm to the State or to individuals.

42. While it appeared to the Committee from the tenor of the above-mentioned sections of the Penal Code that the sentences served by Mr. Rodriguez da Silva were imposed on grounds unconnected with any trade union activities in which he might have been engaged, the Committee, following its usual practice, recommended the Governing Body in paragraph 253 of its 83rd Report, before submitting its definitive conclusions, to request the Government to be good enough to furnish the texts of the judgments given against Mr. Rodriguez da Silva and of the reasons adduced therein.

43. The 83rd Report of the Committee was approved by the Governing Body on 28 May 1965, in the course of its 162nd Session. The above request for further information was brought to the notice of the Government by a letter dated 3 June 1965. On 23 August 1965 the Government furnished the texts of the judgments given by the courts on 4 July 1951 and 15 March 1954 referred to in paragraph 40 above.

44. From the judgment of the Supreme Court of Lisbon given on 4 July 1951 it appears that Mr. Rodriguez da Silva, charged together with certain other persons, had been sentenced after it had been proved that he belonged to the Portuguese Communist party, described as a clandestine organisation seeking to change the constitution and overthrow the Government by violent means, had been found in possession of subversive propaganda and money belonging to the party, had used a cover name as an agent and organiser of the party, and had been found in possession of a Browning pistol and ammunition. The court reduced his sentence, as indicated in paragraph 40 above, because it was not proved that he intended to use the pistol " in pursuit of criminal purposes ".

45. The judgment of 15 March 1954 sentencing him to a further six months' imprisonment was based on proof that he had used a false identity in order to lease premises for the Communist party and had obtained forged identity papers.

46. These judgments appear to confirm that the sentences served by Mr. Rodriguez da Silva were imposed on grounds not connected with any trade union activities in which he might have been engaged.

47. In these circumstances the Committee recommends the Governing Body to decide that the case does not call for further examination.

Case No. 441:

Complaint Presented by the Latin American Confederation of Christian Trade Unionists against the Government of Paraguay

48. By a communication dated 13 May 1965 the Latin American Confederation of Christian Trade Unionists (C.L.A.S.C.) lodged a complaint alleging violation of freedom of association by the Government of Paraguay. This communication was transmitted to the Government, which sent its observations on 24 August 1965.

49. Paraguay has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but not the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

50. C.L.A.S.C. alleges that Mr. Efigenio Fernández, General Secretary of the Christian Workers' Association (C.C.T.), was arrested on 9 May 1965 after protesting on behalf of C.C.T. against the arrest of Mr. Fulgencio Bareiro Rodas, Executive Secretary of C.L.A.S.C. for the Atlantic region. The complaint states that Mr. Bareiro Rodas was arrested in connection with a telegram he had received from an organisation of Cuban workers in exile, that Mr. Fernández was still under arrest at the time of the complaint and that no news had been received of him since his arrest.

51. With regard to Mr. Bareiro Rodas, Executive Secretary of C.L.A.S.C. for the Atlantic region, the Government explains in its communication of 24 August 1965 that his arrest was ordered with a view to investigating the wording of a telegram he had received referring to " mobilisation of organisations ". The Government believed that this expression might be interpreted in the sense of a rising by the trade unions with a view to overthrowing the established order. The Government further states that Mr. Bareiro Rodas was immediately released and it quotes the wording of the telegram, which was sent from Caracas

and was signed by Mr. Eduardo García, who is Executive Secretary of C.L.A.S.C. for the Caribbean region according to the information available to the International Labour Office. The wording of the telegram as quoted by the Government is as follows:

Please mobilise C.L.A.S.C. organisations in zone to demand stoppage indiscriminate bombardment Dominican civilian population guarantee human rights and restoration of democracy and liberty and prevent unilateral intervention by United States.

52. The Committee believes it may understand that as soon as the authorities were convinced that the telegram was not intended for the purpose originally suspected they immediately released Mr. Bareiro Rodas. The text as transcribed does not relate specifically to trade union matters but rather to political action in regard to which the Committee is not competent.

53. In these circumstances the Committee, considering that the evidence submitted does not show that the measures taken by the authorities with regard to Mr. Bareiro Rodas constitute violation of freedom of association, recommends that the Governing Body decide that this aspect of the case does not call for further examination.

54. With regard to Mr. Fernández the Government states that he was arrested on the grounds of contempt of authority, as described in section 160 of the Penal Code, and was released on 19 May 1965.

55. Since the complainants state that Mr. Fernández was arrested on 9 May 1965, he would seem to have been under arrest for some ten days. The Committee concludes that the charges referred to in the previous paragraph were not maintained.

56. In numerous cases in the past the Committee has pointed out that in all cases in which trade union leaders are preventively detained these measures may involve a serious interference with the exercise of trade union rights; that it would appear necessary that they should be justified by a serious emergency; that, unless accompanied by adequate judicial safeguards applied within a reasonable period, they are open to criticism; and that it should be the policy of every government to ensure that human rights are properly safeguarded, particularly the right of all detained persons to receive a fair trial at the earliest possible moment.[1] The Committee has also pointed out that the detention by the authorities of trade unionists concerning whom no grounds for conviction are subsequently found is liable to involve restrictions of trade union rights.

57. In these circumstances the Committee recommends the Governing Body to note that Mr. Fernández has been released and to decide, therefore, while pointing out to the Government that the detention of trade unionists concerning whom no grounds for conviction are subsequently found is liable to involve restrictions of trade union rights, that this aspect of the case does not call for further examination.

58. In view of the above, and with regard to the case as a whole, the Committee recommends the Governing Body—

(a) as regards the arrest of Mr. Fulgencio Bareiro Rodas, to note that this trade union leader has been released, and to decide, for the reasons stated in paragraph 52 above, that this aspect of the case does not call for further examination;

[1] See Fourth Report, Case No. 5 (India), paras. 18-51, Case No. 10 (Chile), paras. 52-88, and Case No. 30 (United Kingdom-Malaya), paras. 140-161; Sixth Report, Case No. 47 (India), paras. 704-736, and Case No. 49 (Pakistan), paras. 770-813; 12th Report, Case No. 87 (India), paras. 233-240, Case No. 63 (Union of South Africa), paras. 257-276, and Case No. 16 (France-Morocco), paras. 292 428; 13th Report, Case No. 62 (Netherlands), paras. 18-89; 16th Report, Case No. 112 (Greece), paras. 57-86; 17th Report, Case No. 104 (Iran), paras. 157-221; 24th Report, Case No. 142 (Honduras), paras. 97-148; 25th Report, Case No. 136 (United Kingdom-Cyprus), para. 154; 27th Report, Case No. 143 (Spain), para. 186, and Case No. 152 (United Kingdom-Northern Rhodesia), para. 410; 66th Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 409; 67th Report, Case No. 303 (Ghana), para. 318; 78th Report, Case No. 360 (Dominican Republic), para. 185.

(b) as regards the arrest of Mr. Efigenio Fernández, to note that this trade union leader has been released, and to decide, therefore, while pointing out to the Government that the detention of trade unionists concerning whom no grounds for conviction are subsequently found is liable to involve restrictions of trade union rights, that this aspect of the case does not call for further examination.

DEFINITIVE CONCLUSIONS IN THE CASES RELATING TO THE REPUBLIC OF SOUTH AFRICA (CASES NOS. 300, 311 AND 321), GREECE (CASE NO. 341), UNITED KINGDOM (BRITISH GUIANA) (CASE NO. 406), DOMINICAN REPUBLIC (CASE NO. 411) AND UNITED KINGDOM (ST. VINCENT) (CASE NO. 415)

Cases Nos. 300, 311 and 321:

Complaints Presented by the South African Congress of Trade Unions, the International Confederation of Free Trade Unions, the World Federation of Trade Unions, the Food and Canning Workers' Union (Cape Town) and the Trade Unions International of Workers of the Food, Tobacco and Beverage Industries and Hotel, Café and Restaurant Workers (Trade Department of the World Federation of Trade Unions) against the Government of the Republic of South Africa

59. Complaints against the Republic of South Africa were submitted to the I.L.O. by the South African Congress of Trade Unions (S.A.C.T.U.) in communications dated 12 and 21 May, 9 June and 17 August 1962, and by the International Confederation of Free Trade Unions in communications dated 11 September and 21 December 1962. These complaints raised a number of allegations, relating respectively to the South African national budget, to the prohibition of strikes by African workers, to anti-union propaganda carried on by government departments, to intimidation of African workers, to racial segregation within the trade unions, to job reservation, to measures taken against trade union leaders and members, to the South African delegation at the 46th Session of the International Labour Conference, and to various aspects of the provisions and application of the General Law Amendment Act, 1962. Observations on these complaints were furnished by the Government of the Republic of South Africa in a communication dated 17 January 1963, but they were confined to allegations made with respect to the General Law Amendment Act.

60. The above complaints and observations were examined, as Case No. 300, by the Committee at its meeting in February 1963, when the Committee submitted an interim report to the Governing Body in paragraphs 153 to 234 of its 68th Report, which was approved by the Governing Body at its 154th Session (March 1963). On the recommendation of the Committee the Governing Body dismissed the allegations relating to the South African national budget and to the South African delegation at the 46th Session of the International Labour Conference. The allegations relating to intimidation of African workers, which had also been raised in more detailed terms in Case No. 278, were subsequently dismissed by the Governing Body when adopting the Committee's recommendations in that case.[1] With regard to the allegations relating to segregation in trade unions and to job reservation, the Governing Body reaffirmed the conclusions it had adopted at earlier sessions with regard to similar allegations raised in previous cases relating to the then Union of South Africa. The allegations referred to in the present paragraph, therefore, are not dealt with further in this report.

61. The Governing Body requested [2] the Government to furnish further information on certain matters arising out of the allegations relating to the General Law Amendment Act, 1962. At the same time the Committee decided [3] to request the Government to furnish

[1] See 72nd Report, paras. 39-54.

[2] See 68th Report, para. 234 *(a)*.

[3] Ibid., paras. 165, 168, 181.

its observations on the allegations relating to the prohibition of strikes by African workers, to anti-union propaganda carried on by government departments, and to measures taken against trade union leaders and members, which had not been mentioned in the Government's reply dated 17 January 1963. The Committee also asked [1] the Government to furnish observations or further information on certain points relating to the General Law Amendment Act.

62. The above requests for observations and further information on these outstanding allegations were conveyed to the Government by a letter dated 14 March 1963. On 3 May 1963 the Government asked for a copy of one of the documents in the case, which was sent to it on 10 May 1963. Further requests were addressed to the Government by letters dated 13 June and 22 November 1963, 3 March, 28 April, 22 June and 24 November 1964, and 10 March and 3 June 1965; also, with these or other letters, copies were sent of further complaints addressed to the I.L.O. by the South African Congress of Trade Unions on 19 February, 28 March, 13 and 22 May and 24 October 1963 and 11 and 30 January, 11 February and 26 April 1964, and by the World Federation of Trade Unions on 19 October 1963 and 13 February and 26 March 1964. No reply to any of these letters has been received.

63. On 7 November 1962 the Food and Canning Workers' Union (Cape Town) submitted a complaint relating to alleged acts of interference with the union. The matters raised being quite distinct from those raised in Case No. 300, this complaint was dealt with as Case No. 311. The complaint was transmitted to the Government by a letter dated 15 November 1962. In further communications dated 5 February 1963 and 1 March 1963 the complainant also raised allegations relating to measures taken against trade union leaders and members of a similar nature to those raised in Case No. 300. These communications were forwarded to the Government on 13 February and 12 March 1963 respectively. The complaint was supported by the Trade Unions International of Workers of the Food, Tobacco and Beverage Industries and, Hotel, Café and Restaurant Workers (trade department of the World Federation of Trade Unions), of which the complainant in Cape Town is an affiliate, in a letter dated 17 November 1962, transmitted to the Government on 6 December 1962. Further requests to the Government to furnish its observations were made by letters dated 9 May, 12 June and 22 November 1963, 3 March, 25 June and 24 November 1964, and 9 March and 4 June 1965. No reply to any of these letters has been received from the Government.

64. On 14 January 1963 the South African Congress of Trade Unions submitted a complaint relating to a list of organisations published by the Minister of Justice and the placing of restrictions on the scope of their officers and membership. This was a new allegation and the complaint was dealt with as Case No. 321. The complaint was transmitted to the Government, for its observations, on 29 January 1963. Subsequent complaints, on the same matter but dealing also with matters raised in Cases Nos. 300 and 311, were addressed to the I.L.O. by the South African Congress of Trade Unions and the World Federation of Trade Unions on 11 February and 2 March 1963 respectively and transmitted to the Government on 12 March 1963. Further requests to the Government to furnish its observations were made in letters dated 9 May, 13 June and 22 November 1963, 3 March, 25 June and 24 November 1964, and 8 March and 4 June 1965. No reply to any of these letters has been received from the Government.

65. In view of the fact that the subsequent documents of complaint in Cases Nos. 311 and 321 raise matters analogous to certain of the questions raised in Case No. 300, the Committee has considered it appropriate to examine the three cases together, in accordance with the procedure which it has followed in certain earlier cases in comparable circumstances.[2]

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[1] See 68th Report, paras. 217, 220 and 230.

[2] See 20th Report, Cases Nos. 72 and 122 (Venezuela); 26th and 28th Reports, Cases Nos. 141, 153 and 154 (Chile), and 83rd Report, Cases Nos. 283, 329 and 425 (Cuba).

66. According to the procedure for the examination of complaints of alleged infringements of freedom of association it is the function of the Committee to make its examination of cases submitted to it, including the consideration of any observations made by the governments concerned, " if received within a reasonable period of time ".[1] Moreover, in any case in which a government does not respond within a reasonable period to a request for more detailed information, the Committee " will report the circumstances to the Governing Body ".[2] In Case No. 300 eight separate requests for further information and observations on new complaints have been addressed to the Government since 13 June 1963; it has been asked on 12 occasions since 15 November 1962 in Case No. 311, and on ten occasions since 29 January 1963 in Case No. 321, to furnish its observations on the complaints in those cases. The Committee has now to inform the Governing Body that no acknowledgment of any of these 30 communications has ever been received from the Government. In these circumstances the Committee has now examined the cases on their merits, taking account of the evidence submitted by the complainants together with such information as was furnished by the Government in its communication dated 17 January 1963.

67. The Republic of South Africa has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Allegations relating to the Provisions concerning Sabotage in the General Law Amendment Act, 1962

68. These allegations and the Government's observations thereon were examined by the Committee at its meeting in February 1963 and dealt with in detail in paragraphs 186 to 213 of its 68th Report. The matter is analysed more briefly below.

69. The South African Congress of Trade Unions (S.A.C.T.U.) in its communications dated 21 May and 9 June 1962, and the International Confederation of Free Trade Unions (I.C.F.T.U.), in its communication dated 11 September 1962, alleged that the effect of section 21 of the General Law Amendment Act, which created the new offence of " sabotage " and made it punishable by death by hanging or a minimum sentence of five years' imprisonment, was that any white, Indian or coloured workers who went on strike contrary to the provisions of the Industrial Conciliation Act, 1956, and any African workers who went on strike under any circumstances, could be prosecuted for sabotage and sentenced to death.

70. In its communication dated 17 January 1963 the Government declared that acts which were lawful under the Industrial Conciliation Act, 1956, or the Railways and Harbours Service Act, 1960, were not rendered unlawful by the General Law Amendment Act, the provisions of which were " not aimed at interfering in any way with the exercise of bona fide trade union rights ".

71. The Committee, therefore, after examining the text of section 21 of the General Law Amendment Act, reached the following conclusion in paragraph 205 of its 68th Report:

It would seem clear, therefore, that any act by a registered union or any member or members thereof which is not lawful under the 1956 Act would be a " wrongful " act in the terms of section 21 of the 1962 Act if it otherwise satisfied the definition of sabotage set forth therein. Any strike whatsoever by African workers is a " wrongful " act because it is specifically unlawful in all cases according to the Native Labour (Settlement of Disputes) Act, 1953.

72. The Committee then proceeded to consider whether section 21 could be applied in the manner alleged, because, in addition to the act being " wrongful ", it had also to have one or more of the effects set forth in section 21 (1), in order to give rise to a prosecution for sabotage.

[1] See First Report, para. 25.

[2] Ibid., para. 31.

73. The Committee had before it the full text of subsections (1) and (2) of section 21 of the Act, reading as follows [1]:

(1) Subject to the provisions of subsection (2), any person who commits any wrongful and wilful act whereby he injures, damages, destroys, renders useless or unserviceable, puts out of action, obstructs, tampers with, pollutes, contaminates or endangers—

(a) the health or safety of the public;

(b) the maintenance of law and order;

(c) any water supply;

(d) the supply or distribution at any place of light, power, fuel, foodstuffs or water, or of sanitary, medical or fire-extinguishing services;

(e) any postal, telephone or telegraph services or installations, or radio-transmitting, broadcasting or receiving services or installations;

(f) the free movement of any traffic on land, at sea or in the air;

(g) any property, whether movable or immovable, of any other person or of the State,

or who attempts to commit, or conspires with any other person to aid or procure the commission of or to commit, or incites, instigates, commands, aids, advises, encourages or procures any other person to commit, any such act, or who in contravention of any law possesses any explosives, fire-arm or weapon or enters or is upon any land or building or part of a building, shall be guilty of the offence of sabotage and liable on conviction to the penalties provided for by law for the offence of treason: provided that, except where the death penalty is imposed, the imposition of a sentence of imprisonment for a period of not less than five years shall be compulsory, whether or not any other penalty is also imposed.

(2) No person shall be convicted of any offence under subsection (1) if he proves that the commission of the alleged offence, objectively regarded, was not calculated and that such offence was not committed with intent to produce any of the following effects, namely—

(a) to cause or promote general dislocation, disturbance or disorder;

(b) to cripple or seriously prejudice any industry or undertaking or industries or undertakings generally or the production or distribution of commodities or foodstuffs at any place;

(c) to seriously hamper or to deter any person from assisting in the maintenance of law and order;

(d) to cause, encourage or further an insurrection or forcible resistance to the Government;

(e) to further or encourage the achievement of any political aim, including the bringing about of any social or economic change in the Republic;

(f) to cause serious bodily injury to or seriously endanger the safety of any person;

(g) to cause substantial financial loss to any person or to the State;

(h) to cause, encourage or further feelings of hostility between different sections of the population of the Republic;

(i) to seriously interrupt the supply or distribution at any place of light, power, fuel or water, or of sanitary, medical or fire-extinguishing services;

(j) to embarrass the administration of the affairs of the State.

74. The Committee observed that the complainants had made the following contentions. Firstly, they claimed that any strike by African workers could be prosecuted as a " wrongful and wilful act " if it " obstructs . . . or endangers . . . the maintenance of law and order " or " injures " the property of any person. Secondly, special attention was drawn to the situation of workers in certain specified occupations in relation to the definition of sabotage as including wrongful and wilful acts which " [injure, render] unserviceable, [put] out of action," etc., " any water supply . . . the supply or distribution at any place of light, power, fuel, foodstuffs or water, or of sanitary, medical or fire-extinguishing services . . . any postal, telephone or telegraph services ", etc. Thirdly, it was contended, any person who painted a " higher wages " slogan on the wall of a building faced the death penalty for sabotage because he thereby " injured " or " damaged " property. Fourthly, it was alleged that if a trade union organiser went inside factory premises to enlist new members or address the

[1] *Republic of South Africa Government Gazette*, Extraordinary, Vol. IV, No. 273, 27 June 1962.

workers without the consent of the factory owner, he could be charged with sabotage. Fifthly, it was claimed, if a participant in a big strike for higher wages was unable, in terms of section 21 (2), to show that his strike was not likely to " cause substantial financial loss " to the employer, he could be convicted of sabotage. Finally, the complainants alleged, if a trade union organiser, when organising workers to put demands to employers, referred to the employers in a hostile way and then failed to show that " objectively " his act was not likely to " cause . . . feelings of hostility ", he could be convicted of sabotage.

75. The Committee therefore, in paragraph 234 *(a)* of its 68th Report, recommended the Governing Body—

to ask the Government whether it can be assumed from the reply which it has been good enough to furnish . . . that no trade union or officers or members thereof pursuing trade union purposes (some examples of which are noted in [the preceding paragraph]), whether it is a registered trade union or not and irrespective of the races constituting its membership, would be liable to prosecution under section 21 of the General Law Amendment Act, 1962, or whether, on the other hand, the Government's reply is to be interpreted as meaning that the activities of one race are exempted from the application of that section while the activities of another race are not so exempted.

76. The Government has failed on eight occasions to reply to requests to furnish the above information.

77. Also at its meeting in February 1963 the Committee observed that section 21 (2) of the Act placed a serious burden of proof on the accused. It appeared that, if the State made out merely a prima facie case in terms of section 21 (1), the accused had to show that the offence, objectively regarded, was not calculated and was not committed with intent to produce " any " of the effects enumerated in section 21 (2), including " the bringing about of any social or economic change in the Republic " or " to embarrass the administration of the affairs of the State ". This language was so broad as to appear to exclude any action which would be regarded as suggesting any change in existing social or economic conditions or any kind of public inconvenience.

78. The Governing Body therefore decided, on the recommendation of the Committee, to draw the attention of the Government to its view that the provisions of section 21 (2) of the General Law Amendment Act, 1962, were inconsistent with generally accepted principles relating to freedom of association.

79. Since that time there have been further developments. In a communication dated 13 February 1964 the World Federation of Trade Unions alleged that, because of their trade union activities, the following 11 officials of S.A.C.T.U. had been accused of sabotage in the Pietermaritzburg court: Messrs. Billy Nair, Currie Ndhlovu, Solomon Mbanjwa, Bennett Nkosi, Alfred Duma, F. Mdhlalose, Riot Mkwanazi, M. O. Mkize, Joshua Zulu, David Ndawonde, Mathews Mayiwa, and three more in the Port Elizabeth court: Messrs. Caleb Nayikiso, V. Mini and L. Mancoke. Mr. Raymond Mhlaba, Secretary of the African Laundry and Dry Cleaning Workers' Union, and Mr. Elias Motsoaledi, Chairman of the Furniture, Bedding and Mattress Workers' Union and former Chairman of the Council of Non-European Trade Unions, were accused of treason and sabotage in the Pretoria court. With one exception, all these persons were non-Europeans.

80. In a communication dated 26 March 1964 W.F.T.U. stated that Mr. V. Mini and two other S.A.C.T.U. members, Mr. W. Khayingo and Mr. Z. Mkaba, had been sentenced to death, and that Mr. Billy Nair had been sentenced to 20 years' imprisonment.

81. The Government has failed to reply to six successive requests to furnish its observations on the last-mentioned complaint.

82. In these circumstances the Committee recommends the Governing Body—

(a) to deplore the fact that the Government of the Republic of South Africa has failed to furnish the further information requested of it, as indicated in paragraph 234 *(a)* of the 68th Report of the Committee cited in paragraph 75 above, on repeated occasions,

or to reply to the several requests made to it to furnish observations on the grave cases of prosecution of trade unionists for sabotage—in three of which cases sentence of death was pronounced—referred to in paragraphs 79 and 80 above;

(b) to point out in these circumstances that the Government has failed to refute the allegations that trade union officers and members are liable to be prosecuted for sabotage and sentenced to death under the General Law Amendment Act, 1962, in the event of their having performed any of the trade union activities indicated in paragraph 74 above;

(c) to point out to the Government that, by virtue of the fact that strike action by African workers is always an unlawful act under the Native Labour (Settlement of Disputes) Act, 1953, and therefore wrongful under section 21 of the General Law Amendment Act, 1962, whereas strike action by other workers is not wrongful in this sense when it is not unlawful in terms of the Industrial Conciliation Act, 1956, or the Railways and Harbours Service Act, 1960, the provisions of section 21 are discriminatory against a particular race;

(d) to point out to the Government that, in the case of other races, these provisions are discriminatory against the officers and members of non-registered organisations;

(e) to reaffirm its previous statement of its view that the provisions of section 21 (2) of the General Law Amendment Act, 1962, are inconsistent with generally accepted principles relating to freedom of association.

Allegations relating to Measures Taken against Trade Union Leaders and Members

83. These allegations fall under two heads: firstly, those concerning measures taken pursuant to the Suppression of Communism Act, as amended and supplemented by the General Law Amendment Act, 1962, and secondly, measures taken under various other legal provisions not directly related to those two acts.

(a) *Measures Taken pursuant to the Suppression of Communism Act and the General Law Amendment Act.*

84. In its communication dated 12 May 1962 S.A.C.T.U. referred to the large number of banning orders served on trade union leaders and members, since the middle of 1961, pursuant to the Suppression of Communism Act.

85. In particular Mr. Leon Levy (President of S.A.C.T.U.), Mr. Melville Fletcher (Branch Secretary of the Textile Workers' Union, Durban) and Mr. B. Nair (Secretary of the Metal Workers' Union, Durban), were alleged to have been confined to a certain area and also to have been banned from attending any gathering for five years, the latter restriction attaching also to Mr. Mark Williams-Shope (General Secretary of S.A.C.T.U.).

86. Mr. Harry Gwala (Secretary of the Pietermaritzburg Committee of S.A.C.T.U.) was alleged to have been prohibited from any participation in the affairs of S.A.C.T.U.

87. In its communication dated 21 May 1962 S.A.C.T.U., after referring to the fact that under the Suppression of Communism Act the Minister had already ordered the resignation of over 50 trade union officials as being " statutory Communists " alleged that the General Law Amendment Act, 1962, which had amended and supplemented the Suppression of Communism Act, could be used to force the resignation of union officials who had not even been " convicted of statutory communism "; if the Minister prohibited a person from attending gatherings or placed a person under house arrest because he was satisfied that his activities might further the objects of " statutory communism ", he could also order him to resign from his union and not become an official or member of that or any other body. The same allegation (based on section 4 of the 1962 Act) was made by I.C.F.T.U. in its communication dated 11 September 1962.

88. S.A.C.T.U. alleged further that, in addition to the case of " statutory Communists ", any person whose activities were likely to further the objects of statutory communism could be placed under what amounted to house arrest. In its communication dated 11 September 1962 I.C.F.T.U. referred to the provisions of section 8 of the 1962 Act as permitting the Minister to prohibit any such person from being within or absenting himself from a mentioned place or area or communicating with any person. In its communication dated 21 December 1962 I.C.F.T.U. gave the names of 12 trade union officers alleged to have been the subject of such measures. They included Messrs. Levy, Nair and Williams-Shope referred to earlier and nine other officers of S.A.C.T.U. affiliates.

89. In its communication dated 21 May 1962 S.A.C.T.U. stated that a person dealt with in any manner whatsoever pursuant to the Suppression of Communism Act could, under the 1962 Act, be ordered by the Minister to report to the police at given times and to inform the police of any change of address or employment. These provisions, declared the I.C.F.T.U. in its communication dated 11 September 1962, were embodied in sections 9 and 10 *(a)* of the 1962 Act.

90. Both complainants alleged that any breach of the various restrictions mentioned above was punishable by a minimum of three and a maximum of ten years' imprisonment.

91. They alleged also that any person in possession of a banned periodical was liable to up to three years' imprisonment.

92. In its communication dated 21 May 1962 S.A.C.T.U. alleged that the 1962 Act gave the Minister increased powers to ban gatherings and to prohibit individuals from attending them. Under the 1962 Act it was a crime, punishable by up to three years' imprisonment, to reproduce in any way the speech or statement of a person banned from gatherings. This was the position, declared I.C.F.T.U. in its communication dated 11 September 1962, in consequence of section 19 of the Act of 1962.

93. In its communication dated 17 August 1962 S.A.C.T.U. set forth the situation at that time, by virtue of the 1962 Act, arising from the banning as statutory Communists of four of the leading officials of S.A.C.T.U. As a result of the extended powers given to the Minister by the Act of 1962 none of these union officers could issue any statement on any matter affecting S.A.C.T.U. members or workers generally; they could not address leaflets to their members; if the secretary of a local committee or an affiliated union received a letter from the National President or General Secretary of S.A.C.T.U. he could not read it to his own executive committee; press organs of the unions could not reproduce even statements made before the enactment of the 1962 Act, such as extracts from the report of the General Secretary or the presidential address to the National Trade Union Conference.

94. When the Committee considered the foregoing allegations at its meeting in February 1963 it observed [1] that, in its communication dated 17 January 1963, the Government had confined itself to stating in this connection that the provisions of the 1962 Act were intended to prevent the dissemination of Communist propaganda and to prevent " the inciting speeches by persons who, because of their support of the Communist cause, have been banned from attending meetings " being recorded or read to audiences at meetings or being published in newspapers supporting Communist ideologies. In these circumstances the Committee decided to request the Government to furnish more detailed observations on these allegations. This request has been conveyed to the Government on repeated occasions but no reply has been received.

95. Since that time there have been the following further developments.

96. In a communication dated 19 February 1963 S.A.C.T.U. declared that, pursuant to the Suppression of Communism Act, Mr. Mosata, President of the African General Workers' Union, Kimberley, had been confined to Kimberley for five years and prohibited from

[1] See 68th Report, para. 229.

attending gatherings or entering factories, mines or mine compounds. In its communications dated 28 March 1963 and 13 May 1963 S.A.C.T.U. referred to similar bans served on Mr. L. Ndzanga, Secretary of the South African Railway and Harbours Non-European Workers' Union (Transvaal), Mr. G. Ngqunge, organiser of the Cape Province organisation of the same union, Mr. C. Ndlovu, Secretary of its Natal organisation—all of whom were also forced to resign from their union offices—and Mrs. Moodley, organiser of the Food and Canning Workers' Union, East Rand.

97. In a communication dated 24 October 1963 S.A.C.T.U. alleged that banning orders had been served on its Vice-President, Mrs. Viola Hashe, and its Assistant General Secretary, Mrs. Phyllis Altman, who had never even been " warned " or " listed " under the Suppression of Communism Act or its amendments, confining them to a given area for five years, prohibiting them for five years from attending any political, social or educational gathering or entering any educational premises, from entering any factory or area within which coloured, Indian or African persons resided and from preparing, purchasing, etc., any material for publication, and requiring them to report to the police once a week for five years. This part of the complaint was supported by W.F.T.U. in a communication dated 19 October 1963.

98. S.A.C.T.U. annexed to this complaint a list of 16 of its officers banned and removed from office since 1 February 1963.

99. S.A.C.T.U., in communications dated 30 January, 11 February and 24 April 1964, and W.F.T.U., in a communication dated 13 February 1964, gave the names of eight more officials of S.A.C.T.U. and its affiliates subjected to banning orders and forced to give up trade union office.

100. According to a communication dated 14 January 1963 from S.A.C.T.U. the Minister of Justice issued a proclamation in the *Government Gazette*, Extraordinary, No. 408, of 28 December 1962 containing a list of 36 organisations, including S.A.C.T.U. but consisting mainly of organisations other than trade unions, and prohibiting from office or membership in such organisations 432 persons listed under the Suppression of Communism Act and, among others, any person, whether in such list or not, banned by the Minister from attending gatherings. The ban attaching to S.A.C.T.U. extended to all its affiliates and subsidiaries and any body promoting the objects of S.A.C.T.U. The consequence was that six S.A.C.T.U. officers, Messrs. Levy, Williams-Shope, Nair, Fletcher, Benine and Rammitloa were required to resign their union positions prior to 1 February 1963. The same matters were raised in its communication dated 2 March 1963 by the W.F.T.U., which added the names of two further persons similarly affected: Mrs. Frances Baard, Port Elizabeth Branch Secretary of the African Food and Canning Workers' Union, and Mr. L. Kukulela, Cape Province Secretary of the Hospital Workers' Union and the African Laundry Workers' Union. The case of these two further persons was also raised by S.A.C.T.U. in a communication dated 11 February 1963.

101. In communications dated 5 February and 1 March 1963 the Food and Canning Workers' Union (Cape Town), after referring to the case of Mrs. Baard, gave the names of ten other officials of the Union removed from office in similar circumstances.

102. Another and even more serious aspect of the measures taken against trade unionists under the General Law Amendment Act was raised by S.A.C.T.U. in its communications dated 13 and 22 May 1963. The complainant alleged that pursuant to section 17 of the General Law Amendment Act, which permits of detention for 90 days without trial, a period which can be renewed indefinitely, the following persons were held in solitary confinement, " for interrogation " and without any charge being brought and without being permitted to have access to their legal advisers or their families: Mr. L. Levy, former National President of S.A.C.T.U., Mr. S. Mlamini, National President of S.A.C.T.U., Mr. C. Mayekiso, Port Elizabeth Secretary of S.A.C.T.U., Mr. V. Mini, Secretary of the Metal Workers' Union (Port Elizabeth), Mr. L. Mancoko, Secretary of the General Workers' Union (Port

Elizabeth), and Mr. E. Loza, Secretary of the Commercial and Distributive Workers' Union (Cape Town). In a further communication dated 24 October 1963 S.A.C.T.U. gave the names of 35 S.A.C.T.U. officials and members detained under the " 90 days clause " stating that the five persons other than Mr. Levy named above had by that time been held in solitary confinement for 150 days without ever being charged. Mr. Mlamini, acording to a communication from W.F.T.U. dated 13 February 1964, was eventually sentenced to nine months' imprisonment for distributing a leaflet calling a regional conference of workers and peasants in December 1962.

103. All these various documents of complaint were submitted to the Government for its observations. The Government has never acknowledged any of the repeated requests made to it to furnish observations on the complaints.

104. When the Committee, in Case No. 63, examined earlier cases of trade union leaders having been banned from public and trade union life by operation of the Suppression of Communism Act, 1950, it submitted to the Governing Body the conclusions contained in paragraphs 268 to 276 of its 12th Report. Paragraph 276 reads as follows:

> In so far as the South African Act of 1950 was enacted, as the Government contends, purely for a political reason, namely that of barring Communists in general, as citizens, from all public life, the Committee considers that the matter is one of internal national policy with which it is not competent to deal and on which it should therefore refrain from expressing any view. However, in view of the fact that measures of a political nature may have an indirect effect on the exercise of trade union rights, the Committee wishes to draw the attention of the South African Government to the views which it has expressed . . . with regard, first, to the principle that workers, without distinction whatsoever, should have the right to join organisations of their own choosing and, secondly, to the importance of due process in cases in which measures of a political nature may indirectly affect the exercise of trade union rights. Consequently, the Committee recommends the Governing Body to communicate the above conclusions to the Government of the Union of South Africa.

105. The Committee reaffirmed the conclusions contained in paragraphs 268 to 276 of its 12th Report in subsequent cases relating to South Africa.[1] Now that the Suppression of Communism Act has been amended by the General Law Amendment Act, 1962, for the specific purpose of strengthening the provisions of the earlier Act, these general conclusions still hold good and the Committee accordingly reaffirms them.

106. There remains, however, the question as to the manner in which the legal provisions are in fact applied to trade union leaders and members as such.

107. It is clear from the evidence in the present and earlier cases viewed cumulatively that under the Suppression of Communism Act a trade union leader can be removed from and disqualified for trade union office membership and/or confined to a particular area and prohibited from attending gatherings, not merely if it is proven that he is a Communist or if he is or has been a professed Communist or a member of a Communist party or organisation, but on the mere ground that the competent minister has " warned " him as a Communist, a proceeding entirely within the discretion of the M nister in the course of which the person concerned has no opportunity to defend himself and against which there is no right of appeal to the courts. Prior to the General Law Amendment Act, 1962, such a person was referred to as a " statutory Communist ". The General Law Amendment Act has considerably aggravated the position. The position now is that a trade unionist can be barred from union office and membership, made to report regularly to the police, confined to a given area, barred from attending gatherings or communicating with his trade union colleagues and kept in solitary confinement for periods of 90 days, which can be renewed indefinitely, entirely at the discretion of the Minister—all this even without having been designated a " statutory Communist "—because in the view of the Minister his activities might further

[1] See 15th Report, Case No. 102, para. 185 (1); 24th Report, Case No. 145, para. 209 (1); 66th Report Case No. 261, para. 185 *(a)*; 67th Report, Case No. 288, para. 135 *(a)*; 70th Report, Case No. 314, para. 97.

the interests of statutory communism. No recourse to the courts in any form exists. All these points have been alleged and substantiated in detail by the different complainants and the Government has submitted no observations at all in refutation.

108. Certain principles enunciated on many occasions by the Committee and the Governing Body are brought into question by these legal provisions.

109. In a number of cases [1] the Committee has observed that the public authorities should refrain from any interference which would restrict the right of occupational organisations to elect their representatives in full freedom and to organise their administration and activities. The provisions of the Suppression of Communism Act and the General Law Amendment Act which permit the Minister in his discretion to remove trade union leaders from trade union office and to disqualify them for such office in the future are incompatible with this generally accepted principle.

110. The Committee has also pointed out in earlier cases that in *all* cases in which trade union leaders are preventively detained these measures may involve a serious interference with the exercise of trade union rights, and has emphasised the right of *all* detained persons to receive a fair trial at the earliest possible moment.[2] The Committee has also expressed the view [3] that the restriction of a person's movements to a limited area accompanied by a prohibition of entry into the area in which his trade union operates and in which he normally carries on his trade union functions is also inconsistent with the normal enjoyment of the right of association and with the exercise of the right to carry on trade union activities and functions, and should also be accompanied by adequate judicial safeguards applied within a reasonable period and, especially, by observance of the right of those concerned to receive a fair trial at the earliest possible moment. The Committee considers that the provisions of the Suppression of Communism Act and the General Law Amendment Act which permit the Minister in his discretion to confine trade union leaders to a particular area, to prohibit them from entering the areas in which they normally carry on their trade union activities, and to hold them in solitary confinement for a 90 days' period which can be renewed, without trial or even without charges being laid, are incompatible with the right to exercise trade union activities and functions and with the principle of fair trial enunciated above.

111. The Committee therefore recommends the Governing Body—

(a) to draw the attention of the Government to the importance which the Governing Body attaches to the principle that the public authorities should refrain from any interference which would restrict the right of occupational organisations to elect their representatives in full freedom and to organise their administration and activities;

(b) to express the view that the provisions of the Suppression of Communism Act and the General Law Amendment Act which permit the Minister in his discretion to remove trade union leaders from trade union office and to disqualify them for such office in the future are incompatible with this generally accepted principle and have been consistently applied in practice in a manner incompatible with the said principle;

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[1] See 30th Report, Case No. 172 (Argentina), para. 204; 81st Report, Case No. 385 (Brazil), paras. 139-141; 83rd Report, Cases Nos. 283, 329 and 425 (Cuba), para. 156.

[2] See Fourth Report, Case No. 5 (India), paras. 18-51, Case No. 10 (Chile), paras. 52-88, and Case No. 30 (United Kingdom-Malaya), paras. 140-161; Sixth Report, Case No. 47 (India), paras. 704-736, and Case No. 49 (Pakistan), paras. 770-813; 12th Report, Case No. 87 (India), paras. 233-240, Case No. 63 (Union of South Africa), paras. 257-276, and Case No. 16 (France-Morocco), paras. 292-428; 13th Report, Case No. 62 (Netherlands), paras. 18-89; 16th Report, Case No. 112 (Greece), paras. 57-86; 17th Report, Case No. 104 (Iran), paras. 157-221; 24th Report, Case No. 142 (Honduras), paras. 97-148; 25th Report, Case No. 136 (United Kingdom-Cyprus), para. 154; 27th Report, Case No. 143 (Spain), para. 186, and Case No. 152 (United Kingdom-Northern Rhodesia), para. 410; 62nd Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 152; 66th Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 409; 83rd Report, Case No. 303 (Ghana), para. 225, and Case No. 418 (Cameroon), para. 358.

[3] See 25th Report, Case No. 152 (United Kingdom-Northern Rhodesia), para. 220; 66th Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 409.

(c) to draw the attention of the Government to the fact that in all cases in which trade union leaders are preventively detained these measures may involve a serious interference with the exercise of trade union rights and to the importance which the Governing Body attaches to the right of all detained persons to receive a fair trial at the earliest possible moment;

(d) to express its view that the restriction of a person's movements to a limited area accompanied by a prohibition of entry into the area in which his trade union operates and in which he normally carries on his trade union functions is also inconsistent with the normal enjoyment of the right of association and with the exercise of the right to carry on trade union activities and functions, and should also be accompanied by adequate judicial safeguards applied within a reasonable period and, especially, by observance of the right of those concerned to receive a fair trial at the earliest possible moment;

(e) to draw the attention of the Government to its view that the provisions of the Suppression of Communism Act and the General Law Amendment Act which permit the Minister in his discretion to confine trade union leaders to a particular area, to prohibit them from entering the areas in which they normally carry on their trade union activities and to hold them in solitary confinement for a 90 days' period which can be renewed, without trial and even without charges being laid, are incompatible with the right to exercise trade union activities and functions and with the principle of fair trial enunciated above and have consistently been applied in a manner incompatible with the said right and the said principle.

(b) *Other Measures Taken against Trade Unionists.*

112. In its communication dated 12 May 1962 S.A.C.T.U. made the following allegations. Mr. U. Maleka (Secretary of the Furniture, Mattress and Bedding Workers' Union) and Mr. R. Takalo (Secretary of the Metal Workers' Union, Transvaal) were arrested while helping to distribute leaflets to African mineworkers and were convicted of an offence under the Trespass Act, 1959. Mr. B. Ndavemavota (organiser for the National Organising Committee for Mineworkers), also arrested when distributing leaflets, was sentenced to three months' imprisonment under the Urban Areas Act. Mr. R. Bapela (member of the Clothing Workers' Union) was also arrested when distributing leaflets. Mr. M. Lekhoto (organiser of the Transvaal General Workers' Union), Mr. J. Mebena (member of the Shop and Office Workers' Union) and Mr. L. Ndzanga (Secretary of the South African Railways and Harbour Workers' Union) were arrested in connection with a placard demonstration. Mr. C. Nixishe (organiser of the South African Railways and Harbour Workers' Union) was convicted of an offence under the Trespass Act, 1959. Finally, Mr. D. Sebolai and Mr. J. Mampie (respectively Assistant President and Organising Secretary of the African General Workers' Union, Kimberley) and four members of the union were stated to be awaiting trial on a charge of entering a reserve without permission.

113. While the Government has furnished no observations on these allegations the complainants have not indicated the nature of the leaflets and placards in connection with the distribution or demonstration of which the persons concerned were arrested. However, certain of the laws they were charged with violating are statutes which in themselves restrict the exercise of trade union rights on racial grounds, so that the Committee does not consider that it would be justified in recommending the dismissal of the allegations out of hand.

114. In these circumstances the Committee recommends the Governing Body to note that the evidence before it does not enable it to reach firm conclusions on these particular allegations.

Allegations relating to the Suppression of and Restrictions on Newspapers pursuant to the Suppression of Communism Act and the General Law Amendment Act and the Publications and Entertainments Bill

115. It was alleged by S.A.C.T.U., in its communication dated 21 May 1962, that since 1950 the Minister of Justice, using his powers under the Suppression of Communism Act,

had banned three newspapers—*The Guardian, Advance* and *Clarion*—but that, until 1962, a newspaper thus banned could reappear under an assumed name. Under the General Law Amendment Act, 1962, however, a newspaper banned under the 1950 Act would forfeit the £10,000 which it must, under the Act of 1962, deposit in advance with the Minister of the Interior. In the view of the complainant this would effectively prevent any workers' newspaper from reappearing once it was banned. The complainants also alleged that the Publications and Entertainments Bill conferred upon the authorities the power to prohibit the printing, publication and distribution of any " undesirable " literature, the definition of " undesirable " being so wide as to make it possible to suppress trade union statements and publications which expressed hostility to employers or instigated strike action. So far as the General Law Amendment Act is concerned I.C.F.T.U. made the same allegations in its communication dated 11 September 1962.

116. In its communication dated 17 January 1963 the Government stated that one aim of the Act of 1950 was defeated by reason of the fact that a newspaper which was banned because it disseminated Communist propaganda could simply reappear under a new name. This loophole had been closed by the 1962 Act.

117. Examining these allegations at its meeting in February 1963[1], the Committee observed that in a number of previous cases[2] it had expressed the view that the right to express opinions through the press is clearly one of the essential elements of trade union rights. It appeared to the Committee that, having regard to that principle, it might place a very considerable hardship on any small trade union if it were required to deposit so large a sum as £10,000 before it could issue a newspaper. The Committee therefore requested the Government to state whether all trade unions were required to deposit such a bond in the case of specifically trade union newspapers and also to furnish its observations on the allegation relating to the Publications and Entertainments Bill.

118. Despite repeated requests, the Government has furnished no further observations and has not, therefore, refuted the complainants' contention that all newspapers must furnish a £10,000 bond under the Act of 1962, this being an intolerable burden for small trade unions. On the other hand, the complainants have not submitted later information to show whether the clauses of the Publications and Entertainments Bill complained of were enacted in the terms alleged.

119. The Committee, therefore, recommends the Governing Body—

(a) to reaffirm its view that the right to express opinions through the press is clearly one of the essential elements of trade union rights;

(b) to express the view that if, as alleged, trade union newspapers are required to furnish a £10,000 bond, this would constitute, especially in the case of smaller unions, such an unreasonable condition for their existence as to be incompatible with the exercise of the foregoing right;

(c) to express further its view that, if the provisions of the Publications and Entertainments Bill concerning " undesirable literature " have been or were to be enacted in the terms alleged, this would permit of such abusive interpretation in the discretion of the authorities as to be incompatible with the right of trade unions to express opinions through the press.

Allegations relating to the Banning of Organisations under the General Law Amendment Act

120. In their communications dated 21 May and 11 September 1962 S.A.C.T.U. and I.C.F.T.U. respectively alleged that the General Law Amendment Act widened further the

[1] See 68th Report, paras. 214-217.

[2] See Second Report, Case No. 21 (New Zealand), para. 23; 27th Report, Case No. 166 (Greece), para. 79; 33rd Report, Case No. 178 (United Kingdom-Aden), para. 57; 48th Report, Case No. 191 (Sudan), para. 81; 58th Report, Case No. 221 (United Kingdom-Aden), para. 123; 62nd Report, Case No. 224 (Greece), para. 96.

powers of state presidents to ban organisations, permitting them to ban " any organisation that carried on or has been established for the purpose of carrying on directly or indirectly any of the activities of an unlawful organisation ". It was alleged that, if the Minister " is satisfied ", for example, that a trade union is carrying on some of the activities which were once carried on by the unlawful African National Congress (e.g. campaigning for a minimum £1 a day for all workers, or demanding the repeal of " pass " laws), he may ban that union. This being a discretionary matter, the Court could not overrule the state president in the absence of proof that he acted in bad faith. In the view of I.C.F.T.U. these provisions infringed the generally accepted principle that workers' organisations shall not be dissolved or suspended by administrative authority.

121. In its communication dated 17 January 1963 the Government referred to these allegations only indirectly, when it stated that one of the weaknesses of the Suppression of Communism Act which it had to remedy was the fact that, despite the banning of the Communist party, Communist activities could be continued by merely giving a new name to an organisation which was, in fact, the Communist party.

122. When it examined [1] this aspect of the case at its meeting in February 1963 the Committee, observing the specific nature of the allegations made, recalled the principle laid down in the procedure for the examination of complaints of alleged infringements of trade union rights that, where precise allegations are made, the Committee cannot regard as satisfactory replies from governments which are confined to generalities.[2] The Committee therefore requested the Government to furnish more detailed observations on these allegations. No reply has been received from the Government to the repeated requests made to it to furnish such observations.

123. It appears from the unrefuted evidence submitted by the complainants that the General Law Amendment Act permits the competent authorities in their discretion to ban any organisation which carries on any normally legal trade union activity, such as campaigning for a minimum wage, if that activity has at any time figured in the programme of any trade union or other organisation which has been declared to be unlawful.

124. The Committee therefore recommends the Governing Body to draw the attention of the Government to its view that the provisions in question are incompatible with the generally accepted principle that the public authorities should refrain from any interference which would restrict the right of workers' organisations to organise their activities and to formulate their programmes or impede the lawful exercise of this right.

Allegations relating to the Provisions of the General Law Amendment Act concerning the Offence of Illegally Leaving the National Territory

125. Under the Departure from the Union Regulation Act, 1955, any person who leaves South Africa without a passport commits an offence punishable by a minimum of three months' imprisonment. In its communication dated 21 May 1962 S.A.C.T.U. alleged that the General Law Amendment Act has amended the Criminal Code in order to permit the State to prove the offence more easily so as to provide that any document which indicates that a person has been outside the Republic is prima facie evidence that he was outside the country, if it is accompanied by a certificate from the Secretary of Foreign Affairs that the document is of foreign origin.

126. When it examined this question at its meeting in February 1963 the Committee observed that, while the Government did not comment on the matter, the complainants had made no allegation concerning the application of these provisions, either generally or

[1] See 68th Report, paras. 218-220.

[2] See First Report, para. 31.

in any specific case, in such a manner as to affect the exercise of trade union rights.[1] The Committee therefore recommended the Governing Body to decide that these allegations did not call for further examination.

127. In a communication dated 28 March 1963 S.A.C.T.U. alleged that Mr. John Gaitsewe, its Acting General Secretary, had been sentenced to two years' imprisonment, on 25 March 1963, for leaving the country without travel documents to attend a trade union conference overseas. In his speech in the court, Mr. Gaitsewe said that he had been forced to leave the country in this way because the Government would not grant passports to any Africans who did not support the Government's cause. The same allegations were made by W.F.T.U. in a communication dated 2 March 1963.

128. The Government has not furnished any observations on the case of Mr. Gaitsewe and, more particularly, has not refuted the allegation that Africans who do not support the Government's cause are not granted passports permitting them to leave the country to attend trade union conferences abroad.

129. The Committee has emphasised in several cases in the past that national trade union organisations should have the right to affiliate with international organisations of workers and has affirmed that this right normally carries with it the right of representatives of national organisations to maintain contact with the international organisations with which they are affiliated and to take part in the work of those organisations.[2]

130. In these circumstances the Committee recommends the Governing Body to draw the attention of the Government to the importance which it attaches to the principle enunciated in the preceding paragraph.

Allegations relating to the Prohibition of Strikes by African Workers

131. In its communication dated 12 May 1962 S.A.C.T.U. referred to the penalties of fines and imprisonment prescribed by the Native Labour (Settlement of Disputes) Act, 1953, and the General Law Amendment Act in respect of strikes by African workers. Despite these restrictions there were 453 reported strikes of African workers during the period 1954-60, it was alleged, as a result of which some 40,000 African workers were prosecuted, many of them having been fined or imprisoned.

132. In August 1961, it was alleged, 80 blind African workers at the Constance Caworth Institute for the Blind (Natal), earning only £10 a month or about one-third of the estimated living wage, went on strike for higher wages; the police were called and all the workers were dismissed, following which they were told to apply for readmission, but 13 were not re-engaged and no wage increase was granted.

133. Also in August 1961, it was alleged, 136 workers of the Lion Match Company (Durban) were each fined £5, with the alternative of ten days' imprisonment, on a charge of conducting an illegal strike, because they had held a lunch-time demonstration and exhibited placards demanding union recognition and a wage of £1 a day; leave to appeal was refused.

134. The complainant stated that workers employed by Klipfontein Organic Products (Transvaal) were recruited through the (Government) Bantu Administration Department and lived in compounds on a poverty wage of £7 per month, plus food and accommodation; their only chance to have grievances redressed was to apply to the Bantu Native Commissioner, who, it was alleged, whenever a complaint was addressed to him saw that the workers were dismissed and refused permits to seek work elsewhere. In desperation, it was

[1] See 68th Report, para. 232.

[2] See Sixth Report, Case No. 40 (France-Tunisia), paras. 515-523 and 562 (ii); 12th Report, Case No. 64 (Italy), paras. 94-101, Case No. 65 (Cuba), paras. 119-120, Case No. 74 (Burma), paras. 178-183, and Case No. 77 (various French territories in Africa), paras. 184-199; 60th Report, Case No. 274 (Libya), paras. 261-262; 79th Report, Case No. 389 (Cameroon), para. 120; 82nd Report, Case No. 416 (Pakistan), para. 54.

alleged, they went on strike in July 1961; 600 were arrested but only two were subsequently charged and, after spending three weeks in gaol, were fined £20 each. When S.A.C.T.U. made representations on behalf of these workers to the Minister of Bantu Affairs, it was alleged, they were referred to the same Commissioner against whom the workers had complained.

135. S.A.C.T.U. alleged that 193 African workers employed by the Bay Transport Company, Port Elizabeth, were each fined £7 10s. for striking.

136. At its meeting in February 1963 the Committee decided to request the Government to furnish its observations on these allegations. The Government has not replied to repeated requests to furnish these observations.

137. The Committee has always applied the principle that allegations respecting the right to strike are not outside its competence in so far as they affect the exercise of trade union rights.[1] It has also pointed out that the right of workers and their organisations to strike as a legitimate means of defending their occupational interests is generally recognised.[2]

138. When the Committee examined the question of the right to strike of African workers in an earlier case relating to the then Union of South Africa, it observed that, while temporary restrictions were placed on the right to strike of employees covered by the Industrial Conciliation Act, and a complete prohibition was placed on strikes by such employees engaged in certain essential services, section 18 (1) of the Native Labour (Settlement of Disputes) Act, 1953, placed a total prohibition on strikes by African workers, irrespective of the nature of their occupation.[3] On that occasion the Committee expressed the view that, where the right to strike was accorded to workers and their organisations, there should be no racial discrimination with respect to those to whom it was accorded.[4] Accordingly, in that case, the Committee recommended the Governing Body to note that in South Africa the existence of racial discrimination in respect of trade union rights was further confirmed by the fact that the nature and extent of the limitations placed on the right to strike differed widely as between employees covered by the Industrial Conciliation Act and African workers.[5]

139. In these circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government to the fact that the right of workers and their organisations to strike as a legitimate means of defending their occupational interests is generally recognised;

(b) to express its view that, where the right to strike is accorded to workers and their organisations, there should be no racial discrimination with respect to those to whom it is accorded;

(c) to note once again that in the Republic of South Africa the existence of racial discrimination in respect of trade union rights is further confirmed by the fact that the

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[1] See 28th Report, Case No. 143 (Spain), para. 109, Cases Nos. 141, 153 and 154 (Chile), para. 202, and Case No. 169 (Turkey), para. 297; 47th Report, Case No. 143 (Spain), para. 66; 58th Report, Case No. 221 (United Kingdom-Aden), para. 109; 65th Report, Case No. 266 (Portugal), para. 77; 66th Report, Case No. 294 (Spain), para. 481; 71st Report, Case No. 173 (Argentina), para. 67; 72nd Report, Case No. 211 (Canada), para. 27; 78th Report, Case No. 364 (Ecuador), para. 79; 83rd Report, Case No. 399 (Argentina), para. 293.

[2] See Fourth Report, Case No. 5 (India), paras. 18-51; 12th Report, Case No. 60 (Japan), paras. 10-83; 28th Report, Cases Nos. 141, 153 and 154 (Chile), para. 202; 30th Report, Case No. 167 (Honduras), para. 76; Case No. 181 (Ecuador), para. 94, Case No. 143 (Spain), para. 130, and Case No. 172 (Argentina), para. 778, 58th Report, Case No. 192 (Argentina), para. 447; 65th Report, Case No. 266 (Portugal), para. 77; 68th Report, Case No. 294 (Spain), para. 137; 78th Report, Case No. 364 (Ecuador), para. 79; 83rd Report, Case No. 399 (Argentina), para. 293.

[3] See 15th Report, Case No. 102 (Union of South Africa), para. 153.

[4] Ibid., para. 154.

[5] Ibid., para. 185 (4).

nature and extent of the limitations placed on the right to strike differ widely as between employees covered by the Industrial Conciliation Act, 1956, and African workers.

Allegations relating to Anti-Union Propaganda Carried On by Government Departments

140. In its communication dated 12 May 1962 S.A.C.T.U. alleged that anti-union propaganda was carried on among its 99,800 African employees by the South African Railways and Harbours Administration, which was a government department.

141. The complainant furnished a purported extract from the March 1962 issue of *Umqondiso*, an official publication of the Administration circulated among non-white railway workers. In the extract as furnished it was stated:

The workers' representatives and the regional committees (appointed by the Administration) are the official medium for the purpose of making representations to the Department. They are, in fact, the *only* medium which are recognised by the Department.... On the other hand, there are organisations and so-called unions who influence non-European servants to join up and become a member of the organisation. The fees are high and are privately collected every month. They make it look legal by issuing a membership card and a receipt.... These so-called unions do not enjoy departmental recognition and the management of the railways or any of its officials do not, in any manner or form, on whatever subject, negotiate with these unions. They cannot assist you in any of your service conditions; yes, they are only out to collect your money. They are living off the fat of the land, and that with your hard-earned money which you contribute to them monthly. As a matter of fact, activities related to these unions, of whatever nature they may be, are not permitted on railway premises.

142. After referring to these organisations as " illegal so-called unions ", the extract stated as follows:

To protect you from these unscrupulous people, the Administration has given strict instructions that no non-European servant may act as a collector for societies, firms, unions, associations or any other organisation or cause, without the written permission of the Head of Department. Nor is any person allowed to enter railway premises to collect any money from railway servants whether it be during working hours or not. Let this be a warning to you and do not allow others to mislead you.

143. In the view of the complainants these statements defamed officials of the South African Railways and Harbour Workers' Union (of African railway workers), stated wrongly that the union was illegal and confirmed the implacable opposition of the Government to free trade union organisation.

144. At its meeting in February 1963 the Committee decided to request the Government to furnish its observations on these allegations. It has failed to reply to repeated requests to do so.

145. It appears clear from the text of an official publication cited by the complainants that the South African Railways and Harbours Administration exercised pressure on non-white railway workers to induce them not to join trade unions. The references to the fact that the unions seeking to organise the workers in question do not enjoy departmental recognition and are not allowed to negotiate and the statement that " the workers' representatives and the regional committees (appointed by the Administration) are the official medium for the purpose of making representations to the Department " and that these are, in fact, " the only medium ", are particularly significant.

146. In these circumstances the Committee recommends the Governing Body—

(a) to emphasise the importance which it attaches to the generally accepted principle that workers without distinction whatsoever should have the right to establish and join organisations of their own choosing without previous authorisation;

(b) to draw the attention of the Government to its view that the extract from the March 1962 issue of *Umqondiso* cited by the complainants and set forth in paragraphs 141 and 142 above constituted an infringement of this principle on the part of the South African Railways and Harbours Administration.

Allegations relating to Police Interference with the Trade Union Activities of the Johannesburg Branch Secretary of the National Union of Laundering, Cleaning and Dyeing Workers

147. In a communication dated 11 January 1964 S.A.C.T.U. complained of the treatment accorded by officers of the Special Branch to Mr. E. Davoren, Johannesburg Branch Secretary of the National Union of Laundering, Cleaning and Dyeing Workers.

148. According to the copy of an affidavit by Mr. Davoren forwarded by the complainant, he was, in December 1963, engaged in assisting in negotiations regarding a new wage agreement. In this connection it was his duty to keep the workers informed of the course of the negotiations and to consult them on their case. Accordingly, he addressed a meeting of workers at Lorentzville on 19 December 1963 and distributed pamphlets setting out their case for a minimum £1 a day. After leaving the meeting he was intercepted by officers of the Special Branch, who took him to headquarters. There, fearing to share the fate of 35 other union officials detained without charge, he asked to use a telephone in order to tell a trade union colleague where he was, but the officer snatched the instrument from his hand. He alleged that the officer lost all self-control and threatened to " tear him apart ". He was then made to sit in the centre of a room occupied by several officers. The senior officer present produced a copy of the pamphlet he had distributed and told him that he was sure to get 90 days and that " it was the Communist cell in S.A.C.T.U. which started the campaign for £1 per day ". He was then questioned as to his earnings in South Africa and concerning his work and earnings in England. In the end, he alleged, after insulting him repeatedly, they allowed him to leave.

149. In a communication dated 11 February 1964 S.A.C.T.U. alleged that Mr. Davoren had been detained and was to be deported to England.

150. In its communication dated 13 February 1964 W.F.T.U. formulated similar complaints regarding Mr. Davoren.

151. In a communication dated 26 April 1964 S.A.C.T.U. stated that Mr. Davoren had been deported in March 1964.

152. In a number of cases the Committee has emphasised the importance that it has always attached to the fact that the right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association [1], and to the principle [2] that trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent, and that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. The Committee has stated further that any such interference, by the same token, would appear to infringe the generally accepted principle that workers' organisations should have the right, without such interference, to organise their activities and to formulate their programmes.[3]

153. It appears from the detailed evidence furnished by the complainants, to which the Government has made no reply, that Mr. E. Davoren, Johannesburg Branch Secretary of the National Union of Laundering, Cleaning and Dyeing Workers, was engaged in lawful wage negotiations on behalf of his members in December 1962, when, by reason of the fact that he was engaged in such negotiations, he was questioned, his actions were criticised and he was threatened with 90 days' detention by officers of the Special Branch.

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[1] See Third Report, Case No. 1 (Peru), para. 20; Sixth Report, Case No. 12 (Argentina), paras. 237-240, and Case No. 55 (Greece), para. 293; 11th Report, Case No. 51 (Saar), para. 55; 13th Report, Case No. 62 (Cuba), para. 83; 27th Report, Case No. 143 (Spain), para. 169; 52nd Report, Case No. 202 (Thailand), para. 158; 65th Report, Case No. 266 (Portugal), para. 65; 83rd Report, Case No. 303 (Ghana), para. 204.

[2] See 15th Report, Case No. 102 (Union of South Africa), para. 164; 25th Report, Case No. 151 (Dominican Republic), para. 312; 27th Report, Case No. 143 (Spain), para. 169; 52nd Report, Case No. 202 (Thailand), para. 158; 65th Report, Case No. 266 (Portugal), para. 65; 83rd Report, Case No. 303 (Ghana), para. 204.

[3] See 83rd Report, Case No. 303 (Ghana), para. 204.

154. In these circumstances the Committee recommends the Governing Body to draw the attention of the Government to the importance which it attaches to the principles enunciated in paragraph 152 above and to its view that the action taken by the police with regard to Mr. Davoren on 19 December 1962 constituted an infringement of the said principles.

Allegations relating to Interference in the Activities of the Food and Canning Workers' Union (Cape Town)

155. In its communications dated 7 November 1962 and 5 February and 1 March 1963 the Food and Canning Workers' Union (Cape Town) alleged various acts of interference in its activities by the authorities.

156. The complainants stated that their union was registered under the Industrial Conciliation Act and had 8,600 members and 27 branches.

157. On 10 May 1962 the General Secretary and four other representatives of the union visited Mossel Bay. These five officials were alleged to have been arrested at 1.30 p.m. and detained for four hours. The complainants stated that the five were arrested in their car which was on a property next to that of the undertaking they intended to visit; despite this, it was alleged, the police urged the employers to lay a charge of trespassing against them.

158. When five union officials, including its President, Vice-President and General Secretary, visited the fishing village of Stompneus Bay on 17 June 1962, it was alleged, they were questioned by the police, who also asked the employers not to allow the union to hold meetings.

159. Four union officials, including the President, Vice-President and General Secretary, visited East London on 4 July 1962. The complainants stated that they were stopped by the police and taken to the charge-house to be questioned by Mr. Huttingh of the Special Branch, where they were kept for three hours, after which they were followed everywhere by the Special Branch. Mr. Huttingh, it was alleged, told the union officials that when they went to East London in future " he should be approached first so that he could work together with them " and added, when they refused this, " that he would break down everything they built up in East London ".

160. It was alleged that the Special Branch attended factory meetings of the union's Paarl Branch. On 5 July 1962 six Special Branch men attended a meeting of the East London branch and refused to leave. Between 15 and 27 July 1962 branch officials and members received visits from the Special Branch; at the same time the police put pressure on employers who had thus far co-operated with the union and allowed it to hold meetings on factory premises. On 18 February 1963 union officials visited Mossel Bay; the union lunch-hour meeting on factory premises was attended by the police; on 19 February the firm concerned would not permit a further meeting. A members' meeting was held at the Mossel Bay Roman Catholic Church Hall but the priest in charge was visited by the police and then asked the participants to leave. A lunch-hour meeting organised by the Montagu branch of the union on 21 February 1963 was attended by members of the Special Branch.

161. The Government has failed to reply to repeated requests made to it to furnish its observations on these allegations.

162. The Committee has consistently drawn attention [1] to the importance it has always attached to the fact that freedom from government interference in the holding of proceedings

[1] See First Report, Case No. 8 (Israel), paras. 63-69; Sixth Report, Case No. 40 (France-Tunisia), para. 487; Seventh Report, Case No. 56 (Uruguay), paras. 32-70; 17th Report, Case No. 104 (Iran), paras. 157-221; 24th Report, Case No. 121 (Greece), paras. 41-79; 27th Report, Case No. 159 (Cuba), para. 373; 53rd Report, Case No. 245 (Greece), para. 47; 70th Report, Case No. 228 (Republic of South Africa), para. 79; 72nd Report, Case No. 260 (Iraq), para. 87; 78th Report, Cases Nos. 397 and 400 (Spain), para. 300.

of trade union meetings constitutes an essential element of trade union rights, as well as to the principle that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof.

163. It appears from the evidence furnished by the complainants that on different occasions at Paarl, Mossel Bay and Montagu, as indicated in paragraph 160 above, the police attended trade union meetings organised by the union. The Committee, in the absence of any explanations by the Government, can only conclude that these facts constitute an infringement of the principle enunciated in the preceding paragraph.

164. The complainants have also furnished evidence to the effect that officers of their union, when visiting Mossel Bay, East London and Paarl, were questioned or detained and threatened by the police in respect of their trade union activities. In the view of the Committee these acts constituted an infringement of the right of a workers' organisation to organise its activities without interference on the part of the public authorities.

165. The Committee therefore recommends the Governing Body—

(a) to draw the attention of the Government to the importance which it has always attached to the fact that freedom from government interference in the holding or proceedings of trade union meetings constitutes an essential element of trade union rights, to the principle that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, and to the principle that workers' organisations should have the right to organise their activities without interference on the part of the public authorities;

(b) to express its view that the various instances of police interference cited by the complainants, as indicated in paragraphs 157 to 160 above, constituted infringements of the principles and rights enunciated in the preceding subparagraph.

* * *

166. In all the circumstances the Committee recommends the Governing Body—

(a) with regard to the allegations relating to the provisions concerning sabotage in the General Law Amendment Act, 1962—

(i) to deplore the fact that the Government of the Republic of South Africa has failed to furnish the further information requested of it, as indicated in paragraph 234 *(a)* of the 68th Report of the Committee cited in paragraph 75 above, on repeated occasions, or to reply to the several requests made to it to furnish observations on the grave cases of prosecution of trade unionists for sabotage—in three of which cases sentence of death was pronounced—referred to in paragraphs 79 and 80 above;

(ii) to point out in these circumstances that the Government has failed to refute the allegations that trade union officers and members are liable to be prosecuted for sabotage and sentenced to death under the General Law Amendment Act, 1962, in the event of their having performed any of the trade union activities indicated in paragraph 74 above;

(iii) to point out to the Government that, by virtue of the fact that strike action by African workers is always unlawful under the Native Labour (Settlement of Disputes) Act, 1953, and therefore wrongful under section 21 of the General Law Amendment Act, 1962, whereas strike action by other workers is not wrongful in this sense when it is not unlawful in terms of the Industrial Conciliation Act, 1956, or the Railways and Harbours Service Act, 1960, the provisions of section 21 are discriminatory against a particular race;

(iv) to point out to the Government that, in the case of other races, these provisions are discriminatory against the officers and members of non-registered organisations;

(v) to reaffirm its previous statement of its view that the provisions of section 21 (2) of the General Law Amendment Act, 1962, are inconsistent with generally accepted principles relating to freedom of association;

(b) with regard to the allegations relating to measures taken against trade union leaders and members under the Suppression of Communism Act and the General Law Amendment Act—

(i) to draw the attention of the Government to the importance which the Governing Body attaches to the principle that the public authorities should refrain from any interference which would restrict the right of occupational organisations to elect their representatives in full freedom and to organise their administration and activities;

(ii) to express the view that the provisions of the Suppression of Communism Act and the General Law Amendment Act which permit the Minister in his discretion to remove trade union leaders from trade union office and to disqualify them for such office in the future are incompatible with this generally accepted principle and have been consistently applied in practice in a manner incompatible with the said principle;

(iii) to draw the attention of the Government to the fact that in all cases in which trade union leaders are preventively detained these measures may involve a serious interference with the exercise of trade union rights and to the importance which the Governing Body attaches to the right of all detained persons to receive a fair trial at the earliest possible moment;

(iv) to express its view that the restriction of a person's movements to a limited area accompanied by a prohibition of entry into the area in which his trade union operates and in which he normally carries on his trade union functions is also inconsistent with the normal enjoyment of the right of association and with the exercise of the right to carry on trade union activities and functions, and should also be accompanied by adequate judicial safeguards applied within a reasonable period and, especially, by observance of the right of those concerned to receive a fair trial at the earliest possible moment;

(v) to draw the attention of the Government to its view that the provisions of the Suppression of Communism Act and the General Law Amendment Act which permit the Minister in his discretion to confine trade union leaders to a particular area, to prohibit them from entering the areas in which they normally carry on their trade union activities and to hold them in solitary confinement for a 90 days' period which can be renewed, without trial and even without charges being laid, are incompatible with the right to exercise trade union activities and functions and with the principle of fair trial enunciated above and have consistently been applied in a manner incompatible with the said right and the said principle;

(c) with regard to the allegations relating to the suppression of and restrictions on newspapers pursuant to the Suppression of Communism Act, the General Law Amendment Act and the Publications and Entertainments Bill—

(i) to reaffirm its view that the right to express opinions through the press is clearly one of the essential elements of trade union rights;

(ii) to express the view that if, as alleged, trade union newspapers are required to furnish a £10,000 bond, this would constitute, especially in the case of smaller unions, such an unreasonable condition for their existence as to be incompatible with the exercise of the foregoing right;

(iii) to express further its view that, if the provisions of the Publications and Entertainments Bill concerning " undesirable literature " have been or were to be enacted in the terms alleged, this would permit of such abusive interpretation in the discretion of the authorities as to be incompatible with the right of trade unions to express opinions through the press;

(d) with regard to the allegations relating to the banning of organisations under the General Law Amendment Act, to draw the attention of the Government to its view that the provisions in question, which appear to permit the competent authorities to ban any organisation which carries on any normally legal trade union activity if that activity has at any time figured in the programme of any trade union or other organisation which has been declared to be unlawful, are incompatible with the generally accepted principle that the public authorities should refrain from any interference which would restrict the right of workers' organisations to organise their activities and to formulate their programmes or impede the lawful exercise of this right;

(e) with regard to the conviction of Mr. Gaitsewe, Acting General Secretary of the South African Congress of Trade Unions, on a charge of illegally leaving the country contrary to the provisions of the Departure from the Union Regulation Act, to draw the attention of the Government to the importance which the Governing Body attaches to the right of national trade union organisations to affiliate with international organisations of workers and to its view that this right normally carries with it the right of representatives of national organisations to maintain contact with the international organisations with which they are affiliated and to take part in the work of those organisations;

(f) with regard to the allegations relating to the prohibition of strikes by African workers—

(i) to draw the attention of the Government to the fact that the right of workers and their organisations to strike as a legitimate means of defending their occupational interests is generally recognised;

(ii) to express its view that, where the right to strike is accorded to workers and their organisations, there should be no racial discrimination with respect to those to whom it is accorded;

(iii) to note once again that in the Republic of South Africa the existence of racial discrimination in respect of trade union rights is further confirmed by the fact that the nature and extent of the limitations placed on the right to strike differ widely as between employees covered by the Industrial Conciliation Act, 1956, and African workers;

(g) with regard to the allegations relating to anti-union propaganda carried on by government departments—

(i) to emphasise the importance which it attaches to the generally accepted principle that workers without distinction whatsoever should have the right to establish and join organisations of their own choosing without previous authorisation;

(ii) to draw the attention of the Government to its view that the extract from the March 1962 issue of *Umqondiso* cited by the complainants and set forth in paragraphs 141 and 142 above constituted an infringement of this principle on the part of the South African Railways and Harbours Administration;

(h) with regard to the allegations relating to police interference with the trade union activities of Mr. E. Davoren, Johannesburg Branch Secretary of the National Union of Laundering, Cleaning and Dyeing Workers—

(i) to emphasise the importance which it has always attached to the fact that the right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association, and to the principle that trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent, and that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof;

(ii) to express its view that the action taken by the police with regard to Mr. Davoren on 19 December 1962 constituted an infringement of the principle enunciated in the preceding clause and also of the principle that workers' organisations should have the right, without interference on the part of the public authorities, to organise their activities and formulate their programmes;

(i) to note that, for the reasons indicated in paragraph 113 above, the evidence before the Committee does not enable it to reach firm conclusions on the allegations relating to measures taken against trade unionists under the Trespass Act and Urban Area Act and legislation restricting entry into reserves;

(j) with regard to the allegations relating to interference in the activities of the Food and Canning Workers' Union (Cape Town);

(i) to draw the attention of the Government to the importance which it has always attached to the fact that freedom from government interference in the holding or proceedings of trade union meetings constitutes an essential element of trade union rights, to the principle that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, and to the principle that workers' organisations should have the right to organise their activities without interference on the part of the public authorities;

(ii) to express its view that the various instances of police interference cited by the complainants, as indicated in paragraphs 157 to 160 above, constituted infringements of the principles and rights enunciated in the preceding subparagraph.

Case No. 341 :

Complaint Presented by the Pan-Hellenic Federation of Textile Workers against the Government of Greece

167. This case was examined by the Committee at its 36th Session, held in Geneva in February 1964. At that time the Committee submitted to the Governing Body an interim report setting forth its final conclusions in respect of some of the allegations in the case, whilst as regards others it recommended the Governing Body to seek additional information from the Government. These conclusions and recommendations, contained in the Committee's 75th Report[1], were adopted by the Governing Body at its 159th Session, on 10 July 1964.

168. The paragraphs which follow deal only with the allegations which remain outstanding. These allegations relate to—

(a) infringements of the right of collective bargaining;

(b) governmental interference in connection with collective agreements; and

(c) the composition of arbitration tribunals.[2]

169. Greece has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Allegations relating to Infringements of the Right of Collective Bargaining

170. The allegations made in this respect by the complainants and the Government's observations thereon were analysed in detail in paragraphs 47 to 71 of the Committee's 75th Report. It will therefore suffice to recall briefly below the outlines of this aspect of the case.

171. These revealed that there were two trade union organisations claiming to represent the workers in the textile industry: on the one hand, the complaining organisation—the Pan-Hellenic Federation of Textile Workers—and, on the other hand, the Federation of Greek Textile Workers. According to the complainants the latter organisation had only about 1,000 members, whereas they themselves had a membership of 12,000.

[1] See paras. 42-107.

[2] See 75th Report, paras. 47-71 and 107 *(b)*, 75-79 and 107 *(c)*, and 83-87 and 107 *(d)*, respectively.

172. It may also be seen from the information available to the Committee at that time that both the trade union organisations in question were " representative " of the workers concerned, a decision of the competent judge dated 6 November 1962 having recognised both the complaining organisation and the Federation of Greek Textile Workers as representative organisations.

173. Having begun negotiations with the employers with a view to the revision of the collective agreement in force, each of the two organisations submitted a different set of claims. Those submitted by the complaining organisation were rejected by the employers. Those put forward by the Federation of Greek Textile Workers, on the other hand, were acceded to by the employers, who concluded with that organisation a new collective agreement which was approved by the Minister of Labour.

174. The complaining organisation, claiming that it had been thrust on one side, thereupon requested the Minister of Labour to submit the case to an arbitration tribunal. The Minister refused to do so, justifying his refusal by the argument that having approved one collective agreement he could not approve another.

175. In order to settle the matter both the organisations concerned appealed to the Council of State. Faithful to its invariable practice, the Committee recommended the Governing Body at its February 1964 Session to request the Government to supply the text of the Council of State's decision as soon as it was pronounced.

176. With its reply dated 27 July 1965 the Government furnishes the text of the Council of State's decision, together with that of a decision of the first-instance arbitration tribunal of Piraeus as to the representative capacity of the two organisations concerned.

177. The Council of State noted that by its decision of 1962 (see paragraph 172 above) the first-instance arbitration tribunal of Athens had ruled that both the organisations involved were representative. The Council of State went on to say, however, that the arbitration tribunal was not empowered to take such a decision, its task being to determine which of the two organisations was *the more* representative and thereby qualified to represent the workers in the trade in collective negotiations. It therefore annulled the decision.

178. The question of the representative capacity of the two organisations concerned was then brought before the first-instance arbitration tribunal of Piraeus, which, at a public hearing on 16 July 1964, decided on the basis of the evidence submitted to it that the Federation of Greek Textile Workers, with its 17 affiliated unions representing a total of 30,043 members, was the more representative of the trade, the Pan-Hellenic Federation of Textile Workers being composed of only 11 unions with a total of 21,040 members.

179. The above-mentioned observations of the arbitration tribunal of Piraeus show that, contrary to the allegations made by the complaining organisation (see paragraph 171 above), that organisation is not the most representative of the textile workers. Moreover, since it is clear from the Council of State's decision that only the organisation the most representative of the textile workers is qualified to negotiate collective agreements, the Committee considers that the complaining organisation has not furnished sufficient proof in support of its allegations, and it therefore recommends the Governing Body to decide that this aspect of the case does not call for further examination.

Allegations relating to Governmental Interference in connection with Collective Agreements

180. The complainants alleged that the validity of collective agreements was decided at the discretion of the Ministers of Labour and Co-ordination, which, they said, were empowered to modify the terms of such agreements.

181. At its February 1964 Session the Committee noted that under section 20 (2) of Act No. 3239 of 1955, in fact, " in the event of any collective agreement . . . being contrary

to the general economic or social policy of the Government, or to any such policy in particular matters, the Ministers of Co-ordination and of Labour may ... amend or withhold approval of all or part of such agreement ... by means of a joint order (with reasons) ...".

182. In its observations the Government pointed out that this provision of the law, dating from 1955, had been introduced to meet the urgent need that existed at the time to ensure the economic and financial stability of the country. As the situation had greatly changed meanwhile, it had been decided to amend the law in this respect, and a Bill for this purpose had been laid before Parliament, but, continued the Government, the Bill had not been passed owing to a change of government.

183. At its February 1964 Session the Committee took the view that before examining further this aspect of the case it would be advisable to ascertain the Government's intentions concerning the amendments to the legislation that had been contemplated by its predecessor. For this reason it recommended the Governing Body to request the Government to be good enough to inform it whether it intended to alter the section of Act No. 3239 referred to above and, if so, to specify the nature of the alterations contemplated or made.

184. In its reply the Government states that the draft Bill for the Labour Code, the text of which has already been submitted to the I.L.O., provides for a new system of collective bargaining and arbitration, and amends several provisions of Act No. 3239.

185. If reference is made to the text of the draft Bill, it would appear that under section 327, paragraph 2, the Minister of Labour is empowered, in certain circumstances which are not specified, to refuse to allow a collective agreement to be filed.

186. The Committee considers that if such a refusal may be based on grounds only of errors of pure form the provision in question is not in conflict with the principle of voluntary negotiation laid down by the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Greece. The Committee feels, on the other hand, that if this provision implies that the filing of a collective agreement may be refused on grounds such as those set forth in section 20 of Act No. 3239, as quoted in paragraph 181 above, it amounts to a requirement that prior approval be obtained before a collective agreement can come into force, which infringes the principle of voluntary negotiation laid down by the aforementioned Convention. In this connection the Committee feels compelled, as on a number of occasions in the past[1], to emphasise the importance that should be attached to the principle that the public authorities should refrain from any interference which would restrict the right of trade unions to seek, through collective bargaining or other lawful means, to improve the living and working conditions of those whom they represent, or impede the lawful exercise of this right.

187. Having said this, the Committee considers none the less that its objections to the requirement that prior approval of collective agreements be obtained from the Government do not signify that ways could not be found of persuading the parties to collective bargaining to have regard voluntarily in their negotiations to considerations relating to the economic or social policy of the Government and the safeguarding of the general interest. But to achieve this it is necessary first of all that the objectives to be recognised as being in the general interest should have been widely discussed by all parties on a national scale through a consultative body such as the National Social Policy Advisory Board, in accordance with the principle laid down by the Consultation (Industrial and National Levels) Recommendation,

[1] See Third Report, Case No. 1 (Peru), para. 20; Sixth Report, Case No. 12 (Argentina), paras. 237-240, and Case No. 55 (Greece), para. 923; 11th Report, Case No. 51 (Saar), para. 55; 13th Report, Case No. 62 (Cuba), para. 83; 15th Report, Case No. 102 (Union of South Africa), para. 164; 25th Report, Case No. 151 (Dominican Republic), para. 312; 27th Report, Case No. 143 (Spain), para. 169; 30th Report, Case No. 143 (Spain), para. 124; 52nd Report, Case No. 202 (Thailand), para. 158; 65th Report, Case No. 266 (Portugal), para. 65.

1960 (No. 113). It might also be possible to envisage a procedure whereby the attention of the parties could be drawn, in certain cases, to the considerations of general interest which might call for further examination of the terms of agreement on their part. However, in this connection, persuasion is always to be preferred to constraint. Thus, instead of making the validity of collective agreements subject to governmental approval, it might be provided that every collective agreement filed with the Ministry of Labour would normally come into force a reasonable length of time after being filed; if the public authority considered that the terms of the proposed agreement were manifestly in conflict with the economic policy objectives recognised as being desirable in the general interest, the case could be submitted for advice and recommendation to an appropriate consultative body, it being understood, however, that the final decision in the matter rested with the parties to the agreement.

188. Since the Government is in the process of revising its legislation on the subject, the Committee hopes that the foregoing observations and suggestions will be taken into account, and therefore recommends the Governing Body to draw the Government's attention thereto.

Allegations relating to the Composition of Arbitration Tribunals

189. The complainants alleged that Act No. 3239 provided for compulsory arbitration by tribunals without allowing the organisations concerned to appoint their representatives to them, since the workers' representatives were chosen by the Minister of Labour from among representatives nominated exclusively by the General Confederation of Greek Workers (C.G.T.).

190. In its reply the Government stated that workers' representatives on arbitration tribunals were not chosen by the authorities from a list of persons nominated by C.G.T. but appointed directly by that organisation, under section 10 (1) of Act No. 3239, as the most representative organisation of the workers.

191. At its February 1964 Session the Committee observed that while the workers' representatives on arbitration tribunals were not appointed by the Government on the proposal of C.G.T., but directly by that organisation, it was none the less true that, by the Act itself, it was for this organisation alone to decide who should be the workers' representatives on arbitration tribunals. But it was common knowledge, went on the Committee, that side by side with C.G.T. there were other workers' federations in Greece. Without wishing to cast any doubt on the representative character of C.G.T., the Committee considered that it would be better able to form an informed opinion if it possessed precise information on the numerical strength and the representative character of the various main trade union organisations in Greece. It therefore recommended the Governing Body to request this information from the Government.

192. In its reply the Government makes no allusion to this aspect of the case. If one refers to the draft Bill for the Labour Code of which mention was made earlier, however, it will be seen that section 356 embodies the concept that the most representative unions should provide members for the National Arbitration Board. It will also be seen, however, that there is no provision in the draft Bill going into more detail on this point, and that section 356 leaves it to the discretion of the Minister of Labour to decide which employers' and workers' organisations are to be considered the most representative.

193. The Committee considers that in such circumstances it is important that the State should not intervene other than to give formal recognition to an existing situation, and that in assessing that existing situation—i.e. in determining whether an organisation is representative—it is indispensable that any decision should be based on objective criteria laid down in advance by an independent body, and founded in their turn on grounds which allow for no possibility of abuse.

194. Here again, for the same reason as given in paragraph 188 above, the Committee recommends the Governing Body to draw the Government's attention to the observations contained in the preceding paragraph.

* * *

195. As regards the case as a whole the Committee recommends the Governing Body—

(a) to decide, for the reasons indicated in paragraph 179 above, that the allegations relating to infringements of the right of collective bargaining do not call for further examination;

(b) with respect to the allegations relating to governmental interference in connection with collective agreements, to draw the Government's attention to the observations and suggestions contained in paragraphs 186 and 187 above;

(c) with respect to the allegations relating to the composition of arbitration tribunals, to draw the Government's attention to its view that, in determining whether an organisation is representative for the purpose of participation in the membership of such tribunals, it is important that the State should not intervene other than to give formal recognition to an existing situation, and that it is indispensable that any decision should be based on objective criteria laid down in advance by an independent body, and founded in their turn on grounds which allow for no possibility of abuse.

Case No. 406:

Complaint Presented by the British Guiana Trades Union Council against the Government of the United Kingdom in respect of British Guiana

196. The complaint of the British Guiana Trades Union Council was addressed directly to the I.L.O. on 3 July 1964. On 29 July 1964 the Secretary-General of the United Nations transmitted to the I.L.O. a copy of the complaint which had been addressed to him on 21 July 1964 by the International Confederation of Free Trade Unions. Observations on the complaint were furnished by the Government of the United Kingdom by a communication dated 15 January 1965. The foregoing documents were before the Committee at its meeting in May 1965, when the Committee submitted an interim report to the Governing Body in paragraphs 305 to 323 of its 83rd Report, which was approved by the Governing Body on 28 May 1965, in the course of its 162nd Session.

197. The Government of the United Kingdom has ratified the Right of Association (Agriculture) Convention, 1921 (No. 11), the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and has declared their provisions to be applicable, without modification, to British Guiana. The Government of the United Kingdom has also ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and has declared it applicable to British Guiana with modifications.

198. The complaint relates to events alleged to have taken place in British Guiana prior to the election of the present Government in December 1964 and is directed against the former Government, in which the People's Progressive Party (P.P.P.) held power, the Progressive Youth Organisation (P.Y.O.) connected with that party, and what the complainant refers to as the " government and party sponsored and financed trade union, known as the Guiana Agricultural Workers' Union (G.A.W.U.) ". According to the allegations, the G.A.W.U. President, Mr. Harry Lall, was a P.P.P. member of the Legislative Assembly; he was detained by the Governor on 13 June 1964, since which date Mr. Macie Hamid, another P.P.P. legislator but not a member of G.A.W.U., had acted as its President, while another non-union member, Mr. George Henry, who was removed from the legislature by the courts, became its Vice-President.

199. The allegations were analysed in full in paragraphs 308 to 316 of the Committee's 83rd Report. They may be more briefly summarised as follows. Since a stoppage of work

began at Leonora estate on 17 February 1964, Ministers and members of the former Government, P.P.P., P.Y.O. and G.A.W.U. are alleged to have waged a campaign of terror against sugar workers belonging to the Man-Power Citizens' Association (M.P.C.A.) affiliated to the complaining organisation, in order to prevent them working, 24 workers being murdered and many injured and 134 workers' houses being burnt and 540 more destroyed or seriously damaged. All these events were said to have flowed from the fact that G.A.W.U., backed by the former Government, called a series of strikes in order to force the sugar employers to recognise them as bargaining agent instead of M.P.C.A., which had a majority membership. At one stage 4,000 workers were terrorised into leaving M.P.C.A. but 3,000 of them rejoined, whereupon the former Government is alleged to have embarked on a plan to destroy factories and sugar crops and enforce work stoppages, so that protection had to be given by United Kingdom troops. The complainants describe the various methods employed by the agitators. From 19 February 1964 onwards, the four unions (including M.P.C.A.) having bargaining agreements with the Sugar Producers' Association, as well as the Chamber of Commerce, pressed the Governor to bring in United Kingdom troops and demanded the issue of emergency regulations, a course which the former Minister of Home Affairs, Mrs. Jagan, refused to adopt until 22 May 1964. On 16 May 1964 a commission of inquiry had been set up but, as it consisted of P.P.P. sympathisers, the complainants challenged it in the courts and it adjourned *sine die*. On 13 June 1964 the Governor assumed emergency powers.

200. In a communication dated 15 January 1965 the Government of the United Kingdom stated that a new government had been formed in British Guiana following elections in December 1964 and that the Ministers mentioned in the allegations were no longer in office. The new Government in British Guiana, regretting the failure of the previous Government to furnish observations, said that it could not itself offer satisfactory comments without a detailed investigation, which would not, in view of the lapse of time, produce conclusive evidence, but that it intended to promote the implementation of the applicable provisions of the Conventions relating to freedom of association.

201. At its meeting in May 1965 the Committee recalled that in earlier cases[1] it has taken the view, when it has had before it allegations relating to violations of trade union rights by an earlier government, that, although the government in power could obviously not be held responsible for events which took place under its predecessor, it is clearly responsible for any continuing consequences which they may have had since its accession to power.

202. The Committee observed that, in the absence of any observations on the merits of the matters alleged, it was not possible for it to say whether such continuing consequences of the events alleged still existed. For example, it was still unaware of the relative positions and relationships of M.P.C.A. and G.A.W.U. and the Sugar Producers' Association; it did not know what might have ensued from the setting up of a commission of inquiry by the previous Government; and it did not know, in the event of the allegations being well founded, what steps, if any, the present Government might have taken or intended to take to indemnify the dependants of M.P.C.A. members stated to have been murdered because they refused to join a strike encouraged by the previous Government itself or to indemnify workers whose homes were destroyed. The Committee recalled that, in Case No. 260 relating to Iraq, where the observations of the Government concerned had been insufficient for the Committee to be able to decide whether events occurring under a previous government had continued to have consequences under a successor government, the Committee had requested the Government concerned to furnish fuller observations before it formulated its conclusions to the Governing Body.[2]

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[1] See Second Report, Case No. 13 (Bolivia), para. 149; 25th Report, Case No. 129 (Peru), para. 15; 28th Report, Case No. 146 (Colombia), paras. 217 and 222-223; 56th Report, Case No. 159 (Cuba), paras. 78 and 79; 72nd Report, Case No. 260 (Iraq), para. 78; 78th Report, Case No. 316 (Ecuador), para. 108.

[2] See 72nd Report, para. 78.

203. Further, having before it information to the effect that two members of G.A.W.U. had been charged with offences of sedition committed on 7 March and 2 April 1964, the Committee took the view that the judgments of the courts inquiring into these incidents might afford information as to the general situation then existing which would be of assistance to the Committee in formulating its conclusions.[1]

204. In these circumstances the Committee, in paragraph 323 of its 83rd Report, recommended the Governing Body to request the Government to be good enough to furnish fuller observations on the matters alleged in the complaint and also to furnish copies of the judgments given in the proceedings against the two members of G.A.W.U. referred to above.

205. These recommendations were approved by the Governing Body on 28 May 1965, in the course of its 162nd Session, and the request for further observations and information was conveyed to the Government of the United Kingdom by a letter dated 3 June 1965. The Government furnished further information by a communication dated 11 October 1965 enclosing observations prepared by the present Government of British Guiana.

206. The Government of British Guiana states once again that it would not be possible to offer satisfactory comments on the individual matters referred to in the complaint by the British Guiana T.U.C. without a detailed investigation which would not, in view of the lapse of time, produce conclusive evidence. It says that it is not aware of any continuing consequences and wishes to state categorically that there has been no interference by the present Government with the operation of the trade union movement in the country contrary to the Right of Association (Agriculture) Convention, 1921 (No. 11), the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), or to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), as applied with modifications.

207. The present Government of British Guiana gives the following further information.

208. G.A.W.U. failed to gain recognition but instructed its members to return to work on 27 July 1964. On 24 August 1964 G.A.W.U. renewed its application for recognition because the registration of M.P.C.A. had been cancelled by the Registrar of Trade Unions on the ground that it had wilfully violated section 35 of the Trade Unions Ordinance. M.P.C.A. appealed to the court, which ruled, in September 1964, that the cancellation of registration had been " wrongful, mistaken, *ultra vires* and void ". On 19 September 1964 the Sugar Producers' Association informed G.A.W.U., accordingly, that its recognition of M.P.C.A. continued unchanged. On 27 February 1965 G.A.W.U. applied for recognition to two individual sugar companies, but they replied that questions of that kind could be dealt with only by the Sugar Producers' Association. G.A.W.U. made no further demand for recognition. It appears that over 50 per cent. of sugar industry employees are members of M.P.C.A.

209. The appointment of the commission of inquiry set up by the previous Government (see paragraph 199 above) was revoked by the Governor in February 1965, as advised by the present Government.

210. On the question of indemnification of those persons who had suffered during the disturbances which followed the strike, the present Government has appointed a Committee comprising 12 persons under the chairmanship of Sir Stanley Gomes, a retired Chief Justice, with the following terms of reference: " to examine generally the conditions of persons displaced and otherwise affected by the disturbances in 1962, 1963 and 1964, and to determine and advise to what extent such persons should be assisted to return to normal life ".

211. The two members of G.A.W.U. prosecuted for sedition were acquitted on 30 July 1965.

[1] See 83rd Report, para. 322.

212. It appears to the Committee from the wording of the particulars of the offences that copies of the proceedings might make available information of assistance to it in its examination of the factual allegations.

213. In these circumstances the Committee recommends the Governing Body—

(a) to note that the present Government of British Guiana has again stated through the Government of the United Kingdom that it could not comment satisfactorily on the individual matters referred to in the complaint without a detailed investigation which would not, in view of the lapse of time, produce conclusive evidence;

(b) to draw attention to the fact that allegations to the effect that, in the course of the strike called by G.A.W.U. and stated to have been backed by the previous Government of British Guiana, 24 non-strikers were murdered and many injured and 134 members' houses were burnt and 540 more were destroyed or seriously damaged have not been refuted either by the previous Government or the present Government of British Guiana;

(c) to note that the present Government of British Guiana has set up a committee whose terms of reference are to examine generally the conditions of persons displaced and otherwise affected by the distubances in 1962, 1963 and 1964 and to determine and advise to what extent such persons should be assisted to return to normal life;

(d) to express the hope that the question of indemnification of the persons affected, or their dependants, as the case may be, by the events referred to in subparagraph *(b)* above will be examined by the committee now set up by the present Government of British Guiana;

(e) to note that the cancellation of the registration of the Man-Power Citizens' Association during the term of office of the previous Government has now been set aside by the courts as having been " wrongful, mistaken, *ultra vires* and void " and that the union continues to be recognised by the British Guiana Sugar Producers' Association.

Case No. 411 :

Complaints Presented by the Latin American Confederation of Christian Trade Unionists and the International Federation of Christian Trade Unions against the Government of the Dominican Republic

214. The complaint of the Latin American Confederation of Christian Trade Unionists (C.L.A.S.C.) is contained in a communication dated 19 August 1964 and that of the International Federation of Christian Trade Unions in a communication dated 20 August 1964. On 25 August 1964 I.F.C.T.U. sent a new communication containing additional information. After these had been forwarded to it, the Government sent its replies on 16 November 1964 and 11 March 1965. The allegations before the Committee relate especially to the provisions of the existing legislation and to their application in practice.

215. The Dominican Republic has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

216. In its communication of 19 August 1964 C.L.A.S.C. reported that the Christian trade union leaders Jesús Caminero, Henry Molina, Porfirio Zarzuela, Rosendo López and others had been imprisoned on account of a general strike which had been declared. The I.F.C.T.U. communication of 20 August 1964 repeated this information and reported the arrest of the main leaders of the Autonomous Confederation of Christian Trade Unions (C.A.S.C.). In its additional information I.F.C.T.U. reported that Mr. Zarzuela had been sentenced to a term of imprisonment, that 40 leaders had been arrested and that the police had raided the premises of certain organisations.

217. In its communication of 16 November 1964 the Government reported that on being notified of the complaints lodged by these trade union organisations it had ordered an inquiry into the facts connected with the detention of the persons named. No final judgment had so far been given in the case, since the final hearing was not due to take place until 28 November 1964, and the Government promised to send the text of the judgment given. By its communication of 11 March 1965 the Government sent the text of the judgment of 25 August 1964, given against Messrs. Luis H. Molina Peña, José de Jesús Caminero, Felipe Alcántara Valdez, Juan B. Ramírez Bello and Rosendo López R. by the Fourth Criminal Chamber of the National District, together with the grounds therefor, the text of the judgment of 28 August 1964 given by the labour court, together with the grounds therefor, and a certificate to the effect that the persons sentenced on 25 August 1964 had brought an appeal against the judgment in question.

218. As is apparent from the text of the judgment given by the Criminal Chamber on 25 August 1964, when the authorities learned that a number of trade union leaders were inciting the workers to strike the matter was investigated and the leaders in question were officially charged with violating sections 103 and 106 of the Penal Code (incitement to commit a crime), Act No. 5915 respecting illegal strikes and Act No. 6132 respecting the expression and dissemination of opinions. On 25 August 1964 the judicial hearing took place and the parties attended to state their case. In the view of the court it appeared from the statements of the accused that they had promoted an unlawful strike, in violation of the Acts and provisions specified. Finally, in the operative part of the judgment, the accused were found guilty of violating Act No. 5915 respecting illegal strikes and sentenced to pay a fine, substantial extenuating circumstances being taken into consideration. Act No. 5915 provides that all strikes declared for political reasons or on the basis of mere solidarity with other workers, and strikes declared in violation of the provisions of section 374 of the Labour Code, are illegal.

219. The judgment given on 28 August 1964 by the labour court found that the strike in which the said persons participated had been declared in violation of the provisions of section 374 of the Labour Code. Under section 373 of that Code strikes declared in violation of section 374, which prescribes the procedures to be followed before a strike is declared, are illegal. According to information furnished by the Secretariat of State for Labour, none of the requirements prescribed in section 374 was satisfied. On 24 August 1964 the accused were summoned to the hearing held to determine whether the strike was legal, but failed to appear. Accordingly, and having regard to the precedents of fact and of law, the strike in which the Autonomous Confederation of Christian Trade Unions participated, *inter alia*, was declared illegal.

220. Section 374 of the Labour Code reads as follows:

Before any strike may be declared the workers concerned shall submit to the Secretariat of State for Labour a statement declaring—

(1) that the strike has as its object the settlement of an economic dispute or the improvement of working conditions;

(2) that the economic dispute in question has been submitted without success to administrative conciliation procedure and that the parties (or one of the parties) have not appointed arbitrators or have not notified the appointment of arbitrators within the given time in conformity with the provisions of section 636;

(3) that more than 60 per cent. of the employees of the undertaking or undertakings concerned have voted in favour of the strike;

(4) that the services affected by the proposed strike are not public services of permanent utility.

No strike may be declared until at least 15 days have elapsed after the date of the statement submitted by the representatives of the organisation to the Secretary of State for Labour containing the above points.

. . . . . .

Within 48 hours of the submission of the statement the said Secretariat of State shall notify the employer party of the statement, forwarding one of the copies of the statement.

221. The Committee notes that the case involves two aspects of the same problem, which derives fundamentally from the legislation in force in the Dominican Republic respecting collective disputes and strikes. One is the criminal aspect and the other is the purely industrial aspect, though both are closely related.

222. With regard to the industrial aspect the Committee points out that on a previous occasion it was called upon to examine the legislation of the Dominican Republic on collective labour disputes and the right to strike.[1] Notwithstanding certain amendments to that legislation, the Committee notes that the rules applied are basically the same. On that occasion the Committee had felt that the cumulative effect of the various provisions applicable in this matter, especially the provision that a trade union must, before declaring a strike, satisfy the government authorities of the economic character of the dispute, a provision which may well become indistinguishable in practice from a requirement of prior government authorisation, amounts to a denial of the right to strike, and for that reason recommended the Governing Body to draw the Government's attention to the desirability of its giving further consideration to the matter.[2]

223. On the other hand, with a view to stating still more clearly its observations on the relevant legislation, the Committee finds it necessary to point out that, under section 374 of the Labour Code, one of the requirements to be satisfied before a strike may be declared is that one of the parties to the dispute has not appointed arbitrators after the administrative conciliation procedure. In such event, according to section 636, the arbitrators may be nominated ex officio, i.e. a dispute may be taken to arbitration in any case. However, as section 377 seems to imply, a strike declared after the commencement of arbitration proceedings would be illegal. On the other hand, according to section 656, the award, once given, has the effect of a collective agreement and its application is compulsory. Taken together, these provisions may be interpreted as absolutely prohibiting the right to strike.

224. The Committee has always maintained the principle that allegations respecting the right to strike are within its competence in so far, but only in so far, as they affect the exercise of trade union rights [3] and has pointed out on a number of occasions [4] that workers and their organisations are usually granted the right to strike as a legitimate means of defending their occupational interests. In this connection the Committee has emphasised the importance it attaches, where strikes are prohibited or are subject to restrictions, in essential services, to the establishment of adequate safeguards to protect the interests of the workers, who are thus deprived of an essential means of defending their occupational

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[1] See 25th Report, Case No. 151.

[2] Ibid., para. 319 *(f)*.

[3] See 28th Report, Case No. 143 (Spain), para. 109, Cases Nos. 141, 153 and 154 (Chile), para. 202, and Case No. 169 (Turkey), para. 297; 47th Report, Case No. 143 (Spain), para. 66; 58th Report, Case No. 221 (United Kingdom-Aden), para. 109; 65th Report, Case No. 266 (Portugal), para. 77; 66th Report, Case No. 294 (Spain), para. 481; 70th Report, Case No. 266 (Portugal), para. 159; 71st Report, Case No. 173 (Argentina), para. 67; 72nd Report, Case No. 211 (Canada), para. 27; 74th Report, Case No. 363 (Colombia), para. 220.

[4] See Second Report, Case No. 28 (United Kingdom-Jamaica), paras. 65-70, and Case No. 32 (United Kingdom-Uganda), paras. 87-92; Fourth Report, Case No. 5 (India), paras. 18-51; Sixth Report, Case No. 117 (India), paras. 723-726, and Case No. 50 (Turkey), paras. 862-865; 12th Report, Case No. 60 (Japan), paras. 10-83; 25th Report, Case No. 152 (United Kingdom-Southern Rhodesia), paras. 179-248; 26th Report, Case No. 136 (United Kingdom-Cyprus), paras. 112-145; 28th Report, Cases Nos. 141, 153 and 154 (Chile), para. 202; 30th Report, Case No. 177 (Honduras), para. 76, Case No. 181 (Ecuador), para. 94; Case No. 143 (Spain), para. 130, and Case No. 172 (Argentina), para. 178; 36th Report, Case No. 178 (United Kingdom-Aden), para. 56; 47th Report, Case No. 143 (Spain), para. 66; 49th Report, Case No. 229 (Union of South Africa), para. 92, and Case No. 192 (Argentina), para. 168; 54th Report, Case No. 179 (Japan), para. 54; 58th Report, Case No. 221 (United Kingdom-Aden), para. 109, and Case No. 192 (Argentina), para. 447; 65th Report, Case No. 266 (Portugal), para. 77; 66th Report, Case No. 294 (Spain), para. 481; 69th Report, Case No. 285 (Peru), para. 63; 70th Report, Case No. 266 (Portugal), para. 159; 74th Report, Case No. 363 (Colombia), para. 220.

interests [1], and has pointed out that such restrictions should be accompanied by adequate, impartial and speedy conciliation and arbitration procedures, in which the parties concerned may participate at every stage[2], and that the awards given should in all cases be binding on both parties. The Committee explained in this connection that these principles do not apply to the absolute restriction of the right to strike, but to the restriction of that right in the essential services or in the civil service, in which case adequate guarantees should be provided to safeguard the interests of the workers.[3]

225. The Committee observes that in a report sent by the Government of the Dominican Republic [4] on the application of Convention No. 87 it is stated that all the requirements and formalities which the Labour Code imposes on trade unions before a strike may be declared are purely for the information of the Secretariat of State for Labour, which allows them to use its good offices in an endeavour to achieve a settlement through conciliation, and that the requirements are never laid down with the idea that the Secretariat should come to any kind of decision as to whether the workers do in fact wish to strike or not, or as to the nature of the strike, such decisions falling exclusively within the competence of the labour courts. The Government adds that there has been no case where workers have been restricted in their freedom to determine whether or not to strike, although they have been notified on many occasions that they must follow the procedure laid down in the Labour Code if the strike is to be declared lawful.

226. The Committee feels that the legal provisions cited seem to admit of the interpretation that it is possible to prohibit the exercise of the right to strike in all cases by declaring a strike illegal, even though this is done by a court. It is also possible that the existence of seemingly contradictory provisions respecting the right to strike might give rise to uncertainty.

227. The Committee accordingly recommends the Governing Body to draw the Government's attention once again to the desirability of re-examining the provisions governing strikes in the light of the considerations set forth in paragraphs 224 and 226 above, so as to establish sufficiently simple and speedy procedures prior to a strike and thereby ensure that workers are not, in practice, deprived of one of the essential means at their disposal for furthering their demands.

228. With regard to the criminal aspect of this case the Committee notes that, under the legislation in force, persons found guilty of promoting an illegal strike are liable to imprisonment for a period between 15 days and six months, as prescribed in Act No. 5915. In this connection the Committee notes that, according to the information furnished by the Government, the persons concerned were sentenced for offences under this Act only, and that fines were imposed having regard to substantial extenuating circumstances.

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[1] See First Report, Case No. 32 (United Kingdom-Uganda), paras. 87-92; Fourth Report, Case No. 29 (United Kingdom-Kenya), paras. 137-139; Sixth Report, Case No. 11 (Brazil), para. 75, and Case No. 73 (United Kingdom-British Honduras), para. 72; 22nd Report, Case No. 148 (Poland), paras. 66-106; 24th Report, Case No. 136 (United Kingdom-Cyprus), paras. 122-145; 27th Report, Case No. 143 (Spain), paras. 85-187; 30th Report, Case No. 172 (Argentina), para. 178; 54th Report, Case No. 179 (Japan), para. 54; 58th Report, Case No. 192 (Argentina), para. 447; 65th Report, Case No. 266 (Portugal), para. 77; 69th Report, Case No. 285 (Peru), para. 63; 70th Report, Case No. 266 (Portugal), para. 159; 74th Report, Case No. 363 (Colombia), para. 220.

[2] See 25th Report, Case No. 151 (Dominican Republic), para. 305; 35th Report, Case No. 172 (Argentina), para. 179; 54th Report, Case No. 179 (Japan), para. 56; 56th Report, Case No. 192 (Argentina), para. 448; 65th Report, Case No. 266 (Portugal), para. 77; 69th Report, Case No. 285 (Peru), para. 63; 70th Report, Case No. 266 (Portugal), para. 159; 74th Report, Case No. 363 (Colombia), para. 220.

[3] See 26th Report, Cases Nos. 134 and 141 (Chile), para. 76; 30th Report, Case No. 172 (Argentina), para. 178; 54th Report, Case No. 179 (Japan), para. 60; 58th Report, Case No. 192 (Argentina), para. 447; 69th Report, Case No. 285 (Peru), para. 63, and Case No. 363 (Colombia), paras. 220 and 241; 76th Report, Case No. 294 (Spain), paras. 285 and 286.

[4] See *Summary of Reports on Ratified Conventions (Articles 22 and 35 of the Constitution)*, Report III (Part I), International Labour Conference, Geneva, 1964 (Geneva, I.L.O., 1964), p. 172.

229. The Committee therefore recommends the Governing Body, while noting that the accused persons are not being detained and that they have merely been fined, to draw the Government's attention to the fact that the restrictive nature of the provisions governing strikes and the possible consequence of the procedure to be followed before a strike may be declared appear to make it possible for strikers to be liable in all cases to penal sanctions, which would imply a violation of the provision of Convention No. 87 that " 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 the Convention (Article 8, paragraph 2), and especially the right of workers' organisations to " organise their administration and activities and to formulate their programmes " (Article 3).

230. In all the circumstances, while reaffirming the principle that allegations respecting the right to strike are within its competence, in so far—but only in so far—as they affect the exercise of trade union rights, the Committee recommends the Governing Body—

(a) to draw the Government's attention once again to the desirability of re-examining the provisions respecting strikes in the light of the considerations set forth in paragraphs 224 and 226 above, so as to establish a simplified procedure prior to the declaration of a strike and thereby ensure that the workers are not deprived in practice of one of the essential means at their disposal for furthering their demands ;

(b) while noting that the accused persons are not being detained and that they have merely been fined, to draw the Government's attention to the fact that the restrictive nature of the provisions governing strikes and the possible consequence of the procedure to be followed before a strike may be declared appear to make it possible for strikers to be liable in all cases to penal sanctions, which would imply a violation of the provisions of Convention No. 87 that " 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 the Convention (Article 8, paragraph 2), and especially the rights of workers' organisations to " organise their administration and activities and to formulate their programmes " (Article 3).

Case No. 415 :

Complaint Presented by the International Federation of Commercial, Clerical and Technical Employees and the Commercial, Technical and Allied Workers' Union of St. Vincent against the Government of the United Kingdom in respect of St. Vincent

231. The International Federation of Commercial, Clerical and Technical Employees, on 2 October, 24 November and 15 December 1964, submitted various communications received from the Commercial, Technical and Allied Workers' Union of St. Vincent, which contain a series of allegations respecting the violation of freedom of association in St. Vincent. These communications, together with the observations thereon made by the Government of St. Vincent and forwarded by the United Kingdom on 20 January 1965, were considered by the Committee at its meeting in May 1965, when the Committee submitted to the Governing Body the interim report contained in paragraphs 41 to 62 of its 84th Report, which was approved by the Governing Body on 24 June 1965, in the course of its 162nd Session. This report contained a request for further information on certain points, and was brought to the notice of the Government of the United Kingdom by a letter dated 9 July 1965. By a letter dated 6 October 1965 the Government of the United Kingdom forwarded further observations prepared by the Government of St. Vincent.

232. The Government of the United Kingdom has ratified the Right of Association (Agriculture) Convention, 1921 (No. 11), the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and has declared that their provisions are applicable without modification to St. Vincent. It has also ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and has declared it applicable with

modifications to St. Vincent. These modifications relate to the composition of the committee of management of a trade union, the taking of decisions by secret ballot in certain cases, and the use to which trade union funds may be put.

Allegations relating to the Non-Recognition of the Commercial, Technical and Allied Workers' Union of St. Vincent for the Purpose of Collective Bargaining

233. These allegations and the Government's observations thereon were analysed at length, when the Committee met in May 1965, in paragraphs 43 to 56 of the Committee's 84th Report. The Committee recommended the Governing Body, in paragraph 62 *(a)* of its 84th Report—

. . . . . .

(i) to draw the Government's attention to the provision contained in Article 3 of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), that all practicable measures shall be taken to assure to trade unions which are representative of the workers concerned the right to conclude collective agreements with employers or employers' organisations; and also the provision contained in Article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), that measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

(ii) to stress the importance it attaches to the principle that government authorities, in their capacity as employers, should recognise for the purposes of collective bargaining the representative workers' organisations; and

(iii) to draw the attention of the Government to its view that the attitude adopted by the authorities in the present case in not taking steps to recognise the majority union representing the workers at the Public Health Department and at the Mental Hospital does not appear to have been consistent with the principles contained in Conventions Nos. 84 and 98, which enumerate the procedure of collective bargaining as a means of determining conditions of employment.

234. In its latest observations the Government of St. Vincent states that the Commercial, Technical and Allied Workers' Union of St. Vincent is now provisionally registered and has been granted all the bargaining rights which it has claimed and that negotiations are proceeding between employers and the union and also that the Government has recognised the bargaining rights of the union in respect of scavengers employed by the Public Health Department and Mental Hospital workers.

235. The Committee recommends the Governing Body to take note of this statement.

Allegations relating to the Final Registration of Trade Unions

236. In paragraphs 57 to 59 of its 84th Report the Committee examined a provision contained in Ordinance No. 30 of 1954 which allows the Registrar to refuse final registration of a trade union if he considers that the union has not yet attained a reasonable degree of efficiency and organisation in the management of its affairs. In the view of the Committee this provision gave excessive scope to the Registrar in determining whether registration should or should not be granted to an industrial association. In the present case final registration had been refused to the complaining organisation pursuant to this provision.

237. The Committee noted that the law permitted an appeal to the Supreme Court from the Registrar's decision, but recalled that in such cases the I.L.O. Committee of Experts on the Application of Conventions and Recommendations had pointed out that " the existence of a procedure of appeal to the courts does not appear to be a sufficient guarantee; in effect this does not alter the nature of the powers conferred on the authorities responsible for

effecting registration, and the judges hearing such an appeal ... would only be able to ensure that the legislation had been correctly applied ".[1]

238. The Committee, therefore, in paragraph 62 *(b)* of its 84th Report, recommended the Governing Body—

. . . . . .

(i) to draw the Government's attention to the desirability of defining clearly in its legislation the specific conditions that trade unions must satisfy in order to qualify for registration and of prescribing specific legal criteria for the purpose of deciding whether they have satisfied such conditions;

(ii) to suggest to the Government the possibility of examining in detail the provisions of Ordinance No. 30 of 1954 with a view to deciding what amendments might be introduced in the light of the foregoing conclusions.

239. In the observations furnished on 6 October 1965 the Government of St. Vincent states that the various ordinances, if reasonably interpreted, are clear, but that consideration is being given to possible amendments.

240. The Committee recommends the Governing Body to take note of this statement, to express the hope that in the consideration of possible amendments to Ordinance No. 30 of 1954 account will be taken of the principle set forth in paragraph 62 *(b)* (i) of the Committee's 84th Report cited above, and to request the Government of the United Kingdom to be good enough to keep the Governing Body informed of further developments in this connection.

Allegations relating to Coercive Measures against Workers in connection with Their Trade Union Membership

241. It is alleged that, since the Commercial, Technical and Allied Workers' Union began, on 16 September 1963, to seek to be recognised as the collective bargaining representative of employees of the Public Health Department and the Mental Hospital, the Chief Minister for the Crown and the Minister of Social Services, who is responsible for public health, have attacked the union and have threatened the employees of the institutions mentioned above with victimisation. It is alleged that the Chief Minister stated at a political meeting that as long as his Government remained in office it would not recognise the union and that any attempt by the workers to strike would result in their services being terminated. The Chief Minister, it is alleged, is the leader of a government-controlled union which he is seeking to force upon employees of government institutions in rivalry with the complaining organisation.

242. After the complaining union had made a further application on 27 January 1964 for recognition as representative of the employees of the Mental Hospital, it is alleged, the competent Minister visited the institution and threatened the workers and forbade them to join the complaining union.

243. When the Committee met in May 1965 it noted that the observations of the Government furnished on 20 January 1965 contained no comments with respect to these allegations. The Committee recalled the importance it has always attached [2] to the provision contained in Article 1 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment, and pointed out, in paragraph 60 of its 84th Report, that the consequences of this provision are that the Government must take measures, whenever necessary, to ensure that this protection is effective, which of course implies that the authorities must refrain from any act likely to provoke or have as its object anti-union discrimination against workers in respect of their employment.

[1] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 43rd Session, Geneva, 1959 (Geneva, I.L.O., 1959), para. 31, p. 108.

[2] See 14th Report, Case No. 105 (Greece), paras. 117-145; 19th Report, Case No. 97 (India), paras. 39-49; 58th Report, Case No. 234 (Greece), para. 578; 61st Report, Case No. 256 (Greece), para. 40; 76th Report, Case No. 364 (Ecuador), para. 348.

244. In these circumstances the Committee, in paragraph 62 *(d)* of its 84th Report, recommended the Governing Body to request the Government to furnish its observations on this aspect of the case.

245. In the observations furnished on 6 October 1965 the Government of St. Vincent states that " it is necessary to differentiate between coercive measures by Government *qua* government and statements made at party political meetings which by custom are of a nature and frequency peculiar to all political parties in St. Vincent " and that " the Ministry concerned is unaware of any factual coercive measures taken against workers in connection with their trade union membership ".

* * *

246. In all the circumstances the Committee recommends the Governing Body—

(a) to take note with regard to the allegations relating to the non-recognition of the Commercial, Technical and Allied Workers' Union of St. Vincent, of the statement by the Government of St. Vincent that this union is now provisionally registered and has been granted all the bargaining rights which it has claimed, that negotiations are proceeding between employers and the union, and that, in particular, the Government has recognised the bargaining rights of the union in respect of scavengers employed by the Public Health Department and Mental Hospital workers;

(b) to decide, with respect to the allegations relating to the final registration of trade unions—

(i) to take note of the statement by the Government of St. Vincent that consideration is being given to possible amendments to the provisions of Ordinance No. 30 of 1954;

(ii) to express the hope that, in this connection, regard will be had to the desirability of defining clearly in its legislation the specific conditions that trade unions must satisfy in order to qualify for registration and of prescribing specific legal criteria for the purpose of deciding whether they have satisfied such conditions;

(iii) to request the Government of the United Kingdom to be good enough to keep the Governing Body informed of further developments in this connection;

(c) to draw attention, with regard to the allegations relating to coercive measures against workers in connection with their trade union membership, to the danger of statements of the kind alleged being interpreted as intended to exert pressure on workers when exercising their right to join the organisation of their own choosing.

Interim Conclusions in the Cases relating to Sudan (Case No. 191), Libya (Case No. 274), Burundi (Cases Nos. 282 and 401), United Kingdom (Aden) (Case No. 291), Spain (Cases Nos. 294, 383, 397 and 400), Peru (Case No. 335), Congo (Leopoldville) (Case No. 365), Brazil (Case No. 385), Argentina (Case No. 399), Congo (Brazzaville) (Case No. 419), United Kingdom (Aden) (Case No. 421), Ecuador (Case No. 422) and Guatemala (Case No. 442)

Case No. 191:

Complaints Presented by the Confederation of Arab Trade Unions, the World Federation of Trade Unions and the Sudan Railway Workers' Union against the Government of Sudan

247. The Committee has already examined this case at its sessions in May 1960 [1], February 1961 [2], February 1962 [3] and February 1964.[4]

[1] See 48th Report, paras. 56-90.
[2] See 52nd Report, paras. 79-122.
[3] See 60th Report, paras. 110-162.
[4] See 74th Report, paras. 149-156.

248. Sudan has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), but has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

249. When it examined the case at its meeting in February 1962 the Committee, in paragraph 162 of its 60th Report, made the following recommendations to the Governing Body:

... the Committee recommends the Governing Body—

(a) to decide, with respect to the allegations relating to the suspension of the trade unions of Sudan—

(i) to take note of the Government's statement that 48 trade unions, representing 42,000 industrial workers, have now been registered under the Trade Unions (Amendment) Ordinance, 1960, and that ten further applications for registration are under consideration;

(ii) to request the Government to be good enough, bearing in mind the hope expressed by the Governing Body when it adopted paragraph 90 *(a)* (ii) of the Committee's 48th Report, cited in paragraph 117 above, to continue to keep the Governing Body informed of further developments with regard to the formation and functioning of trade unions in Sudan;

(b) to decide, with respect to the allegations relating to the trade union press—

(i) to take note of the Government's statement that it has no objection in principle to allowing trade unions to express their opinions by publishing their own newspapers;

(ii) to request the Government to inform the Governing Body whether this statement means that the freedom of the trade union press has now been re-established or will now be re-established in Sudan, in accordance with the hope expressed by the Governing Body when it approved paragraph 90 *(b)* (ii) of the Committee's 48th Report;

(iii) to request the Government to furnish its observations on the allegations made by the World Federation of Trade Unions in its communication dated 5 June 1961, to which reference is made in paragraph 123 above;

(c) to request the Government to furnish its observations on the allegations relating to arrests of trade unionists made by the World Federation of Trade Unions in its communication dated 5 June 1961 and which are referred to in paragraphs 129 and 130 above;

(d) to decide, with respect to certain matters arising out of the Trade Unions (Amendment) Ordinance, 1960—

(i) to draw the attention of the Government to the importance which the Governing Body attaches to the generally accepted principle that workers *without distinction whatsoever* should have the right to establish and join trade union organisations;

(ii) to express the hope that the Government will now consider amending section 2 of the Trade Unions Ordinance, as amended in 1960, so as to give full effect to the principle enumerated in subparagraph (i) above;

(iii) to request the Government to be good enough to keep the Governing Body informed as to further developments in this connection;

(iv) to draw the attention of the Government to the importance which the Governing Body attaches to the generally accepted principle that workers should have the right to establish and join organisations *of their own choosing*;

(v) to express the hope that the Government, having regard to the considerations set forth in paragraphs 134, 136 and 137 above, will now consider amending sections 9 (1) and 27 (3) of the Trade Unions Ordinance, as amended in 1960, so as to give full effect to the principle enunciated in subparagraph (iv) above;

(vi) to request the Government to be good enough to keep the Governing Body informed as to further developments in this connection;

(vii) to draw the attention of the Government to the importance which it attaches to the generally recognised principles that workers' organisations should have the right to establish and join federations and confederations and that any such organisation, federation or confederation should have the right to affiliate with international organisations of workers;

(viii) to point out to the Government that the question as to whether a need to form federations and confederations is felt or not is a matter to be determined solely by the workers and workers' organisations themselves *after* their right to form them has been legally recognised;

(ix) to express the hope that the Government will now consider amending the provisions of the Trade Unions Ordinance, as amended in 1960, so as to give full effect to the principles enunciated in subparagraph (vii) above;

(x) to request the Government to be good enough to keep the Governing Body informed as to further developments in this connection;

(e) to decide, with respect to the allegations relating to the dissolution of the Sudan Railway Workers' Union—

(i) to draw the attention of the Government to its view that dissolution by the Executive in exercise of the legislative functions with which the Government is endowed, like dissolution by virtue of administrative powers, does not ensure the right of defence which normal judicial procedure alone can guarantee, and to the importance which it attaches to the principle that workers' and employers' organisations should not be liable to be dissolved or suspended by administrative authority;

(ii) to suggest to the Government that it may care to reconsider the provisions of sections 9 and 16 of the Trade Disputes Act, 1960, in the light of the considerations set forth in paragraph 160 above.

250. At its meeting in February 1964 the Committee had before it a communication from the Government dated 2 December 1963 in which the Government stated that the Supreme Council for the Armed Forces had accepted the principle of the establishment of a trade union federation, had decided to authorise the establishment of a railway workers' union and had accepted the amendment of the Trade Unions Ordinance so as to extend the right of organisation to all workers who were not yet organised. These decisions were noted by the Committee in paragraphs 152, 153, and 154 of its 74th Report.

251. The Committee made the following recommendations to the Governing Body in paragraph 156 of its 74th Report:

Having regard to the foregoing, the Committee recommends the Governing Body—

(a) to thank the Government for the information which it has been good enough to communicate, and to take note of that information with interest;

(b) to request the Government to furnish to the Committee, as it has already declared its intention of doing, more detailed information on the matters mentioned in paragraphs 152, 153 and 154 above;

(c) to request the Government again to be good enough to furnish the further information requested in subparagraphs *(a)* (ii), *(b)* (ii) and (iii), *(c)*, *(d)* (iii), (vi) and (x) of paragraph 162 of the 60th Report of the Committee;

(d) to express the hope that the Government will furnish the information referred to in subparagraphs *(b)* and *(c)* above at an early date;

(e) to take note of the present interim report, it being understood that the Committee will report further to the Governing Body when it has received the additional information in question.

252. These recommendations were approved by the Governing Body at its 159th Session (June-July 1964) and were brought to the notice of the Government by a letter dated 18 June 1964.

253. On 9 September 1964 the World Federation of Trade Unions submitted a further document of complaint.

254. In this communication W.F.T.U. alleged that on 14 August 1964 the Government banned the Constituent Congress of the Sudanese Federation of Unions just before it was due to be held, dissolved the constituent committee and ordered its functions to be transferred to an executive committee composed of the presidents of the ten main unions of the country, which was to draw up a constitution for the Federation. It was ordered that no workers' congress should be called before the executive committee had finished its work and the Minister of Information and Labour had given his agreement, and that all the trade unions should retain their existing executives until the end of 1965 except for necessary changes with the consent of the Trade Union Registrar. The complainant considered that these measures were in violation of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Sudan, and disregarded the recommendations contained in the reports of the Committee on Freedom of Association.

255. This complaint was transmitted to the Government for its observations by a letter dated 18 September 1964.

256. The Government furnished observations in a communication dated 24 June 1965.

257. The Government begins by stating that the complaints relate to the period of the military régime in Sudan between December 1958 and October 1964, whereas on 1 November 1964 the Supreme Council for the Armed Forces was replaced by a National Government, in accordance with a new National Charter signed by representatives of all democratic organisations and providing, among other things, for " total freedom of organisation, association and freedom of expression ". A caretaker government was formed, in which the Minister of State for Cabinet Affairs was Mr. Shafia Ahmed El Sheikh, the newly elected Secretary-General of the reformed Sudan Trade Union Federation.

258. Under the military régime there had been 88 trade unions, a number which, according to the Government, had grown to 200 by June 1965. The Government declares that unions enjoy complete freedom to send their elected representatives abroad to international conferences, to associate with international federations and confederations of their own choosing and to express their views freely in the press. The Trade Union Federation's organ, *El-Taliaa*, is now published weekly. All trade unionists, says the Government, now have complete freedom of movement.

259. The Government states that, on 7 April 1965, the Sudan Council of Ministers repealed the Trade Unions (Amendment) Ordinance, 1960, and that " the 1948 Ordinance, now back in full force, extends the right of organisation to all workers who are not yet organised ".

260. On 10 June 1965 an elected government took office. The Prime Minister declared in the Constituent Assembly that his Government is bound by all international agreements entered into by previous governments.

261. In conclusion, the Government expresses the view that the previous grounds for complaint no longer apply.

262. In earlier cases[1] the Committee has taken the view, when it has had before it allegations relating to violations of trade union rights by an earlier government, that although the government in power could obviously not be held responsible for events which took place under its predecessor, it is clearly responsible for any continuing consequences which they may have had since its accession to power.

263. It would appear from the Government's reply that trade union freedom has been restored and that the legal situation relating to freedom of association is that which prevailed before the military authorities assumed power in 1958, that is to say, it is governed entirely by the Trade Unions Ordinance, 1948, the amending ordinance of 1960 having been repealed. There would therefore appear to be no purpose in pursuing further the matters arising from the fact that the trade unions were dissolved in 1958 or those arising out of the Trade Unions (Amendment) Ordinance, 1960. In other words, the questions referred to in paragraph 156 *(b)* of the Committee's 74th Report appear to have been disposed of as a result of the information now furnished by the Government, as do those referred to in subparagraphs *(a)* (ii) and *(d)* (iii), (vi) and (x) of paragraph 162 of the 60th Report of the Committee cited in paragraph 249 above. Moreover, the points referred to in subparagraph *(b)* (ii) and (iii) of paragraph 162 of the said report now appear to require no further consideration in view of the Government's statement that the freedom of the trade union press has been restored.

264. There remains the point covered by subparagraph *(c)* of paragraph 162 of the Committee's 60th Report. This related to allegations of arrests of trade unionists referred

[1] See Second Report, Case No. 13 (Bolivia), para. 149; 25th Report, Case No. 129 (Peru), para. 15; 28th Report, Case No. 146 (Colombia), paras. 217 and 222-223; 56th Report, Case No. 159 (Cuba), paras. 78 and 79; 72nd Report, Case No. 260 (Iraq), para. 78; 78th Report, Case No. 316 (Ecuador), para. 108; 83rd Report, Case No. 406 (United Kingdom-British Guiana), para. 320.

to by W.F.T.U. in its communication dated 5 June 1961 and analysed in paragraphs 129 and 130 of the Committee's 60th Report. According to those allegations three officers of the Sudan trade unions, Messrs. El Shafia Ahmed El Sheikh, Shakir Mursal and Taha Mohamed Ali were still in prison. In a communication dated 25 August 1959 the Government had said that they had been sentenced by court martial to five years' imprisonment. Further, it was alleged, the following trade unionists had been sentenced at Atbara to varying terms of imprisonment: Messrs. Abdul Fattah Osman, Khidir Nasr, Khalifa Mahgoub, Sir El Khatim Rashwan, Ahmed El Badawi El Salflawi, Ahmed Ali Ibrahim and El Hag Mohammed Salih. In its latest reply the Government makes no specific reference as to the liberation of trade unionists imprisoned under the preceding régime beyond what may be implied from its statement that " all trade unionists now have complete freedom of movement ", and apart from the fact that Mr. El Shafia Ahmed El Sheikh is now the Secretary-General of the reformed Sudan Trade Union Federation.

265. In these circumstances the Committee recommends the Governing Body—

(a) to note with satisfaction that the Trade Unions (Amendment) Ordinance, 1960, which has been the subject of various allegations, was repealed on 7 April 1965;

(b) to note the Government's statements, in its communication dated 24 June 1965, that the right of organisation is now governed, as before the events of 1958 which gave rise to the complaints, by the Trade Unions Ordinance, 1948, that trade unions are now being formed and operating in freedom and that the freedom of the trade union press has been restored;

(c) to request the Government, having regard to its statement that all trade unionists now have complete freedom of movement, to confirm that all the trade unionists sentenced to imprisonment by court martial under the military régime, including in particular those indicated in paragraph 264 above, are now at liberty.

Case No. 274 :

Complaint Presented by the International Confederation of Free Trade Unions and the Confederation of Arab Trade Unions against the Government of Libya

266. When the Committee examined this case at its meeting in February 1962 it submitted an interim report in paragraphs 212 to 281 of its 60th Report, which was approved by the Governing Body at its 151st Session (March 1962).

267. Paragraph 281 of the 60th Report of the Committee, containing the recommendations of the Committee as approved by the Governing Body, reads as follows:

In all the circumstances the Committee, after examining the complaint and the observations of the Government of Libya thereon, and having taken into account the factual evidence obtained by the I.L.O. representative who visited Libya in January 1962, recommends the Governing Body—

(a) to decide that the allegations relating to the sequestration of union funds do not call for further examination;

(b) to decide that, subject to the observations contained in paragraph 254 above, no useful purpose would be served by pursuing further its examination of the allegations relating to the violation of trade union premises;

(c) to decide, with respect to the allegations relating to the refusal to admit representatives of the International Confederation of Free Trade Unions to Libya—

(i) to draw the attention of the Government to the importance which the Governing Body attaches to the principle that national trade union organisations should have the right freely to maintain contact with the international organisations of workers to which they are affiliated;

(ii) to note the Government's expression of regret that the representatives of the International Confederation of Free Trade Unions who were sent to Libya were not admitted to the national territory and its assurance that such representatives will in future be welcomed at any time;

(iii) to conclude therefore that, subject to the observation made in subparagraph (i) above, there is no ground for it to pursue further its examination of these allegations;

(d) to decide, with respect to the allegations relating to measures taken against trade union leaders following a strike in 1961—

(i) to draw the attention of the Government to the importance which the Governing Body attaches to the principle set forth in article 40 of the Constitution of the International Labour Organisation that members of the Governing Body shall enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation;

(ii) to point out to the Government that Mr. Salem Shita is a member of the Governing Body by virtue of his election thereto by the Workers' group of the International Labour Conference as a representative of that group and not of the workers of Libya;

(iii) to point out to the Government that the requirement that workers' representatives wishing to attend an international meeting outside Libya must obtain a permit to leave the country, this permit being granted by the Council of Ministers on the recommendation of the Ministry of Labour, is not compatible in the case of members of the Governing Body with the principle set forth in subparagraph (i) above;

(iv) to note that Mr. Salem Shita has been acquitted by the Court of Appeal on all the charges brought against him and to request the Government to furnish to the Governing Body the text of the judgment of the Court of Appeal which acquitted him;

(v) to request the Government to state whether any of the persons arrested at the same time as Mr. Shita, and whose trial was stated to be due to take place on 21 November 1961, have in fact been brought to trial and, if so, to furnish information as to the outcome of the proceedings;

(e) to request the Government to furnish a copy of the judgment given in the case of Mr. Ali Bitar, to confirm whether Mr. Bitar has in fact instituted an appeal and, if so, to furnish also a copy of the judgment of the appellate court when it is available;

(f) to decide, with respect to the allegations relating to interference with the right to organise—

(i) to draw the attention of the Government to the importance which the Governing Body has always attached to the principle that workers should enjoy adequate protection against acts of anti-union discrimination in respect of their employment, including acts calculated to make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership, and acts calculated to cause the dismissal of or otherwise prejudice a worker by reason of union membership;

(ii) to express the hope that the Government, in its desire to promote sound and harmonious industrial relations in Libya, will exercise all possible influence to secure the reinstatement, with full regard for the principle enunciated in subparagraph (i) above, of all the dismissed workers who have not yet been re-engaged, and will keep the Governing Body informed as to developments in this connection;

(iii) to request the Government to inform the Governing Body as to the outcome of the 14 cases of dismissed workers which have been referred to the Court of Urgent Cases;

(iv) to suggest to the Government that it may consider the advisability of amending section 12 of the Labour Code so as to permit workers whose applications to the Director of Labour do not lead to a satisfactory result within a prescribed period to address themselves directly to the courts;

(g) to decide, with respect to the allegations relating to the right to strike in so far as the exercise of trade union rights is affected—

(i) to draw the attention of the Government to the importance which the Governing Body has always attached to the principle that, where strikes by workers are restricted or prohibited, such restriction or prohibition should be accompanied by the provision of conciliation procedures and of independent and impartial arbitration machinery whose awards are in all cases binding on both sides;

(ii) to draw the attention of the Government to the fact that it would not appear to be appropriate for all publicly owned undertakings to be treated on the same basis in respect of

limitations of the right to strike without distinguishing in the relevant legislation between those which are genuinely essential and those which are not;

(iii) to suggest to the Government that it may care to reconsider the existing situation in the light of the considerations set forth in subparagraph (ii) above;

(iv) to suggest to the Government that, in so far as the provision prohibiting strikes in public establishments and public utility establishments is maintained, it migth consider, having regard to the principle enunciated in subparagraph (i) above, establishing satisfactory alternative arrangements for the redress of grievances;

(v) to request the Government to be good enough to keep the Governing Body informed as to further developments in this connection;

(h) to decide, with respect to the allegations relating to the prohibition of the establishment of more than one central trade union organisation in Libya—

(i) to draw the attention of the Government to the importance which the Governing Body attaches to the generally recognised principle that workers' organisations should have the right freely to form federations and confederations of their own choosing;

(ii) to express the hope that the Government will reconsider the provisions of section 39*bis* of the Labour Code so as to give full effect to the foregoing principle;

(iii) to request the Government to keep the Governing Body informed of any further developments in this connection;

(i) to decide, with respect to the allegations relating to the requirement of previous authorisation for affiliation with international organisations of workers—

(i) to draw the attention of the Government to the importance which it attaches to the generally accepted principle that trade union organisations should have the right to affiliate with international organisations;

(ii) to express the view that the requirement of governmental permission for such international affiliation is not compatible with this principle;

(iii) to note the Government's statement that the relations of the General Union of Libyan Workers with international organisations will not be affected;

(iv) to suggest to the Government, nevertheless, that it may consider amending its legislation so as to give full effect, both in law and in fact, to the principle enunciated above;

(j) to suggest to the Government that if, in accordance with the earnest hope of the Governing Body, it gives effect to the recommendations made in the foregoing paragraphs, it may then care to give consideration to the possibility of ratifying the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

268. The above conclusions were brought to the notice of the Government of Libya by a letter dated 21 March 1962, since when the Committee has asked the Government on numerous occasions to be good enough to reply to the requests for further information contained therein.

269. In a communication dated 18 February 1965 the Government of Libya refers to its earlier communications dated 12 November 1961 and 15 January 1962, to the information and documentation placed before Lord Forster of Harraby, K.B.E., Q.C., when he visited Libya as representative of the Director-General from 5 to 10 January 1962, and to the observations made by the Libyan delegation at the International Labour Conference in June 1962, and expresses the view that the above sources of information contain a sufficient and satisfactory reply to all the points raised in paragraph 281 of the Committee's report.

270. The Government adds that the labour movement in Libya is receiving all protection and appreciation from the responsible authorities and that it is at all times working hard to raise the standards and improve the conditions of the workers.

271. Libya has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). On 20 June 1962—that is to say, subsequently to the

Committee's examination of the substance of the case in February 1962—Libya ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

272. The Committee, having regard to the contentions of the Government indicated in paragraph 269 above, has re-examined each of the outstanding allegations in the light of such contentions. It is to be noted, however, that all the sources of information mentioned by the Government, apart from the observations of the Libyan delegation at the International Labour Conference in June 1962, were already before the Committee, and were taken into consideration by it, before it formulated the recommendations to the Governing Body contained in paragraph 281 of its 60th Report.

Allegations relating to Measures Taken against Trade Union Leaders following a Strike in 1961

273. This aspect of the case was considered by the Committee in paragraphs 216 to 235 of its 60th Report. The allegations of I.C.F.T.U. in its communications dated 4 October and 10 November 1961 related to the arrest of Mr. Salem Shita, General Secretary of the General Union of Libyan Workers, on 10 September 1961 and to the arrest at the same time of 18 other trade union leaders, the latter having been provisionally released pending their trial fixed to begin on 21 November 1961. The Government's observations dated 12 November 1961, supplemented by further observations dated 15 January 1962, revealed that Mr. Shita had been acquitted on one charge and convicted on the other charge against him by the lower court, on 3 December 1961, that cross-appeals had been lodged, and that on 25 December 1961 the Court of Appeal had acquitted him on all charges. When the I.L.O. representative, Lord Forster of Harraby, K.B.E., Q.C., was in Libya from 5 to 10 January 1962, copies of the two court decisions relating to Mr. Shita were not available but, as the Committee indicated in paragraph 226 of its 60th Report, the Government had promised him that copies would be forwarded to the I.L.O. As they had not been received, the Committee, in paragraph 281 *(d)* (iv) of its 60th Report, recommended the Governing Body to request the Government to furnish the text of the judgment of the Court of Appeal which had acquitted him on 25 December 1961. No copy of this judgment has ever been received from the Government.

274. The Committee considers it appropriate to point out, as it has done in many cases in the past, that it has regularly followed the practice, when called upon to examine matters which were the subject of national judicial proceedings, of requesting the governments concerned to communicate the texts of the judgments given and the grounds adduced therein [1], and that generally governments have co-operated with the Committee by responding to such requests. The request for the transmittal of a judgment, therefore, was not a singular proceeding for the Committee to follow in the present case but was in accordance with its normal practice, to which it has always had recourse in order to assess to the full the facts contested in a complaint.

275. With regard to the particular case of Mr. Salem Shita, the Committee observes that in 1964 and 1965 he attended the 48th and 49th Sessions of the International Labour Conference as Workers' delegate of Libya, occupying the post of General Secretary of the Libyan National Federation of Trade Unions, and has continued to serve, apparently in full freedom, as a Workers' deputy member of the Governing Body of the I.L.O. It would appear that his position has thus been regularised and, accordingly, the Committee recommends the Governing Body to decide that this aspect of the case should now be regarded as closed.

[1] See 17th Report, Case No. 97 (India), para. 137; 24th Report, Case No. 142 (Honduras), para. 134; 26th Report, Case No. 147 (Union of South Africa), para. 111; 31st Report, Case No. 170 (France-Madagascar), para. 52; 34th Report, Case No. 130 (Switzerland), para. 6; 45th Report, Case No. 213 (Federal Republic of Germany), para. 123; 58th Report, Case No. 156 (France-Algeria), para. 175; 67th Report, Case No. 241 (France), para. 22; 72nd Report, Case No. 294 (Spain), para. 112; 81st Report, Case No. 385 (Brazil), para. 149.

276. With regard to the allegations that 18 other trade unionists arrested on 10 September 1961 were due to be tried on 21 November 1961, the only comment on this allegation made by the Government was that contained in its communication dated 12 November 1961 to the effect that the Government had referred their cases to the court. No further information on this question was reported by Lord Forster after his visit to Libya in January 1962. At its meeting in February 1962, therefore, the Committee, in paragraph 281 *(d)* (v) of its 60th Report, recommended the Governing Body to request the Government to state whether any of the persons arrested at the same time as Mr. Shita, and whose trial was stated to be due to take place on 21 November 1961, had in fact been brought to trial and, if so, to furnish information as to the outcome of the proceedings.

277. Since that time no information on this point has been received from the Government of Libya, nor did the Libyan Minister of Labour refer to it in his speech on the Director-General's Report at the 46th Session of the International Labour Conference in June 1962.

278. In these circumstances the Committee recommends the Governing Body to request the Government again to be good enough to state whether any of the 18 trade unionists arrested at the same time as Mr. Shita, and whose trial was stated to have been due to take place on 21 November 1961, have in fact been brought to trial and, if so, to furnish information as to the outcome of the proceedings.

Allegations relating to Mr. Ali Bitar

279. At its meeting in February 1962 the Committee examined, in paragraphs 236 to 243 of its 60th Report, the case of Mr. Ali Bitar, editor of the newspaper of the General Union of Libyan Workers, alleged also to have been arrested on 10 September 1961. In its communications dated 12 November 1961 and 15 January 1962 the Government explained that, in consequence of passages appearing in the newspaper, Mr. Bitar was fined—a fact confirmed by the I.L.O. representative who went to Libya in January 1962 and who said that an appeal by Mr. Bitar was pending. The Committee observed that nothing in the information before it made it clear on the basis of what articles Mr. Bitar was fined and that only the text of the judgment would make it possible for it to elucidate the matter. Consequently, in accordance with its established practice in such cases, the Committee, in paragraph 281 *(e)* of its 60th Report, recommended the Governing Body to request the Government to furnish a copy of the judgment given in the case of Mr. Ali Bitar, to confirm whether he had in fact instituted an appeal and, if so, to furnish also a copy of the judgment of the appellate court when it was available.

280. The Government has still furnished no further information on this matter, nor was any reference made to it by the Libyan delegation to the 46th Session of the International Labour Conference in June 1962.

281. In these circumstances the Committee recommends the Governing Body to request the Government once again to be good enough to furnish a copy of the judgment given in the case of Mr. Ali Bitar, to confirm whether in fact he instituted an appeal and, if so, to furnish a copy of the judgment given by the appellate court.

Allegations relating to the Re-engagement of Strikers Who Participated in the Strike of September 1961

282. In paragraphs 244 to 250 of its 60th Report the Committee examined allegations relating to strikers who were not re-engaged after the strike which took place in September 1961. In particular, the Committee observed that, arising out of the refusals to re-engage some of the strikers, the Government had stated in its communication dated 15 January 1962 that it had made every effort to ensure their re-engagement and that 14 cases affecting workers whom the employers had refused to re-engage had been referred to the Court of

Urgent Cases in Tripolitania, as the Government made clear to the I.L.O. representative who visited Libya from 5 to 10 January 1962.

283. It was in the light of the foregoing that the Committee, in paragraph 281 *(f)* (ii) and (iii) of its 60th Report, recommended the Governing Body to request the Government to keep the Governing Body informed as to further developments with regard to the reinstatement of all the dismissed workers who had not been re-engaged and to inform the Governing Body as to the outcome of the 14 cases of dismissed workers which had been referred to the Court of Urgent Cases.

284. Since that time no further information has been furnished on this matter, either by the Libyan delegation to the International Labour Conference in June 1962 or by the Government subsequently.

285. In these circumstances the Committee recommends the Governing Body to request the Government to inform it as to how far it succeeded in its efforts to secure the reinstatement of workers who were refused re-engagement following the strike of September 1961 and, more particularly, to inform it as to the outcome of the 14 cases of dismissed workers which were referred to the Court of Urgent Cases in Tripolitania.

Allegations relating to the Prohibition of the Establishment of More than One Central Trade Union Organisation in Libya

286. At its meeting in February 1962 the Committee considered section 39*bis* of the amended Labour Code, permitting the formation of only one central trade union organisation in Libya—an amendment which, according to the Government, was motivated by the need to avoid competitive and challenging interests in the trade union movement and the confusion which had resulted therefrom in the past.[1] The Committee, after emphasising the importance which it attached to the generally accepted principle that workers' organisations should have the right freely to form federations and confederations, observed, in paragraph 275 of its 60th Report, that the I.L.O. Committee of Experts on the Application of Conventions and Recommendations, when examining a similar provision in the legislation of another country, had pointed out that such a provision did not appear to be compatible with the principle that trade union organisations should have the right to establish and join federations and confederations of their own choosing without previous authorisation.[2] It was in these circumstances that the Committee made to the Governing Body the recommendations contained in paragraph 281 *(h)* (i), (ii) and (iii) of its 60th Report cited in paragraph 267 above.

287. At the 46th Session of the International Labour Conference in June 1962 the Libyan Minister of Labour and Social Affairs emphasised his Government's " great awareness and consciousness of securing the freedom of labour movement within the law, as well as of its international obligations and undertakings in this respect ".[3] He did not, however, refer specifically to the problem raised by section 39*bis* of the amended Labour Code, nor has the Government furnished any further observations on this matter.

288. A new Labour Act [4] was promulgated on 22 November 1962, section 64 of which embodied a provision to the effect that " not more than one general federation may be formed in Libya ".

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[1] See 60th Report, para. 273.

[2] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 45th Session, Geneva, 1961, (Geneva, I.L.O., 1961), p. 93.

[3] See *Record of Proceedings*, International Labour Conference, 46th Session, Geneva, 1962 (Geneva, I.L.O., 1963), twentieth sitting, p. 250.

[4] See *Al Jarida al-Rasmiya*, 24 Nov. 1962, No. 17, and I.L.O.: *Legislative Series*, 1962—Libya 1.

289. In these circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government once again to the importance which the Governing Body attaches to the generally recognised principle that workers' organisations should have the right freely to form federations and confederations of their own choosing;

(b) to express the hope that the Government will reconsider the provisions of section 64 of the Labour Code so as to give full effect to the foregoing principle;

(c) to request the Government to keep the Governing Body informed of any further developments in this connection.

Allegations relating to the Refusal to Admit Trade Union Missions to Libya

290. Allegations relating to the alleged refusal to admit representatives of I.C.F.T.U. and other organisations into Libya in September 1961 were examined by the Committee in paragraphs 259 to 262 of its 60th Report. The Committee recommended the Governing Body to draw the attention of the Government to the importance which the Governing Body attaches to the principle that national trade union organisations should have the right freely to maintain contact with the international organisations of workers to which they are affiliated. Noting further, however, that in its communication dated 12 November 1961 the Government had expressed its regret that the representatives of the I.C.F.T.U. had not been admitted to the national territory on the occasion in question and had given its assurance that such representatives would in future be welcomed at any time, the Committee, in paragraph 281 *(c)* (iii) of its 60th Report, recommended the Governing Body to decide that, subject to the foregoing observations, there was no ground for it to pursue further its examination of these allegations.

291. In a communication dated 28 March 1962 I.C.F.T.U. alleged that an I.C.F.T.U. mission had been refused admission to Libya on 27 March 1962, although the visit had been notified to the Prime Minister in advance and visas had been obtained by the members of the mission.

292. On 1 April 1962 the Government informed the Director-General of the I.L.O. that the I.C.F.T.U. mission had not informed the competent Libyan authorities in advance of its arrival or of the purposes of its visit. Upon their unexpected arrival the competent authorities refused to admit them. The Government added that there was no legal ground for the existence of any connection between I.C.F.T.U. and the labour movement in Libya and accused I.C.F.T.U. of aiming to cause disturbance in Libya under the guise of defending the workers.

293. On 5 April 1962 I.C.F.T.U. addressed a communication to the I.L.O. to which was attached a copy of a letter said to have been sent by I.C.F.T.U. to the Libyan Prime Minister on 16 March 1962. According to the text cited this letter informed the Prime Minister that the mission, whose five members were named, would visit Libya on 27 March 1962, for four or five days, in order to resume normal negotiations with its affiliate, the Libyan General Federation of Trade Unions, and expressed the wish that the mission might also have an interview with the Prime Minister. I.C.F.T.U. also gave the dates on which different Libyan embassies issued visas to the four members of the mission who actually tried to enter Libya (the fifth did not obtain a visa and so did not accompany the others). On 29 March, according to I.C.F.T.U., the Prime Minister expressed regret in a cable and stated that the letter of 16 March had not been received until 29 March.

294. In a further communication dated 19 April 1962 I.C.F.T.U. accused the Government of not implementing the assurance as to the future admission of I.C.F.T.U. representatives which it had given in its communication dated 12 November 1961 and alleged that, when the members of the mission reached the frontier between Tunisia and Libya, an

official at the Libyan frontier post cancelled their visas, stating that " he was only carrying out instructions ".

295. I.C.F.T.U. alleged further that, at a press conference in Benghazi on 1 April 1962, the Libyan Minister of Labour and Social Affairs said that the General Union of Libyan Workers (U.G.T.L.) was no longer affiliated to I.C.F.T.U. and that Mr. Salem Shita no longer had any relations with the Libyan trade union movement. U.G.T.L., it was alleged, had at no time indicated a desire to end its affiliation with I.C.F.T.U., nor had U.G.T.L., which alone had competence in the matter, ever informed I.C.F.T.U. that Mr. Shita had been replaced or retired. I.C.F.T.U. expressed the view that the Government was trying to break the international relations of the Libyan trade union movement, contrary to its earlier statement, referred to in paragraph 278 of the Committee's 60th Report, that the new provisions of the Labour Code would " not affect the relations of the General Union and the international organisations ".

296. In a communication dated 7 April 1962 the Confederation of Arab Trade Unions complained that its representatives were refused entry to Libya in October 1961 and that in March 1962 it was prevented by the Government from communicating with the Libyan trade unions.

297. The communication from I.C.F.T.U. dated 5 April 1962 was transmitted to the Government for its observations by a letter dated 30 April 1962; the communication dated 7 April 1962 from the Confederation of Arab Trade Unions and that dated 19 April 1962 from I.C.F.T.U. were transmitted to the Government by a letter dated 9 May 1962. On numerous occasions since that time the Committee has requested the Government to furnish its observations on these complaints, but no such observations have been received.

298. Over three years have now elapsed since the trade union missions in question were refused admission to Libya—at a period when the case of Mr. Salem Shita was a matter of grave concern and was one of the important elements in the chain of events which featured the disturbed period when these incidents took place. Since that time the position of Mr. Shita has become regularised and no further complaints of missions being refused admission to the country have been submitted.

299. In these circumstances the Committee recommends the Governing Body to decide, while again drawing attention to the importance which it attaches to the principle that national trade union organisations should have the right freely to maintain contact with the international organisations of workers to which they are affiliated, that the examination of the allegations relating to the refusal to admit trade union missions to Libya in the spring of 1962 should, for the reasons indicated in paragraph 298 above, now be regarded as closed.

Situation in respect of the Ratification of International Labour Conventions relating to Freedom of Association

300. At the conclusion of its examination of the case in February 1962 the Committee recommended the Governing Body to suggest to the Government that if, in accordance with the earnest hope of the Governing Body, it gave effect to the recommendations contained in paragraph 281 of the Committee's 60th Report, it might then care to give consideration to the possibility of ratifying the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

301. On 20 June 1962 Libya ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

302. The Committee therefore recommends the Governing Body to suggest, having regard to the fact that on 20 June 1962 the Government of Libya ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), that the Government may care to consider giving effect in its legislation to the recommendations made in paragraph 281

of the 60th Report of the Committee, with a view to ratifying also the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

* * *

303. With regard to the case as a whole the Committee recommends the Governing Body—

(a) to decide, for the reasons indicated in paragraph 275 above, that the examination of the allegations relating to measures taken against Mr. Salem Shita, formerly General Secretary of the General Union of Libyan Workers and now General Secretary of the Libyan National Federation of Trade Unions, should now be regarded as closed;

(b) to decide, while again drawing attention to the importance which the Governing Body attaches to the principle that national trade union organisations should have the right freely to maintain contact with the international organisations to which they are affiliated, that the examination of the allegations relating to the refusal to admit trade union missions to Libya in the spring of 1962 should, for the reasons indicated in paragraph 298 above, now be regarded as closed;

(c) to request the Government once again to be good enough to state whether any of the 18 trade unionists arrested at the same time as Mr. Shita, and whose trial was stated to have been due to take place on 21 December 1961, have in fact been brought to trial, and, if so, to furnish information as to the outcome of the proceedings;

(d) to request the Government once again to be good enough to furnish a copy of the judgment given in the case of Mr. Ali Bitar, to confirm whether in fact he instituted an appeal and, if so, to furnish a copy of the judgment given by the appellate court;

(e) to request the Government to inform the Governing Body as to how far it succeeded in its efforts to secure the reinstatement of workers who were refused re-engagement following the strike of September 1961, and, more particularly, to inform the Governing Body as to the outcome of the 14 cases of dismissed workers which were referred to the Court of Urgent Cases in Tripolitania;

(f) to decide, with regard to the allegations relating to the prohibition of the establishment of more than one central trade union organisation in Libya—

(i) to draw the attention of the Government once again to the importance which the Governing Body attaches to the generally recognised principle that workers' organisations should have the right freely to form federations and confederations of their own choosing;

(ii) to express the hope that the Government will reconsider the provisions of section 64 of the Labour Code so as to give full effect to the foregoing principle;

(iii) to request the Government to keep the Governing Body informed of any further developments in this connection;

(g) to suggest, having regard to the fact that on 20 June 1962 the Government of Libya ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), that the Government may care to consider giving effect in its legislation to the recommendations made in paragraph 281 of the 60th Report of the Committee, with a view to ratifying also the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Cases Nos. 282 and 401:

Complaint Presented by the International Federation of Christian Trade Unions and the Pan African Workers' Congress against the Government of Burundi

304. The complaints contain three series of allegations: one series relating to executions and threats of execution of trade union leaders in October-November 1965, the second and third series, part of which may have been superseded by the very serious present situation, relating to arrests and threatened executions in 1964 and to the murder of four trade unionists in January 1962.

Allegations relating to Executions and Threats of Execution of Trade Union Leaders in October-November 1965

305. In a cable dated 2 November 1965 the Secretary-General of I.F.C.T.U. stated that Mr. Niyirikana, President of the Burundi Christian Trade Union, and Mr. Mayondo, counsellor of that organisation, had been executed on 25 October 1965 at Bujumbura, without trial, and that other trade union leaders had been placed on a list of persons to be executed. His Federation asked the Director-General to intervene urgently on behalf of other leaders who, it contended, were also to be executed.

306. Immediately upon receipt of this cable, on 3 November 1965, the Director-General despatched a cable to the Prime Minister of Burundi in which, after indicating the contents of the cable received from I.F.C.T.U., he stated that, in accordance with the existing procedure, the complaint would be brought to the notice of the Committee on Freedom of Association set up by the Governing Body for the purpose of examining such complaints in accordance with the procedure established at the request of the United Nations. The Director-General informed the Prime Minister that the Committee would meet on 8 November, but said that he felt obliged to draw the matter to the personal attention of the Prime Minister without delay, and that he would keenly appreciate receiving information on the matter.

307. No reply to his cable dated 3 November 1965 has been received by the Director-General from the Prime Minister of Burundi.

308. The Committee has always attached the greatest importance to the right of all detained persons to receive a fair trial at the earliest possible moment.[1] At the present moment it has before it allegations of executions and threatened executions of trade union leaders with complete disregard for the principle of fair trial.

309. In these circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government of Burundi to the importance which it has always attached to the right of all detained persons to receive a fair trial by an impartial and independent judicial authority at the earliest possible moment;

(b) to express its grave concern in view of the allegations it has before it concerning executions and threatened executions of trade union leaders in Burundi without trial;

(c) to urge the Government to furnish to the Governing Body, as a matter of special urgency, its observations on the matters raised in the cable from I.F.C.T.U. dated 2 November 1965 which the Director-General brought to the personal attention of the Prime Minister of Burundi in a cable dated 3 November 1965.

Allegations relating to Arrests and Threatened Executions of Trade Union Leaders in 1964

310. Earlier complaints were received from I.F.C.T.U. dated 13 May, 10 July and 23 October 1964.

311. The essence of the allegations in the first two complaints was that, in July 1964, Mr. Mayondo and certain other trade unionists were in Rwanda but that several leading and

[1] See Fourth Report, Case No. 5 (India), paras. 18-51, Case No. 10 (Chile), paras. 52-88, and Case No. 30 (United Kingdom-Malaya), paras. 140-161; Sixth Report, Case No. 47 (India), paras. 704-736, and Case No. 49 (Pakistan), paras. 770-813; 12th Report, Case No. 87 (India), paras. 233-240, and Case No. 63 (Union of South Africa), paras. 257-276; 13th Report, Case No. 62 (Netherlands), paras. 18-89; 16th Report, Case No. 112 (Greece), paras. 57-86; 17th Report, Case No. 104 (Iran), paras. 157-221; 24th Report, Case No. 142 (Honduras), paras. 97-148; 25th Report, Case No. 136 (United Kingdom-Cyprus), para. 154; 27th Report, Case No. 143 (Spain), para. 186, and Case No. 152 (United Kingdom-Northern Rhodesia), para. 410; 62nd Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 152; 67th Report, Case No. 303 (Ghana), para. 318.

active members of the Burundi Christian Trade Union were in prison in Burundi, including the following eight persons: Messrs. Gabriel Gegera, Mathieu Ntahomarikiye, Léon Monwangari, Lucien Nahinana, Uoachim Baridwegur, Venant Ntwenga, Emile Nigere, Anaclet Burundi.

312. The complaint dated 23 October 1964 expressed fears that six trade unionists, including Messrs. Ntwenga and Burundi, were about to be executed.

313. After having failed to reply to six separate requests to furnish its observations on these complaints, the Government, in a letter dated 8 September 1965, states that the circumstances of the case are " in no way of general significance " and that " the persons concerned in the complaint have been dealt with not as trade unionists but as individual persons ". The Government considers that " it would therefore be desirable for this case to be closed without further action, thereby putting an end to the interminable correspondence which has already been exchanged in this connection ".

314. The Committee has pointed out in many cases in the past [1] that, where allegations that trade union leaders or workers have been arrested or detained on account of trade union activities for reasons of internal security or for common law crimes, the Committee has always followed the rule that the governments concerned should be requested to submit further information as precise as possible concerning the arrests or detentions and the exact reasons therefor.

315. In particular, the Committee, in view of the importance it has always attached to the right of all detained persons to receive a fair trial at the earliest possible moment, has always followed the practice in such cases of requesting governments to be good enough to inform it whether legal proceedings had been instituted against the persons concerned and, if so, to furnish copies of the judgments given and of the reasons adduced therein.

316. In the present case the Government appears to consider that a very brief and general reply which it has made is sufficient.

317. In this connection the Committee has pointed out, in certain past cases in which governments have sought to maintain that a reply in general terms to the effect that detentions of trade unionists have been due to unlawful or subversive activity and not to their trade union activities should be regarded by the Committee as adequately substantiated, that the question as to whether the matter in respect of which sentences have been imposed or detentions ordered is to be regarded as a matter relating to a criminal offence or a matter relating to the exercise of trade union rights is not one which can be determined unilaterally by the government concerned, in such a manner as to prevent the Governing Body from inquiring into it.[2]

318. The Committee draws special attention to the resolution concerning freedom of association and protection of the right to organise adopted by the First African Regional Conference of the International Labour Organisation (Lagos, December 1960). Paragraph 7 of this resolution—

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[1] See Sixth Report, Case No. 18 (Greece), paras. 323-326, Case No. 44 (Colombia), paras. 593-595, and Case No. 49 (Pakistan), paras. 807-811; 11th Report, Case No. 72 (Venezuela), para. 6 *(c)*; 12th Report, Case No. 65 (Cuba), paras. 102-105, Case No. 66 (Greece), paras. 140-146, and Case No. 68 (Colombia), paras. 167-169; 15th Report, Case No. 110 (Pakistan), para. 241; 22nd Report, Case No. 58 (Poland), para. 106 *(d)*; 25th Report, Case No. 136 (United Kingdom-Cyprus), paras. 93-178, Case No. 158 (Hungary), para. 332; 27th Report, Case No. 156 (France-Algeria), para. 273, and Case No. 159 (Cuba), para. 370; 52nd Report, Case No. 143 (Spain), para. 48; 62nd Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 152; 74th Report, Case No. 294 (Spain), para. 191; 76th Report, Case No. 364 (Ecuador), para. 342; 78th Report, Case No. 383 (Spain), para. 253.

[2] See 27th Report, Case No. 143 (Spain), para. 106; 28th Report, Case No. 147 (Union of South Africa), para. 237; 44th Report, Case No. 200 (Union of South Africa), para. 162; 58th Report, Case No. 253 (Cuba), para. 632; 83rd Report, Case No. 303 (Ghana), para. 230 *(b)*.

Requests the Governing Body of the International Labour Office to invite governments in respect of whose countries complaints may be made to the Governing Body Committee on Freedom of Association to give their wholehearted co-operation to that Committee, in particular by replying to requests for observations made to them and by taking the fullest possible account of any recommendations which may be made to them by the Governing Body following examination of such complaints;

and paragraph 8—

Requests the Governing Body to accelerate as far as possible the procedure of its Committee on Freedom of Association and to give greater publicity to the conclusions of that Committee, particularly when certain governments refuse to co-operate loyally in the consideration of complaints submitted against them.

319. In these circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government to the fact that the question as to whether the matter in respect of which sentences have been imposed on trade unionists or detentions ordered is to be regarded as a matter relating to a criminal offence or a matter relating to the exercise of trade union rights is not one which can be determined unilaterally by the government concerned, in such a manner as to prevent the Governing Body from inquiring further into it;

(b) to request the Government to be good enough to furnish, as a matter of urgency, information as to the exact reasons for the detentions of the persons referred to in the complaints dated 10 July and 23 October 1964 and as to their present situation, and to state whether legal proceedings have been instituted against any of the persons concerned and, if so, to furnish copies of the judgments given and of the reasons adduced therein;

(c) to draw the attention of the Government to the importance which should be attached to the resolution adopted by the First African Regional Conference of the International Labour Organisation (Lagos, December 1960), and in particular to paragraphs 7 and 8 of the resolution cited in paragraph 318 above.

Allegations relating to the Murder of Four Trade Unionists in January 1962

320. In their communications of January and February 1962 the complainants alleged that on 15 January 1962 four trade unionists, Messrs. Nduwabike, Ndinzurwaha, Ntaymerijakiri and Baravura, had been assassinated at Usumbura. They allege that these murders were committed by youth members of the Uprona Party at the instigation of the authorities.

321. When these complaints were presented, as Belgium was responsible for the international relations of Burundi, the request for observations was addressed to the Belgian Government. On 4 April 1962 the Belgian Government replied stating that as soon as the facts were known immediate measures were taken and some 20 suspects were arrested.

322. The Committee, and then the Governing Body, asked to be kept informed of the results of the inquiry undertaken. Burundi meanwhile having gained independence and become a Member of the I.L.O., this request was addressed to the Government of Burundi, for the first time, by a letter dated 9 April 1963. This request was repeated no less than 14 times without any reply ever being received by the I.L.O.

323. In these circumstances, while recognising that the events in question are now a matter of the past, as they took place in January 1962, the Committee recommended the Governing Body to draw the attention of the Government to the importance which should be attached to the resolution adopted by the First African Regional Conference of the I.L.O. and, in particular, to the paragraphs of that resolution cited in paragraph 318 above.

* * *

324. In these circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government of Burundi to the importance which the Governing Body has always attached to the right of all detained persons to receive a fair trial by an impartial and independent judicial authority at the earliest possible moment;

(b) to express its grave concern in view of the allegations it has before it concerning executions and threatened executions of trade union leaders in Burundi without trial;

(c) to urge the Government to furnish to the Governing Body, as a matter of special urgency, its observations on the matters raised in the cable from I.F.C.T.U. dated 2 November 1965 which the Director-General brought to the personal attention of the Prime Minister of Burundi in a cable dated 3 November 1965;

(d) to decide, with regard to the allegations relating to arrests and threatened executions of trade union leaders in 1964—

(i) to draw the attention of the Government to the fact that the question as to whether the matter in respect of which sentences have been imposed on trade unionists or detentions ordered is to be regarded as a matter relating to a criminal offence or a matter relating to the exercise of trade union rights is not one which can be determined unilaterally by the government concerned, in such a manner as to prevent the Governing Body from inquiring further into it;

(ii) to request the Government to be good enough to furnish, as a matter of urgency, information as to the exact reasons for the detentions of the persons referred to in the complaints dated 10 July and 23 October 1964 and as to their present situation, and to state whether legal proceedings have been instituted against any of the persons concerned and, if so, to furnish copies of the judgments given and of the reasons adduced therein;

(e) to draw the attention of the Government to the importance which should be attached to the resolution adopted by the First African Regional Conference of the I.L.O. (Lagos, December 1960) and, in particular, to paragraphs 7 and 8 of that resolution which are cited in paragraph 318 above.

Case No. 291 :

Complaints Presented by the Confederation of Arab Trade Unions, the International Confederation of Free Trade Unions, the World Federation of Trade Unions, the Aden Trades Union Congress, the Postal, Telegraph and Telephone International and the Arab Federation of Petroleum Workers (Cairo) against the Government of the United Kingdom in respect of Aden

325. The Committee, after having considered this case at its meetings in February 1963[1], May 1963 [2] and June 1964 [3], considered it further at its meeting in February 1965, when it submitted to the Governing Body the interim report respecting the allegations still outstanding contained in paragraphs 71 to 105 of its 81st Report, which was approved by the Governing Body at its 161st Session (March 1965).

326. At its meeting in February 1965 the Committee submitted definitive conclusions to the Governing Body with respect to certain allegations relating to the application of the penal provisions of the Industrial Relations (Conciliation and Arbitration) Ordinance, 1960. With regard to the other outstanding allegations, which are dealt with in the present report, the Committee formulated requests to the Government to furnish further information and observations on certain points.

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[1] See 68th Report, paras. 94-125.

[2] See 70th Report, paras. 219-279.

[3] See 76th Report, paras. 118-211.

327. These requests were brought to the notice of the Government of the United Kingdom by a letter dated 9 March 1965. The Government furnished a reply by a letter dated 26 May 1965.

328. The United Kingdom has ratified the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and has declared them to be applicable, without modification, to Aden.

Allegations relating to the Industrial Relations (Conciliation and Arbitration) Ordinance, 1960

329. At its meeting in February 1965 the Committee took note, in paragraphs 75 and 76 of its 81st Report, of a statement by the Government in its communication dated 6 November 1964 that the Aden Joint Advisory Council, in which the Aden Trades Union Congress was participating, had made recommendations to the Government of Aden concerning possible amendments to the Industrial Relations (Conciliation and Arbitration) Ordinance, 1960, that the new Aden Government would give early consideration to this matter and that the recommendations of the Council would be taken fully into account when this was done. The Committee requested the Government to be good enough to inform it, as soon as possible, of further developments in the matter.

330. In its communication dated 26 May 1965 the Government states that a Bill to repeal the Industrial Relations (Conciliation and Arbitration) Ordinance, 1960, and to provide for industrial relations procedure in essential services will shortly be published for presentation to the Aden Legislative Council.

331. The Aden T.U.C., in a communication dated 31 August 1965, states that it has decided to withdraw its representatives from the Aden Joint Advisory Council indefinitely.

332. In these circumstances the Committee takes note of the Government's statement referred to in paragraph 330 above and requests it to be good enough to inform the Committee, as soon as possible, of further developments in the matter.

Allegations relating to the Application of the Penal Provisions of the Industrial Relations (Conciliation and Arbitration) Ordinance, 1960

333. At its meeting in February 1965 the Committee submitted definitive conclusions to the Governing Body, in paragraphs 85 to 91 of its 81st Report, in respect of a sedition case involving Mr. Abdulla Al Asnag, General Secretary of the Aden T.U.C., and his colleague, Mr. Idris Hambala. This matter is not, therefore, dealt with further in the present report.

334. In paragraphs 77 to 79 of its 81st Report the Committee referred to the application of the penal provisions of the Industrial Relations (Conciliation and Arbitration) Ordinance, 1960, in several specific cases arising out of strikes which occurred between October 1961 and December 1963. The Committee, having requested the Government to keep it informed of developments in connection with the question of amendment of the ordinance, took the view that it should continue to await the outcome of this more general aspect of the matter before submitting recommendations on the specific cases which had come before it. Again, in view of the fact that the Government has now stated that a Bill to repeal the ordinance and make other provision for industrial relations procedure in essential services will shortly be presented to the Legislative Council, and that the Committee is asking the Government to keep it informed of further developments in this matter, the Committee considers that it should defer its recommendations on these specific cases for the time being.

335. In paragraphs 80 to 84 of its 81st Report the Committee considered the case of Mr. Murshed, General Secretary of the General and Technical Workers' Union. The Committee observed that he had been found guilty by the court on a charge of sedition, but that this charge appeared to have been based essentially on his exhortations to contravene the ordinance, while other charges against him related to contraventions of the ordinance itself. For the same reasons as in the other cases before it, the Committee therefore deferred making its definitive recommendations on this particular case and, for the reasons now explained in paragraph 333 above, has again adjourned this aspect of the case.

Allegations relating to the Suppression of a Trade Union Newspaper

336. In paragraphs 270 to 273 of its 70th Report, paragraphs 170 to 176 of its 76th Report and paragraphs 92 and 93 of its 81st Report the Committee considered allegations relating to the suppression of the Aden T.U.C. newspaper, *Al Ommal.*

337. At its meeting in June 1964 the Committee had before it a communication from the Government dated 11 November 1963. In that communication, in reply to an earlier request to furnish extracts from *Al Ommal* on the basis of which its licence was revoked on the ground that it published subversive or seditious material, the Government declared that the revocation of the licence of the newspaper had not been caused by a single article or a single issue but had resulted from long continued misrepresentation of news and had been considered in conjunction with the security situation existing at the time. The Committee noted, in paragraph 175 of its 76th Report, that this reply added no new information to the general statement in an earlier reply that the newspaper had been suppressed for publishing subversive or seditious material,which, apparently, had not led to the prosecution of the editors of the newspaper. The Committee observed also that the Government did not comment on the allegation that the revocation of a newspaper's licence is entirely within the discretion of the public authority, without the right of appeal to a court of law, an allegation which, if it were well founded, the Committee pointed out, would appear to raise a question as to compatibility with the right of an organisation to organise its activities without interference on the part of the public authorities, pursuant to Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which had been declared applicable without modification to Aden.

338. In these circumstances the Committee, in paragraph 176 of its 76th Report, requested the Government to furnish fuller information on the matters referred to in the preceding paragraph. At its meeting in February 1965 the Committee, not having received the information in question, repeated this request in paragraph 93 of its 81st Report.

339. In its communication dated 26 May 1965 the Government states that it is the present policy of the Government of Aden that all applications for newspaper licences should receive similar treatment. The Government declares that recently licences have been issued by the Government of Aden on a liberal scale and are unlikely to be revoked, but that the revocation of a newspaper's licence is entirely within the discretion of the public authority and that there is no appeal to a court of law.

340. On a number of occasions in the past [1] the Committee has expressed the view that the right to express opinions through the press or otherwise is clearly one of the essential elements of trade union rights.

341. In the present case the following facts have now been ascertained. Firstly, *Al Ommal* was suppressed on the ground that it had been publishing subversive or seditious material. Secondly, the Government cannot furnish extracts from the said material because,

[1] See Second Report, Case No. 21 (New Zealand), para. 23; 12th Report, Case No. 75 (France-Madagascar), para. 290; 27th Report, Case No. 166 (Greece), para. 79; 33rd Report, Case No. 178 (United Kingdom-Aden), para. 57; 48th Report, Case No. 191 (Sudan), para. 81; 57th Report, Case No. 221 (United Kingdom-Aden), para. 94.

it states, the reason for its suppression was based on its " misrepresentation " of news over a long period. Thirdly, the publication of the said material did not lead to the editor of the newspaper being prosecuted. Finally, the revocation of any newspaper's licence is entirely in the discretion of the public authorities with no right of appeal to the courts.

342. In these circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government to the view which it has expressed on several occasions that the right to express opinions through the press or otherwise is clearly one of the essential elements of trade union rights;

(b) to note that revocation of the licence of the Aden T.U.C. newspaper, *Al Ommal*, was effected by public authorities in Aden in their discretion and without giving rise to any right of appeal to a court of law;

(c) to draw the attention of the Government to its view that this discretionary power of the public authorities in Aden is not compatible with the right of a trade union organisation to organise its activities without interference on the part of the public authorities pursuant to Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which has been declared applicable without modification to Aden;

(d) to request the Government to be good enough to inform the Governing Body of the measures it is intended to take to bring the legislation of Aden in this respect into conformity with Article 3 of the said Convention.

Allegations relating to the Banning of Public Meetings, Gatherings and Demonstrations

343. In its communication dated 13 June 1963 the Aden T.U.C. alleged that all public meetings, gatherings and public demonstrations were banned, that Government Notice No. 21 of 1963 prohibited the exhibition of symbols, placards or pictures on any building, public or private, and that the police had removed flags, pictures and other symbols from trade union buildings.

344. In its communication dated 6 November 1964 the Government stated that the measures contained in Government Notice No. 21 were of general application and not directed specifically at trade union activities and were not applied against trade unions to their disadvantage compared with other organisations.

345. At its meeting in February 1965 the Committee observed, in paragraph 95 of its 81st Report, that the Government had not commented on the allegations that all public meetings, gatherings and demonstrations were banned and that the police had removed flags, pictures and other symbols from trade union buildings, and therefore requested the Government to furnish its observations on these points.

346. In its communication dated 26 May 1965 the Government states that public meetings, processions and demonstrations normally require police permission under the Control of Meetings and Assemblies Regulations. During the existing state of emergency they are also governed by section 26 of the Emergency Decree, under which the Minister's power is delegated to the Commission of Police, but that it is not true to say that all public meetings, etc., are banned. With regard to the allegations concerning the removal of flags, pictures and other symbols from trade union buildings, states the Government, the police have acted solely pursuant to section 542 (1) of the Police Ordinance, which controls the exhibition of articles likely to lead to a disturbance of the public peace or the contempt of authority.

347. In the present case there is a general allegation that all public meetings, gatherings and demonstrations and the exhibition of symbols, placards and pictures on any building are banned, to which the Government replies that there is no general prohibition of public meetings, etc., but that they are subject in all cases to police permission, and that the law

is applied to trade unions in the same way as other entities. Any removal of flags, etc., has been in accordance with powers of general application pursuant to provisions controlling the public exhibition of articles likely to lead to a disturbance of public peace or contempt of authority.

348. The allegations are of a somewhat general nature. No reference is made to the banning of any specific trade union meeting or demonstration, nor is any indication given of the nature of the symbols, etc., removed from trade union buildings. In these circumstances it is natural that the Government's reply should also be of a general nature, but this reply does assert that in no cases have trade unions been treated disadvantageously compared with other entities.

349. The Committee considers that the complainants have not furnished sufficient proof to show that the application of the measures referrred to have resulted in any specific infringement of trade union rights and therefore recommends the Governing Body to decide that these allegations do not call for further examination.

Allegations relating to Non-Recognition of Trade Union Rights in the States of the Federation of South Arabia

350. In its communication dated 6 April 1963 the Aden T.U.C. alleged that in the states of the Federation other than Aden trade unions were illegal and that the Aden Teachers' Union, recognised for the last seven years, was no longer recognised by the Federal Minister of Education because education concerned the whole Federation and not just the state of Aden. Since the formation of the Federation, said the complainants, other existing unions, as well as proposed new ones, were no longer recognised. Finally, it was alleged, employees in Abyan state who had asked for a revision of wages had been arrested.

351. In its communication dated 11 November 1963 the Government said that under the Constitution of the Federation labour matters were the responsibility of the individual states. In the states other than Aden life depended upon agriculture and there had been no demand for the formation of trade unions. " In fact ", said the Government, " there is no trade union organisation in these states but it would be a misinterpretation to claim that trade unions are illegal in these states."

352. The Government stated that the Aden Teachers' Union was a recognised union; in the past it had not sought recognition as a body with which the Aden Government, as an employer, should negotiate, although it had held informal discussions with the Education Department. On 6 February 1962 it applied for formal recognition and was requested to supply details of its constitution and membership. It had not replied to this request, but if it did reply, stated the Government, further consideration would be given to the question of recognition.

353. When it considered these allegations at its meeting in June 1964 the Committee noted, so far as the allegation that trade unions were illegal in the states of the Federation other than Aden was concerned, the Government's statement that " it would be a misinterpretation to claim that trade unions are illegal in these states ". The Committee, therefore, in paragraph 182 of its 76th Report, requested the Government to state " whether it would be correct to assume from the statement that workers in the states in question are legally entitled to form and join trade unions and carry on trade union activities if they wish to do so " and also asked the Government to furnish its observations on the allegation that employees in Abyan state who asked for a revision of wages were arrested.

354. At its meeting in February 1965 the Committee, not having received the further information and observations in question, repeated this request to the Government in paragraph 100 of its 81st Report.

355. In its communication dated 26 May 1965 the Government states that under the Constitution of the Federation of South Arabia labour matters are a state responsibility.

In the states other than Aden there is no law against trade unions. The Government explains, however, " that the concept of trade unionism is not at present reconcilable with the tribal organisation and social structure of the states of the Protectorate and that the creation of a climate in which trade unionism can function appropriately will necessarily be a slow and gradual process and is likely always to be extremely limited owing to the scattered distribution of the population and their dependence on agriculture ".

356. The Government declares that the agitation by state employees in Fadhli state for a revision of wages coincided with an investigation which was being undertaken into the causes of the general unrest existing in the state at the time, with the result that evidence of a subversive organisation directed and sustained from outside the state came to the notice of the authorities. Further investigation, says the Government, led to the discovery of seditious literature in the houses of two men—who were subsequently arrested—of a nature calculated to undermine law and order and to destroy the authority of the state, while other evidence was found of organised cells for subversive activity in the main centres of the state. In consequence the two men concerned, who were state employees, were arrested and prosecuted " on grounds on which any government would be bound to take action to maintain its authority ". The Government emphasises that neither these two men nor any other employees were arrested for agitating over wages revision.

357. With regard to the allegation that persons were arrested in Abyan state for asking for a wages increase, which is made in very general terms, the Government furnishes details to show that the state concerned was Fadhli state and that the arrests and prosecution of two public employees which took place in that state were not related to agitation by state employees in general for a wages revision but to a general wave of subversive activity in the state concerned. If the allegations had been more specific and substantiated in detail, the Committee might have considered it necessary to request the Government to furnish more detailed information on this aspect of the case. In the circumstances, however, the Committee considers that the complainants have not furnished sufficient proof in this particular connection of any infringement of trade union rights having taken place and recommends the Governing Body to decide that this aspect of the allegations does not call for further examination.

358. With regard to the allegations relating to the non-recognition of the Teachers' Union the position is not clear. It would appear that the Aden Teachers' Union is a registered union and that, when it sought formal recognition on 6 February 1962, it was asked to supply details of its constitution and membership—although it had in the past been recognised for the purpose of informal discussion—by the Education Department of the state of Aden, but had not supplied them. It is alleged, however, that recognition was refused to this union by the Federal Minister of Education because, since the formation of the Federation, education concerned the Federation and not just the state of Aden. It is further to be noted that in its reports pursuant to article 22 of the I.L.O. Constitution with respect to the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Government has referred to the Aden Teachers' Union as one of the " representative organisations " to which copies of its reports have been circulated.

359. In these circumstances, having regard to the obligation which the Government has assumed, under Article 3 of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), to ensure that all practical measures shall be taken to assure to trade unions which are representative of the workers concerned the right to conclude collective agreements with employers, the Committee requests the Government to be good enough to state whether the Aden Teachers' Union or any other union is now competent to negotiate on behalf of teachers in Aden and to comment on the allegation that recognition had been refused because education had become a federal matter.

360. There remains the allegation relating to the non-recognition of trade unions in states of the Federation other than Aden. To the specific question put by the Committee in para-

graph 182 of its 76th Report (see paragraph 353 above) the Government replies that there is no law against trade unions in these states.

Allegations relating to the Employment (Registration and Control of Employment) Bill

361. These allegations were dealt with in detail by the Committee in paragraphs 183 to 196 of its 76th Report and paragraphs 101 to 104 of its 81st Report, when the Committee drew the attention of the Government, having regard to certain of the provisions of the Bill, to the guarantees and principles embodied in Articles 1 and 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and Article 3 of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), both declared applicable without modification to Aden. The Committee also noted that it appeared from the text of the proposed Bill that, if it were to be enacted in that form, access to employment in general and to particular employments would depend on a worker being registered and that a wide discretion would be accorded to the registering authority when deciding to grant or refuse negotiation. The Committee pointed out, in paragraph 194 of its 76th Report, that it had drawn attention in the past [1] to the fact that such provisions may tend to prevent the negotiation by collective agreement of better terms and conditions, including terms and conditions governing access to particular employments, and thereby to infringe the rights of the workers concerned to bargain collectively and to promote and improve their working conditions, which are generally regarded as essential elements of freedom of association.

362. In these circumstances, at its meetings in June 1964 [2] and February 1965 [3], the Committee adjourned its examination of this aspect of the case and requested the Government to keep the Committee informed of further developments.

363. In its communication dated 26 May 1965 the Government states that the Bill remains in abeyance.

364. The Committee therefore requests the Government to be good enough to inform it in due course of any further developments in connection with the Employment (Registration and Control of Employment) Bill.

* * *

365. With regard to the case as a whole the Committee recommends the Governing Body—

(a) to decide, for the reasons indicated in paragraphs 348 and 349 above, that the allegations relating to the banning of public meetings, gatherings and demonstrations, and to the removal of flags, pictures and other symbols from trade union buildings do not call for further examination;

(b) to decide, for the reasons indicated in paragraph 357 above, that the allegations relating to the arrest of workers in Abyan state do not call for further examination;

(c) to decide, with regard to the allegations relating to the suppression of a trade union newspaper—

(i) to draw the attention of the Government to the view which it has expressed on several occasions that the right to express opinions through the press or otherwise is clearly one of the essential elements of trade union rights;

(ii) to note that revocation of the licence of the Aden T.U.C. newspaper, *Al Ommal*, was effected by the public authorities in Aden in their discretion and without giving rise to any right of appeal to a court of law;

[1] See 15th Report, Case No. 102 (Union of South Africa), paras. 160-165.

[2] See 76th Report, para. 196.

[3] See 81st Report, para. 104.

(iii) to draw the attention of the Government to its view that this discretionary power of the public authorities in Aden is not compatible with the right of a trade union organisation to organise its activities without interference on the part of the public authorities pursuant to Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which has been declared applicable without modification to Aden;

(iv) to request the Government to be good enough to inform the Governing Body of the measures it is intended to take to bring the legislation of Aden in this respect into conformity with Article 3 of the said Convention;

(d) to take note of the present interim report of the Committee with regard to the remaining allegations, it being understood that the Committee will report further thereon to the Governing Body when it has received additional information which it has decided to request the Government to be good enough to furnish.

Cases Nos. 294, 383, 397 and 400 :

Complaints Presented by the International Confederation of Free Trade Unions, the International Federation of Christian Trade Unions and the World Federation of Trade Unions against the Government of Spain

366. The Committee felt that it would be useful and appropriate to deal in a single document with the cases concerning Spain which it has under consideration and which relate to the various complaints presented.

367. Spain has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

368. When the Committee last considered these cases at its 38th Session (November 1964) it submitted to the Governing Body provisional reports thereon which appear in its 78th Report [1], and which were approved by the Governing Body at its 160th Session (November 1964).

369. The Government has supplied additional information in communications dated 4 February and 11 September 1965. The Committee has also obtained information on certain questions relating to the trade union situation in Spain and the texts of some of the judicial decisions requested, through the permanent delegate of Spain accredited to the international organisations in Geneva.

370. The information supplied by the Government on certain questions relating to the trade union situation in Spain, and the allegations which are still pending, are examined by the Committee in the following paragraphs.

Councils of Workers and Councils of Employers

371. The Committee has indicated on previous occasions [2] that workers should have the right to establish and join organisations of their own choosing without previous authorisation, and that these organisations should have the right to elect their representatives freely. The Government now indicates that the social sections (workers) and the economic sections (employers) of the Spanish trade union organisation have been progressively acquiring independence as regards the negotiation—and/or the nomination of representatives with a view to the negotiation—of collective agreements, this evolution having culminated in the internal regulations of the trade union organisations by means of which councils of

[1] See paras. 126-139, 248-257 and 292-330.

[2] See 27th Report, Case No. 143 (Spain), paras. 139-144 and 187 *(b)*; 60th Report, Case No. 143 (Spain), para. 62 *(e)*.

workers and councils of employers were set up (Orders Nos. 90 and 91 of 5 November 1964). These councils, which work in plenary and as permanent bodies and which exist both at the provincial and the national levels, are defined and act as " organs for expression, representation and inter-union co-ordination of workers' general and common interests " (Order No. 90 respecting workers' councils, section 1), or ". . . of employers' general and common interests " (Order No. 91 concerning employers' councils, section 1). Through these councils the employers and the workers enjoy a new means of expression in regard to problems which, being of a general and common interest, affect either all employers as such or all workers as such, whereas questions relating specifically to their sector or branch of activity will continue to be dealt with as in the past by the economic section—as regards employers—and by the social section—as regards workers—of the trade union to which they belong. The provincial councils of employers and of workers which began to be set up in March 1965 are now working normally. The National Council of Workers was established in Valencia on 29 June 1965, and the National Council of Employers was set up in Barcelona on 25 October 1965. Over 7 million workers democratically elected their representatives, both at the provincial level and at the national level, with a view to the establishment of the National Council of Workers. The President of the National Council of Workers has obtained 135 votes from the 273 electors present and voting, other candidates having obtained 89, 27 and 20 votes respectively.

372. The Committee notes, in addition, that section 7 of Order No. 90 concerning workers' councils provides that " the presidents and vice-presidents of provincial workers' councils shall be elected, from amongst the presidents of the social sections of the provincial trade union bodies, by the corresponding plenary assemblies at their first session and shall be proposed to the Provincial Delegate of Trade Unions, who will then appoint them in his capacity as President of the Provincial Trade Union Council "; the Committee also notes that section 13 of this same text provides that " the President and two Vice-Presidents of the National Council of Workers shall be elected from amongst the members of the Permanent Commission, by its plenary assembly at its first session, and shall be proposed to the National Delegate of Trade Unions, who will then appoint them ".

373. Having regard to these facts, the Committee recommends the Governing Body to take note of the creation of the councils of workers and councils of employers, which may constitute a preliminary step towards the setting up of independent workers' and employers' organisations, freely established by the workers and by the employers respectively, and that it suggest to the Government the advisability of taking further steps in the direction already being followed with a view to ensuring that all the offices in the councils of workers, without exception, shall be occupied by persons freely elected by all Spanish workers without any disqualification based on their part in or attitude towards past events.

Amendment of Article 222 of the Penal Code

374. The Committee has pointed out on various occasions [1] that certain legislative provisions, including in particular section 222 of the Penal Code, could be interpreted as an absolute prohibition of strikes. The Government now states that in June 1965 it approved and submitted to the Cortes a draft amendment of section 222 of the Penal Code. Section 222 in its present form reads as follows:

The following shall be punished as guilty of sedition:

(1) officials and employees responsible for all types of public services and individuals who, in a professional capacity, render services recognised as essential and incapable of postponement and who, for the purpose of making an attempt against the security of the State, of upsetting its normal activity or of prejudicing its authority or reputation, cease work or impair the regularity of the service;

[1] See 30th Report, Case No. 143 (Spain), paras. 125-131; 41st Report, Case No. 143 (Spain), paras. 81-88; 49th Report, Case No. 143 (Spain), paras. 100-102; 66th Report, Case No. 294 (Spain), paras. 480-484.

(2) combinations of employers for the purpose of paralysing work;

(3) strikes by workers.

Section 222, with the proposed amendment, would read as follows:

The following shall be punished as guilty of sedition:

(1) officials, employees and individuals responsible for rendering any kind of public services recognised as essential and incapable of postponement who cease their activities or in any way impair the regularity of the service;

(2) employers and workers who, with the object of making an attempt against the security of the State, of upsetting its normal activity, or of prejudicing its authority or reputation, cease or change the regularity of the work.

375. According to the Government, this text is being examined in plenary by the competent committee in the Cortes, with a view to its final approval at the next session of the Cortes.

376. Having regard to these facts, the Committee recommends the Governing Body to take note of the proposed amendment to section 222 of the Penal Code, according to which strikes and lockouts are no longer included amongst the acts which constitute offences of sedition, but to point out the danger of the wording employed in clause 2 of the proposed amendment being interpreted in broad terms as prohibiting all types of strike, and to suggest that due regard should be paid to this fact in the formulation by the Cortes of the final text, so as to exclude, without any doubt whatever, from the acts considered as offences of sedition any strikes which might be promoted by workers with a view to furthering and defending their occupational interests.

Collective Agreements

377. The Committee has made a number of comments [1], as regards the system of collective agreements, on the question of the approval of these agreements by the government authorities. The Government now states in this respect that the system governing the regulation of wages, hours of work and other conditions of work has evolved from one of government regulation to one based on free collective agreements and that the success and gradual development of the new system is not open to doubt. As of 1 January 1965, 4,736 collective agreements had been concluded in the last few years in very different sectors, affecting 7,820,822 workers and 1,445,226 undertakings. These agreements were freely concluded by the employers and workers. According to the Government, the approval of agreements by the labour authorities has no purpose other than to ascertain whether there are any major irregularities of form which invalidate them; moreover, it also performs the extremely important function of raising collective agreements (for purposes of citation and use in courts of law) from the status of a mere contractual fact to that of an instrument having the effect of a rule of law; this greatly facilitates the agreement being adduced as evidence and eliminates the burden of proof concerning its contents and reality, since agreements are immediately published in the provincial or state official bulletins. Out of the 4,736 collective agreements it has been considered necessary to submit only 33 for consideration by the Government's Committee for Economic Affairs, and only three have been rejected.

378. The Committee considers that, bearing in mind the fact that in practice only three of the 33 agreements submitted to it, out of a total of 4,736, have been rejected by the Government's Committee for Economic Affairs, present circumstances would be propitious for the examination by the Government of the possibility of replacing the procedure for the approval of collective agreements, in its present form, by the creation of a system of registration of all collective agreements negotiated in accordance with the terms of the law, so that the simple registration of a collective agreement may have the same effect as now results

[1] See 66th Report, Case No. 294 (Spain), paras. 478, 479 and 495 *(a)*.

from government approval; nevertheless, in the case of certain collective agreements the terms of which appeared to conflict with considerations of general interest, it might be possible to envisage a procedure whereby the attention of the parties could be drawn to these considerations to enable them to examine the matter further, it being understood that the final decision thereon should rest with the parties. The setting up of a system of this sort would be in conformity with the principle that trade unions must enjoy the right to endeavour to improve, by means of collective bargaining, the conditions of living and of work of their members and that the authorities must abstain from any interference which might limit this right.

379. In these circumstances the Committee recommends the Governing Body—

(a) to take note of the increasing number of collective agreements concluded in Spain as a means of regulating conditions of work for a constantly increasing number of workers;

(b) to suggest to the Government that it examine the possibility of replacing the procedure for the approval of collective agreements, in its present form, by the creation of a system for the registration of all collective agreements negotiated in accordance with the terms of the law;

(c) to point out, nevertheless, that, in the case of certain collective agreements the terms of which appeared to conflict with considerations of general interest, it might be possible to envisage a procedure whereby the attention of the parties could be drawn to these considerations to enable them to examine the matter further, it being understood that the final decision thereon should rest with the parties.

Jurisdiction in regard to Public Order

380. The Committee referred in its 74th and 76th Reports [1] to the changes made in the jurisdiction in regard to public order.

381. According to the supplementary information now supplied by the Government the Act of 2 December 1963 established the Jurisdiction and Court of Public Order. This Act deals explicitly with the jurisdiction formerly assigned to the military courts. Many cases in which proceedings had been instituted prior to the entry into force of the new Act have been transferred to the new Jurisdiction and Court of Public Order and removed from the jurisdiction of the military courts. The Court of Public Order is alone competent, throughout the national territory, to deal with offences commonly referred to as political or contrary to the security of the State, for instance unlawful associations, illegal propaganda, offences against the internal security of the State and offences against the external security of the State. According to the Government the military courts remain competent exclusively with respect to acts of terrorism. The judicial authorities competent with regard to public order consist of a Jurisdiction and Court within the system or ordinary courts and with exclusive competence vis-à-vis other jurisdictions and courts within that system. The Court consists of a president and two magistrates who are career judges. With respect to procedure the Act provides that the Court and Jurisdiction must conform strictly to the provisions of the Act respecting ordinary criminal procedure. Judgments are delivered orally and publicly in a special room of the Madrid Territorial Court of Appeal. The representatives of and counsel for the defence are also governed by the rules of ordinary jurisdiction. Appeals against the judgments given by the Court of Public Order may be lodged with the Second Chamber of the Supreme Court of Justice. The Court and Jurisdiction of Public Order have been in operation since 5 February 1964. Up to 31 December 1964 the Jurisdiction of Public Order had examined 267 cases, of which a fair number had already been instituted either with the ordinary courts or the military courts before the Act establishing the jurisdiction of public order came into force. Jurisdiction in these cases

[1] See 74th Report, Case No. 294 (Spain), paras. 176 and 200 *(b)*; and 76th Report, Case No. 294 (Spain), paras. 273-276.

was accordingly removed from these bodies. During its first year the Court of Public Order gave 128 judgments, of which approximately 35 per cent. resulted in release. As of June 1965 52 judgments had been given.

382. In these circumstances the Committee recommends the Governing Body to take note of the Government's statement that the military courts remain competent exclusively with respect to acts of terrorism.

Allegations concerning Arrests Arising out of the 1962 Strikes

383. The Committee observed, at its 38th Session (November 1964), that, of the 47 persons originally sentenced in connection with the 1962 strikes, 43 had subsequently been set free, but that Mr. Gregorio Rodríguez Gordon, Mr. Ramón Ormazábal Tife, Mr. Antonio Jiménez Pericás and Mr. Agustín Ibarrola Giocoechea were still in prison. It requested the Government to be good enough to keep it informed about any measures that might be taken concerning these persons.

384. In its communication of 4 February 1965 the Government states that the terms of imprisonment imposed on the above-mentioned persons would expire at dates running from 13 June 1969 to 13 June 1978, but that, with the remission which could be granted if they sought the benefit of the amnesty, they could be released conditionally on dates running from 27 May 1965 to 1 February 1971.

385. In the circumstances the Committee recommends the Governing Body to take note of the information furnished by the Government and to ask the Government to continue to keep the matter under review and to be good enough to keep it informed as to any measures that may be taken concerning Mr. Ramón Ormazábal Tife, Mr. Gregorio Rodríguez Gordon, Mr. Antonio Jiménez Pericas and Mr. Agustín Ibarrola Goicoechea.

Allegations concerning the 1963 Strikes

386. Although the allegations made by I.C.F.T.U. and I.F.C.T.U. on 24 September 1963 referred only to various acts of persecution and violence arising out of a labour dispute, without supplying any further details about the persons injured thereby, the additional information supplied in the letter of 8 October 1963 gave a number of details, such as the names of the persons alleged to have been ill-treated and tortured (one of whom was stated to have died as a result), together with the assertion that sanctions had been applied to firms which hired workers who had taken part in the strikes.

387. In its communication of 4 February 1965 the Government states that the careful investigations made at that time showed clearly that the allegations of torture and violence were pure fabrications, since it had been fully proved that there had been no case of death or ill-treatment as alleged. The Government adds that it must state categorically that no miner has died as a result of ill-treatment and that there has never been any prisoner named Rafael González (who, according to the complainants, had died). As regards the other persons mentioned in the allegations, the Government denies that anyone named Silvino Zapico has ever been arrested and states that no person of that name is known in the district concerned, nor is there any trace of such a person in the admission records of any hospital. As regards Mr. Vicente Baragaño García, the Government states that he was arrested on 10 August 1963 and placed at the disposal of the competent judicial authorities on grave suspicion of subversive activities outside the scope of trade union affairs, and that, when examined by the doctors of the Carabanchel prison, where he was being held at that time, he bore no trace of the torture alleged to have been inflicted on him. As regards Mr. Everardo Lastra Pérez, the Government states that he was arrested in 1962 for Communist activities and that, since he already showed symptoms of mental derangement at that time, he was sent to the Oviedo psychiatric hospital; on 10 May 1963 he was again

arrested for activities unrelated to labour matters and again sent to the above-mentioned provincial psychiatric hospital because he showed the same marked symptoms of insanity. With respect to the remaining allegations, the Government states that they were either shown also to be unfounded or that they could not be investigated by the Attorney-General's Office because, even if they had been true, they would have related to presumed crimes in regard to which proceedings could have been instituted only at the request of a party legitimately concerned.

388. The Committee notes that, while the complainants allege that certain persons, whose names they mention, were subjected to ill-treatment and torture as a result of which one of them died, the Government categorically denies that this is so and indeed that certain of the persons named had been arrested at any time. In view of these two entirely contradictory statements and the scant information at its disposal, the Committee finds it impossible to reach any final conclusion based on full knowledge of the facts.

389. In the circumstances the Committee recommends the Governing Body to take note of the fact that, for the reasons indicated in paragraph 388 above, it is unable to submit final conclusions to the Governing Body concerning the allegations pending with respect to the 1963 strikes.

Allegations respecting the Arrest of Mr. José María Rodríguez Manzano

390. At its 38th Session (November 1964) the Committee noted that Mr. Rodríguez Manzano had been sentenced by the Court of Public Order because of activities which, according to the complainants, were of a trade union character but which the Government described as political. In accordance with its usual practice the Committee recommended the Governing Body to ask the Government to forward a copy of the verdict and of the reasons adduced therein, together with any other information which might be helpful to the Committee.

391. In its communication of 11 September 1965 the Government insists once again that the activities attributed to Mr. Rodríguez Manzano were political in character; it adds that this is confirmed by the statements of the leaders of the clandestine political movement against the Spanish State, who avow and proclaim their intention of making use of such conflicts as a means of preparing subversion by violence within the structure of the State. This same political character, according to the Government, is reflected in all the activities of the so-called Workers' Trade Union Alliance and the Basque Workers' Solidarity Movement (S.T.V.). The Government indicates that the Basque Nationalist party itself, through its publication *Euzko Gaztedi*, confirms the claim that S.T.V. is a group belonging to the Basque Nationalist party. The Government adds that proof of the political character of S.T.V. may be found in several statements, drawn from different numbers of *Lan Deya* (clandestine news sheet, five or six numbers of which were brought out, according to the sentence, by Mr. Rodríguez Manzano during the summer of 1963, in Pasajes (Guipúzcoa)). The extracts communicated by the Government are as follows: " It is not necessary to recall that the régime is unlawful as to its origin and, accordingly, in its working " (*Lan Deya*, No. 9). " S.T.V. understands the situation and its line is firmly established; it is only by clandestine measures that our objectives can be achieved. . . . Nevertheless participation in this revolutionary work does not imply necessarily that the Basque brotherhood renounces all lawful opportunities of finding a solution for the worker " (ibid., No. 11). " The Basque country is subject to nationalist domination. The economic policy, demography, class organisation, racial, linguistic and cultural discrimination, and the exploitation of the Basque workers prevent the development and even the mere survival of Basque civilisation, and hence any truly original, free and individual contribution of the Basque genius to universal society and culture. French and Spanish nationalism, ' the enemy of separatism ', divides a single nation made up of 2 million persons by a frontier whose only *raison d'être* lies in arbitrary colonialism " (ibid., No. 21).

392. The Committee has also obtained, through the good offices of the permanent delegate of Spain accredited to the international organisations in Geneva, a copy of the sentence handed down by the Court of Public Order in the case against Mr. Rodríguez Manzano and a copy of the sentence given by the Supreme Court on 12 May 1965 by which it rejected the appeal which had been made by Mr. Rodríguez Manzano for breach of form and violation of the law.

393. It appears from the grounds given in the sentence that the deeds which are stated to have been proved are legally made up of the offences of unlawful association, illegal propaganda and clandestine entry into the national territory. Accordingly, Mr. Rodríguez Manzano was condemned to various terms of imprisonment corresponding to the different offences which were proven.

394. The Committee notes that two of the three offences of which Mr. Rodríguez Manzano was found guilty may be related to the exercise of trade union rights: those relating to unlawful association and illegal propaganda. The Committee also notes that the person concerned was judged by the Court of Public Order, which is the only court competent to consider political offences, which is composed of a chairman and of two career magistrates drawn from the judicial profession and in which the prosecution is represented by officials of the Public Prosecutor's Office. The Committee also notes that the judgment against Mr. Rodríguez Manzano was delivered orally and publicly, that the person concerned was able to appeal to the Second Chamber of the Supreme Court of Justice against the sentence and that this appeal was rejected, by decision dated 12 May 1965.

395. The Committee considers that, although it cannot be categorically concluded from the sentences in question—in which reference is made solely to the offences of unlawful association and illegal propaganda—that the alleged activities are not related to the exercise of trade union rights, it would appear that the acts of Mr. Rodríguez Manzano exceeded in some ways the normal framework of trade union activities as such.

396. The Committee therefore recommends the Governing Body to note that Mr. Rodríguez Manzano appealed to the Supreme Court, which confirmed the sentence, and to request the Government to be good enough to keep it informed in the event of any further developments in the matter.

Allegations relating to the Arrest of Workers Belonging to the Workers' Committee of Vizcaya

397. By a joint communication of 28 April 1964 I.C.F.T.U. and I.F.C.T.U. stated that the workers Valeriano Gómez Lavín, Ricardo Basarte Amézaga, Agustín José Begona Sánchez y Corrales, José María Echevarría Heppe and David Morín Salgado, members of the Workers' Committee of Vizcaya elected by the workers of Bilbao to negotiate with the authorities regarding the reinstatement of 52 workers who were dismissed during the strikes of the spring of 1962 had been arrested. Subsequently, in a letter of 15 May 1964, the complainants stated that the said persons had been released. On 29 October 1964 I.C.F.T.U. and I.F.C.T.U. stated that these members of the Workers' Committee of Vizcaya had been tried on 16 October 1964 by the Court of Public Order in Madrid and each had been sentenced to six months' imprisonment.

398. In its communication of 11 June 1964 the Government stated that it was not correct that the five persons detained were members of a workers' committee and had been elected by the workers of Bilbao. The cause of their detention was not the fact that they claimed a representative function, but their active participation in unlawful acts with the object of disturbing and obstructing the free expression of the workers' wishes in elections. These persons, the Government continued, were placed at the disposal of the appropriate ordinary courts of law, which then decided on their release.

399. The Committee, at its 38th Session (November 1964), requested the Government to supply information on the contradiction which appeared to exist between the statements communicated and, in any case, to supply the text of the sentences imposed on the persons in question and the reasons adduced therein.

400. By their communication of 19 January 1965 I.C.F.T.U. and I.F.C.T.U. transmitted the text of the judgment of the Court of Public Order against the members of the above-mentioned Committee, a copy of which was forwarded to the Government.

401. In its communication of 11 September 1965 the Government states that there was no contradiction between the statement, made in its reply of 11 June 1964 and repeated in its reply of 14 October 1964, that these five persons were at liberty, and the fact that they were subsequently tried by the competent court of law, since under any procedural system the fact of being charged with an offence and the fact of being at liberty until the matter comes before a court are perfectly compatible and indeed this coincidence frequently occurs —as it did in the present case. The Government adds that, according to judgment cited by I.C.F.T.U. and I.F.C.T.U., the accused had been provisionally detained by order of the judicial authority on 24 April 1964 and—also provisionally—released on bail on 13 May 1964 until, after the case had been heard, they were sentenced to six months' imprisonment, the period of preventive detention being deducted from the sentence to be served. The Government further states that at the time of the drafting of the reply (11 September 1965) the persons mentioned above were still provisionally at liberty—having appealed to the Supreme Court of Justice against their sentences—until the Supreme Court gave its ruling on the matter. Finally, the Government states that the sentence is equally explicit in the first part of the factual preamble to the sentence where the court found that the persons in question had, apart from other activities, agreed to " boycott trade union elections by refraining from participating in the election of leaders ".

402. The Committee takes note of the Government's statement, which clears up an apparent contradiction between the statements made by the complainants and those of the Government as to whether or not the five persons in question were at liberty.

403. As regards the other point in regard to which the Committee had asked for certain explanations, that is the statement that " these persons were arrested for taking part in unlawful acts, with the object of preventing the free expression of the workers' wishes in elections ", the Committee notes that the Government indicates that the reply may be found in the first part of the preamble to sentence of the Court of Public Order, in which it is stated that the persons concerned, apart from other activities, had agreed to " boycott the trade union elections by refraining from participating in the election of leaders ".

404. The Committee considers that the mere call addressed to workers to abstain from participating in trade union elections does not necessarily imply any intention of obstructing the free expression of workers' wishes in elections, unless the call is accompanied or followed by coercive activities such as to disturb or obstruct the exercise of these trade union rights.

405. The Committee also notes that the persons in question are still at liberty pending their appeal to the Supreme Court against the sentence handed down.

406. Accordingly the Committee recommends the Governing Body to note that the workers belonging to the Workers' Committee of Vizcaya are at liberty pending their appeal to the Supreme Court against the sentence, to request the Government to communicate the judgment of the said court on the question, and to decide in the meantime to postpone its examination of this aspect of the case.

Allegations relating to the Verdicts against Three Trade Union Leaders

407. The complainants stated in their original allegation that three trade union leaders, Francisco Calle, Agustín Mariano and José Cases, were arrested and brought before the

courts for their trade union activities. They indicated subsequently that severe sentences had been handed down against them. The Government, for its part, stated that the persons in question had been arrested not because of trade union activities, but because of subversive political activities and unlawful association, as they had been seeking to disrupt by violence the established order of the Spanish State, and that the court had issued its decision on 6 August 1964 finding the accused guilty of the offences of unlawful association and of subversive propaganda, as defined and declared punishable in the Penal Code.

408. At its 38th Session (November 1964) the Committee noted that the Government had sent no information on the specific acts motivating the sentences in question and recommended the Governing Body to request the Government to communicate the texts of any judgments given and their grounds and, in any case, information on the facts which led to the indictment.

409. In its communication of 4 February 1965 the Government repeated the information already supplied and added that it trusted that the objectivity of the Committee would prevent the danger of its maintaining artificially alive an irrelevant problem for which there had never been the least foundation.

410. The Committee regrets that the Government has not replied in concrete terms to the request for additional information, the purpose of which had been merely to obtain all the necessary information so as to enable the Committee to reach a fully informed and objective decision. The Committee hopes that the Government will find it possible to supply the information in question, as it has already done in regard to other similar questions examined by the Committee (see paragraph 392).

411. By a communication of 22 March 1965 I.F.C.T.U. stated that at the beginning of February the Supreme Court confirmed the sentences against the three trade unionists.

412. In these circumstances the Committee recommends the Governing Body to request the Government once more, in view of the lack of information on the acts leading to the sentences of Mr. Francisco Calle, Mr. Agustín Mariano and Mr. José Cases, to be good enough to communicate the text of the judgments pronounced against these persons, or, in any case, information on the acts that led to their trial, and to decide in the meantime to postpone further examination of this aspect of the case.

Allegations respecting the Arrest of Workers in connection with the Strikes of 1964

413. At its 38th Session (November 1964) the Committee examined the allegations regarding the arrest of workers in Bilbao, Sabadell and the Asturian mines in connection with a number of strikes. The Government had stated in its reply that some of these persons were at the disposal of the competent civil courts, charged with secret and unlawful political activities and unlawful association. In these circumstances the Committee, in accordance with its usual practice, had recommended the Governing Body to ask the Government to supply the texts of the judgments given and their grounds.

414. In its communication of 11 September 1965 the Government repeats the information given in its previous communications and does not therefore introduce any new element which would enable the Committee to proceed with the examination of this aspect of the case.

415. In these circumstances the Committee recommends the Governing Body to ask the Government once again to communicate the texts of any judgments given and their grounds, as well as any other element which might be supplied regarding the activities of the persons in question, and to decide in the meantime to postpone its examination of this aspect of the case.

* * *

416. With regard to the case as a whole the Committee recommends the Governing Body—

(1) as regards the information furnished by the Government on various questions relating to trade union rights in Spain—

(a) to take note of the creation of the councils of workers and councils of employers, which may constitute a preliminary step towards the setting up of independent workers' and employers' organisations, freely established by the workers and by the employers respectively, and to suggest the advisability of taking further steps in the direction already being followed, with a view to ensuring that all the offices in the councils of workers, without exception, shall be occupied by persons freely elected by all Spanish workers, without any disqualification based on their part in or attitude towards past events;

(b) (i) to take note of the proposed amendment to section 222 of the Penal Code, according to which strikes and lockouts are no longer included amongst the acts which constitute offences of sedition;

(ii) to point out the danger of the wording employed in clause 2 of the proposed amendment being interpreted in broad terms as prohibiting all types of strike, and to suggest that due regard be paid to this fact in the formulation by the Cortes of the final text, so as to exclude, without any doubt whatever, from the acts considered as offences of sedition, any strikes which might be promoted by workers with a view to furthering and defending their occupational interests;

(c) (i) to take note of the increasing number of collective agreements concluded in Spain as a means of regulating conditions of work for a constantly increasing number of workers;

(ii) to suggest to the Government that it examine the possibility of replacing the procedure for the approval of collective agreements, in its present form, by the creation of a system for the registration of all collective agreements negotiated in accordance with the terms of the law;

(iii) to point out, nevertheless, that, in the case of certain collective agreements the terms of which appeared to conflict with considerations of general interest, it might be possible to envisage a procedure whereby the attention of the parties could be drawn to these considerations to enable them to examine the matter further, it being understood that the final decision thereon should rest with the parties;

(d) to take note of the Government's statement that the military courts remain competent exclusively with respect to acts of terrorism;

(2) as regards the allegations relating to the strikes of 1963, to take note of the fact that, for the reasons indicated in paragraph 388 above, the Committee is unable to submit final conclusions to the Governing Body;

(3) as regards the allegations relating to the arrest of Mr. José María Rodríguez Manzano, to note that the person concerned appealed to the Supreme Court, which confirmed the sentence, and to request the Government to be good enough to keep it informed in the event of any further developments in the matter;

(4) as regards the allegations relating to arrests arising out of the 1962 strikes, to take note of the information furnished by the Government, and to ask the Government to continue to keep the matter under review and to be good enough to keep it informed as to any measures that may be taken concerning Mr. Ramón Ormazábal Tife, Mr. Gregorio Rodríguez Gordon, Mr. Antonio Jiménez Pericas and Mr. Agustín Ibarrola Goicoechea;

(5) to note that the workers belonging to the Workers' Committee of Vizcaya are now at liberty pending their appeal;

(6) to request the Government to be good enough to furnish the texts, together with the reasons adduced, of the judgments concerning—

(a) the sentencing of Messrs. Francisco Calle, Agustín Mariano and José Cases;

(b) the appeals to the Supreme Court against the sentence lodged by the workers belonging to the Workers' Committee of Vizcaya;

(c) the workers arrested in connection with the strikes of 1964;

(7) to take note of the present interim report, it being understood that the Committee will report further to the Governing Body when the information requested from the Government has been received.

Case No. 335 :

Complaints Presented by the Peruvian Workers' Confederation against the Government of Peru

417. The Committee examined this case previously at its 39th Session (February 1965) and submitted an interim report that appears in paragraphs 57 to 64 of its 82nd Report, which was approved by the Governing Body at its 161st Session (March 1965).

418. The complainants of the Peruvian Workers' Confederation (C.T.P.) are contained in a communication dated 10 May 1963, in another dated 21 May 1963, forwarded by the Secretary-General of the United Nations, and in a third dated 3 June 1963. At each of its sessions in November 1963, February 1964, June 1964 and November 1964 the Committee decided to postpone consideration of this case, since it was awaiting the observations of the Government, which were finally received with a communication dated 5 January 1965. When it examined the case at its February 1965 Session the Committee observed that the Government in its reply did not mention the specific complaints of C.T.P. but referred to the observations that had been made on an earlier case concerning different facts. The Committee in paragraph 64 of its 82nd Report therefore recommended the Governing Body to request the Government to furnish its observations on the specific complaints.

419. The Government sent these observations with a communication dated 10 September 1965.

420. Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Allegations respecting a Legislative Draft to Amend the Penal Code

421. In their communications of 10 and 21 May 1963 the complainants declare that they reject a legislative draft that would infringe freedom of association. According to the text of the draft, which has been published in the press and a copy of which accompanies the complaint, its purpose is to make various additions to the Penal Code. One section aims at establishing so-called offences against freedom to work and lays down penalties of imprisonment for persons who resort to violence in order to compel another person to take part in a strike or prevent him from entering his workplace and also for the employer or employee who practises coercion to compel another person to take part in a lockout or to leave or join a workers' or employers' organisation. Another section provides penalties of imprisonment for workers and officials in the service of the State or of public bodies who collectively cease work.

422. In its communication of 10 September 1965 the Government states that the cause of the complaint no longer exists since the draft in question has not become law. In fact, it was a draft legislative decree that was under consideration during the previous régime, when the executive was invested with legislative powers. The present Government issued Act No. 15060 of 19 June 1964 to set up the Committee for Drafting the Labour Code. The Government adds that this Committee is sitting and that its work will cover questions relating to freedom of association.

423. In these circumstances the Committee recommends the Governing Body to take note of the statement of the Government and to decide that there would be no object in examining this aspect of the case further.

Allegations relating to Presidential Decree No. 009 Governing the Formation of Trade Union Organisations

424. In its communication dated 3 June 1963 C.T.P. states that many provisions of Presidential Decree No. 009 of 3 May 1961, governing the formation of trade union organisations, infringe the principles set forth in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The complainants enclose a copy of the decree with their letter and make detailed comments on those of its provisions which they consider to infringe freedom of association. In the following paragraphs the Committee analyses this series of allegations, as well as the observations made on them by the Government in its communication of 10 September 1965.

(a) *Allegation relating to the Right Not to Join a Trade Union.*

425. C.T.P. alleges that section 4 of Presidential Decree No. 009, which provides that nobody shall be compelled to join or not to join a trade union, introduces into Peruvian legislation a principle that was rejected by the I.L.O. when the Right to Organise and Collective Bargaining Convention (No. 98), was being worked out. C.T.P. adds that, at the two sessions of the International Labour Conference during which the question was studied, three amendments submitted by the Employers' members with the object of incorporating the principle of the right not to join a union in Article 1 of Convention No. 98 were rejected. For this reason, and because the principle in question is not to be found in Convention No. 87, C.T.P. concludes that it is not proper to include it in the decree giving effect to the latter Convention, which has been ratified by Peru.

426. The Government asserts that this objection is baseless, since section 4 of the decree is in full harmony with article 27 of the Peruvian Constitution, which establishes the right to freedom of association. The Government adds that no Article of Convention No. 87 authorises, or can authorise, anybody to compel workers to join or not join a union.

427. In the past the Committee has had to examine a number of cases in which legislation has authorised or prohibited the establishment through collective agreements or other voluntary means of union security clauses. In such cases [1] the Committee has rejected the allegations made, reasoning on the basis of the declarations contained in the report [2] of the Committee on Industrial Relations set up by the International Labour Conference at its 32nd Session in 1949 to the effect that the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), could in no way be interpreted as authorising or prohibiting union security arrangements, such questions being matters for regulation in accordance with national practice. Since the Conference accepted this opinion in adopting the report of the Committee on Industrial Relations, the Committee considers that the provision of section 4 of Presidential Decree No. 009 referred to by the complainants does not in itself infringe Convention No. 98, which has been ratified by Peru, or Convention No. 87, which does not refer to the question either.

428. In these circumstances the Committee recommends the Governing Body to decide that there would be no object in examining this aspect of the case further.

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[1] See 13th Report, Case No. 96 (United Kingdom), paras. 115-139; 15th Report, Case No. 114 (United States), paras. 36-64, and Case No. 102 (Union of South Africa), paras. 116-174; 17th Report, Case No. 120 (France), paras. 78-98; 26th Report, Case No. 162 (United Kingdom), paras. 12-19; 30th Report, Case No. 182 (United Kingdom), paras. 101-108; 83rd Report, Case No. 303 (Ghana), paras. 185-194.

[2] See *Record of Proceedings*, International Labour Conference, 32nd Session, Geneva, 1949 (Geneva, I.L.O., 1951), Appendix VII, p. 468.

(b) *Allegation relating to the Prohibition of Political Activities by Trade Unions.*

429. C.T.P. alleges that section 6 of the decree (which prohibits trade unions from devoting themselves as organised bodies to political or religious activities or economic activities with a gainful purpose) conflicts with Convention No. 87. The Government replies that the restriction is applicable to party politics, which imply the blind acceptance of certain specific lines to the detriment of the union itself, and adds that political action is related to the cultural structure of society. The restriction is based on a full and direct appreciation of the Peruvian situation. Moreover, the Government goes on, the provision in question is in harmony with the resolution concerning the independence of the trade union movement, adopted by the International Labour Conference at its 35th Session in 1952. In conclusion, the Government states that political aims, which presuppose party loyalty, are damaging to the internal cohesion of trade unions and to the achievement of their true aims, and uses this argument to justify the prohibition contained in section 6 of the decree.

430. The Committee observes that neither the complainant nor the Government bases its arguments on the aspects of section 6 devoted to religious activities or to " economic activities with a gainful purpose ". With regard to the political activity of trade unions, the resolution concerning the independence of the trade union movement adopted by the International Labour Conference at its 35th Session (Geneva, June 1952) states in particular that when trade unions undertake political action or participate in it, this action should not be " of such a nature as to compromise the continuance of the trade union movement or its social and economic functions irrespective of political changes in the country ".

431. The Committee nevertheless recalls in this connection words used by the Committee of Experts on the Application of Conventions and Recommendations in 1959 to the effect that a general prohibition against all political activity by trade unions may raise difficulties, since the interpretation given to the relevant provisions in practice may change at any moment and restrict considerably the possibility of action of the organisations.[1]

432. In these circumstances the Committee recalls the principle that it has maintained in various earlier cases, particularly Case No. 423 relating to Honduras [2], that it is not appropriate to prohibit all political activities by occupational organisations in general terms, but that the judicial authorities should be entrusted with the task of pronouncing on abuses that might be committed by organisations that had lost sight of the fact that their fundamental objective, according to the resolution concerning the independence of the trade union movement adopted by the Conference in 1952, is " the economic and social advancement of the workers ".

433. In these circumstances the Committee recommends the Governing Body to draw the attention of the Government to the importance it attaches to the principle set forth in paragraph 432 above, to suggest to the Government the desirability of studying any reforms that may be necessary to give full expression to this principle, and to express the hope that such reforms will be introduced as soon as possible, perhaps with the promulgation of the Labour Code whose drafting is announced by the Government.

(c) *Allegations relating to the Minimum Number of Members in a Trade Union.*

434. The complainants allege that section 7 of the decree, by requiring a minimum of 20 members for the formation or continuance of a workers' trade union, restricts the scope of Article 2 of Convention No. 87, according to which workers and employers, without distinction whatsoever, shall have the right to establish organisations of their own choosing without previous authorisation. C.T.P. adds that this section of the decree also improperly

[1] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (IV), International Labour Conference, 43rd Session, Geneva, 1959 (Geneva, I.L.O., 1959), para. 69, p. 115.

[2] See 84th Report, paras. 63-78.

limits the representation of the workers to one delegate in those workplaces that have five or more workers but do not reach the minimum number fixed for the establishment of a trade union. Both provisions, besides conflicting with the Convention, constitute retrograde measures in Peruvian legislation, since the Presidential Decree of 23 March 1936, which is rescinded where it conflicts with Presidential Decree No. 009, required no minimum number of members and provided, moreover, that, in the absence of a trade union, workers could be represented by two delegates. The complainants assert that workers employed in establishments with fewer than 20 employees, which are very numerous in Peru, were able before the promulgation of Decree No. 009 to establish trade union committees or trade unions that were affiliated to trade unions or federations respectively, such as the National Federation of Workers in Hotels and Allied Establishments. Under the new legislation these workers have lost the right to organise and their leaders find themselves denied trade union protection, and the result has been that the employers have carried out a number of dismissals.

435. With regard to these specific allegations the Government confines itself to stating that the requirement of a minimum number of members meets the necessity of guaranteeing the existence of the trade unions, because it is customary in Peru to establish trade unions with large executive committees of ten to 15 members, and that, in the absence of the requirement of section 7, trade unions would consist only of their executive committees. Moreover, the Government goes on, this legal requirement does not prevent the representation of workers who are not affiliated to a trade union for the purposes of making claims and concluding collective agreements.

436. The complainants also say that section 9 of the decree infringes Article 3 of the Convention. Subsection *(b)* of section 9 stipulates that in order to be a member of a workers' trade union a person shall belong to the undertaking or activity uniting them. The Government makes no observations on this point in its reply.

437. The Committee considers that, before expressing an opinion on this aspect of the case, it must have certain additional information from the Government. It therefore recommends the Governing Body to request the Government to state whether workers in work centres with fewer than 20 members can unite with those of other work centres to form a trade union and, if so, subject to what conditions.

438. The Committee also considers it necessary in connection with these allegations to examine section 11 of the decree, amended by Presidential Decree No. 021 of 21 December 1962, which is referred to by the Government in its report on the application of Convention No. 87.[1] Section 11 as amended requires that a trade union shall consist of more than 50 per cent. of the wage earners if it is a wage earners' union, more than 50 per cent. of the salaried employees if it is a salaried employees' union, and more than 50 per cent. of the wage earners and of the salaried employees if it is a mixed union.

439. The Committee recalls that the Committee of Experts on the Application of Conventions and Recommendations, when examining a similar provision in Burmese legislation [2], stated that such a provision was not in conformity with Article 2 of the Convention, which provides that workers shall have the right " to establish ... organisations of their own choosing without previous authorisation ". The Committee of Experts added that such a legal provision placed a major obstacle in the way of the establishment of trade unions capable of " furthering and defending the interests " of their members and moreover had the indirect result of prohibiting the establishment of a new trade union whenever a trade union already existed in the undertaking or establishment concerned.

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[1] A summary of the report is given in *Summary of Reports on Ratified Conventions (Articles 22 and 35 of the Constitution)*, Report III (Part I), International Labour Conference, 49th Session, Geneva, 1965 (Geneva, I.L.O., 1965), pp. 184-185.

[2] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), ibid., 47th Session, Geneva, 1963 (Geneva, I.L.O., 1963), p. 87.

440. In these circumstances the Committee recommends the Governing Body to draw the attention of the Government to the opinion expressed by the Committee of Experts on the Application of Conventions and Recommendations mentioned in the previous paragraph, to suggest to the Government the desirability of studying any reforms that may be necessary to bring Peruvian legislation in this connection into harmony with Convention No. 87, which has been ratified by Peru, and to express the hope that such reforms will be introduced as soon as possible, perhaps with the promulgation of the Labour Code whose drafting is announced by the Government.

(d) *Allegation relating to the Personal Quality of Trade Union Office.*

441. Section 10 of Presidential Decree No. 009 provides that membership or office in a trade union is strictly personal, and that it cannot be transferred or delegated for any reason. In their communication of 3 June 1963 the complainants state that this provision prohibits the granting of mandates. As an example of the difficulties with which this faces trade unionists they add that under the section referred to trade union leaders are compelled to travel themselves to Lima every time there is business to transact, with all the consequent expenses, unless they wish to see business protracted indefinitely.

442. The Committee observes that in its reply the Government makes no observation on this allegation.

443. The Committee therefore recommends the Governing Body to request the Government to state whether section 10 of Presidential Decree No. 009 must be interpreted or not as denying trade union officers the power of conferring a mandate on third parties to carry out business on behalf of the trade union.

(e) *Allegations relating to the Compulsory Registration of Trade Unions.*

444. According to the complainants the chapter of Presidential Decree No. 009 dealing with the registration of trade unions (sections 11 to 19) contains provisions impairing the guarantees of Convention No. 87 by making registration compulsory and so empowering the labour authorities (section 15) to refuse registration on the grounds of infringement of, or failure to comply with, the legal provisions. They add that the decree goes so far as to require the submission of documents attested by a notary or justice of the peace, or certified by the members of the executive committee on their own responsibility, and they consider that the requirement of registration as derived from the provisions of the decree has the character of original legislation and not that of regulations issued in accordance with Convention No. 87, whose principles have been incorporated in Peruvian legislation by virtue of ratification. In fact, a reading of section 11, as amended by Presidential Decree No. 021 of 21 December 1962 (see paragraph 438 above), shows that the law requires the submission of an application accompanied by the following documents: copy of the minutes of the founding meetings, stating the number of workers and proving that the trade union has been established with the required number of members; a full list of members; and a copy of the by-laws and of the minutes of the general assembly approving them. These documents are to be submitted in duplicate, attested by a notary or, in the absence of a notary, a justice of the peace, or certified by the members of the executive committee. Section 13, also as amended by Presidential Decree No. 021, lays down in detail the form in which the list of members is to be submitted. This is to be typed and to contain, in separate lists for wage earners and salaried employees, various personal details including nationality and the number of the military and electoral record books, each person having to sign or make his fingerprint.

445. With regard to these allegations the Government replies that the compulsory registration of trade unions fulfils the purpose of establishing their existence so that the authorities can give them fuller attention and attribute representative status. The Government adds that it is not a question of recognition, which has been abolished in Peru, but of " statistical registration ".

446. The Committee observes in this connection that section 2 of Presidential Decree No. 021 of 21 December 1962, amending Presidential Decree No. 009, provides that the compulsory registration of trade unions shall grant representative status with the employers and the labour authorities in labour claims. The Committee also observes that compulsory registration is indispensable if the trade unions are to be considered in the formation of national or international bodies or committees of a bipartite or tripartite nature.

447. In these circumstances the Committee considers it necessary to recall what was expressed by the Committee of Experts on the Application of Conventions and Recommendations in 1959. The Committee of Experts considered that, although the founders of an organisation were not freed from the duty of observing formalities as to publicity or other similar formalities which might be prescribed by certain legislation, these formalities must not be such as to be equivalent in practice to previous authorisation. The Committee of Experts, while it pointed out that in some countries the formalities prescribed by law (deposit of constitution and rules, registration or other measures of publicity) were compulsory and in other countries optional, expressed the opinion that the compulsory or optional nature of the formalities prescribed did not always provide a sufficient criterion for determining whether there was or was not a requirement of previous authorisation. In fact, in some cases, although registration was compulsory, the authority competent to effect the registration had no power to refuse it or, which amounted to the same thing in practice, could refuse registration only because of a formal defect which it was always possible to remedy. Nevertheless, the Committee of Experts concluded that when registration, even if it was optional, conferred on the registered organisation the basic rights that it needed in " furthering and defending the interests " of its members, possession by the authority responsible for registration of power to refuse it led to a situation that was not very different from that in cases in which previous authorisation was required.[1]

448. The Committee therefore recommends the Governing Body to draw the attention of the Government to the importance it attaches to the opinion of the Committee of Experts on the Application of Conventions and Recommendations referred to in paragraph 447 above, to suggest to it the desirability of studying any reforms that may be necessary to bring Peruvian legislation in this connection into harmony with Convention No. 87 and to express the hope that such reforms will be introduced as soon as possible, perhaps with the promulgation of the Labour Code whose drafting is announced by the Government.

(f) *Allegations relating to the Right to Organise of State Employees.*

449. According to the complaint of C.T.P. section 28 of the decree removes from the scope of Convention No. 87 workers in the service of the State and of semi-state bodies and so impairs the right to organise established under this Convention for workers without distinction whatsoever. This deprives the workers referred to of the opportunity of advancing their claims, and so many of them have to endure unfavourable working conditions and others have been the object of damaging measures. In this connection the complainants mention the fines imposed on the workers of the Tobacco Agency for having refused to carry out voluntary work, the " subhuman " conditions in which the workers of the Guano and Salt Company work, and other facts.

450. In its reply of 10 September 1965 the Government states that public servants have the opportunity of associating for cultural and sporting activities and for purposes of welfare and co-operation and are protected by a scheme covering stability of employment, holidays with pay, special leave, redundancy and retirement pensions, an assistance fund and other forms of social security. The Government adds that it is, moreover, bringing Peruvian legislation into harmony with the Convention and that the new Act No. 15215

[1] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 43rd Session, Geneva, 1959 (Geneva, I.L.O., 1959), paras. 26 and 27, p. 107.

(establishing a charter and register for the teaching profession in Peru) will provide for the right to organise in this sector of the public service.

451. Reference to section 28 of Presidential Decree No. 009 shows that the decree applies to employers, wage earners and salaried employees in the private sector and that employees subject to special statutes will be governed by their own regulations. It should not, therefore, be inferred that this provision in itself excludes employees of the State or of semi-state bodies from enjoying the rights and guarantees set forth in Convention No. 87. The Government in its reply seems to give implicit recognition to its obligation, arising from the ratification of Convention No. 87, to grant public employees the right to organise. Article 2 of Convention No. 87 provides that workers, " without distinction whatsoever, shall have the right to establish . . . organisations of their own choosing without previous authorisation ", and the only restriction envisaged in this Convention is that of Article 9, which allows the extent to which the guarantees provided for in the Convention shall apply to the armed forces and the police to be determined by national laws or regulations.

452. In these circumstances the Committee expressly emphasises, as it has done on other occasions [1], the importance of ensuring that persons employed in the service of the State should be guaranteed the right to establish trade unions and to register them with a view to their lawful operation, and recommends the Governing Body to bring this principle to the attention of the Government and to request the latter to keep it informed of any progress made towards giving full effect to the principle.

(g) *Allegations relating to Requirements for the Formation of Federations and Confederations.*

453. C.T.P. asserts that various provisions of the chapter in the Presidential Decree dealing with organisations of higher degree (sections 22 to 27) restrict the right held by workers' organisations under Article 5 of Convention No. 87 to establish federations and confederations with the guarantees provided for basic organisations under Articles 2 and 3 of the Convention. According to the complainants the requirement of five trade unions for the establishment of a federation and ten federations for the establishment of a confederation not only infringes the Convention but also disregards the real situation of the country, since in Peru there are what are known as trade union associations covering trade unions of a single political or geographic area and this does not exclude the uniting of the basic organisations within an industry to form the corresponding federation. Thus, with the agreement of the C.T.P. congresses, the trade union organisation of Peru embraces the provincial, departmental and regional associations, besides the Private Employees' Trade Union Federation and the industrial federations, the latter often consisting of the trade union committees of small establishments or craft centres. These industrial federations are in many cases true craft unions established by workers in the same trade working in various work centres.

454. In its reply of 10 September 1965 the Government states that section 23 of the decree, respecting the number of trade unions or federations required for the establishment of organisations of higher degree, meets the necessity of taking account of the average number of organisations existing in each branch of activity. The Government also asserts that, under the present régime of constitutional government, no measures have been adopted affecting the activities of the existing trade union associations, and it refers to what it has already stated in connection with the promulgation of Act No. 15060 of 19 June 1964 establishing the Committee for Drafting the Labour Code.

455. The Committee observes that section 23 of Presidential Decree No. 009 has also been amended by Presidential Decree No. 021 (see paragraph 438 above). Even in its amended form, section 23, which requires the combination of no fewer than five trade unions in the

[1] See Fourth Report, Case No. 51 (India), para. 25; Sixth Report, Case No. 55 (Greece), para. 919; 24th Report, Case No. 144 (Guatemala), paras. 223-258; 26th Report, Cases Nos. 134, 141, 143 and 154 (Chile), para. 100; 69th Report, Case No. 285 (Peru), para. 57; 84th Report, Case No. 423 (Honduras), para. 73.

same type of activity for the formation of a federation and no fewer than ten federations for the formation of a confederation, conflicts with Articles 5 and 6 of the Convention, which lay down that " workers' and employers' organisations shall have the right to establish . . . federations and confederations " and that the guarantees provided for basic organisations by Article 2 of the Convention shall apply to the establishment of these organisations of higher degree. In the present case it should be pointed out in particular that section 23 of the presidential decree appears, as the complainants maintain, to prevent the establishment of organisations of higher degree combining trade unions or federations of different activities operating in the same locality or area.

456. The Committee therefore recommends the Governing Body to draw the attention of the Government to the importance that it attaches to the provisions of Articles 5 and 6 of Convention No. 87, which are infringed by section 23 of Presidential Decree No. 009, to suggest to the Government the desirability of studying any legislative reforms that may be necessary to eliminate the contradiction, and to express the hope that such reforms will be introduced as soon as possible, perhaps with the promulgation of the Labour Code whose drafting is announced by the Government.

(h) *Allegations relating to the Dismissal of Trade Union Officers.*

457. C.T.P. alleges that the officers of trade union organisations already existing but not meeting the requirements of Presidential Decree No. 009 have been deprived of trade union protection and are being dismissed.

458. The Government makes no specific reference to the alleged dismissals in its reply.

459. In these circumstances the Committee recommends the Governing Body to request the Government to send its observations as soon as possible on the alleged dismissals, which may be infringements of Article 1 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which has been ratified by Peru.

* * *

460. With regard to the case as a whole, the Committee recommends the Governing Body—

(a) in respect of the allegations relating to a legislative draft to amend the Penal Code, to take note of the Government's statement to the effect that there is no longer any intention of promulgating this draft and to decide that there would be no object in examining this aspect of the case further;

(b) in respect of the allegation relating to the right not to join a trade union (section 4 of Presidential Decree No. 009), to decide, for the reasons given in paragraph 427 above, that there would be no object in examining this aspect of the case further;

(c) in respect of specific allegations relating to other provisions of Presidential Decree No. 009, to draw the attention of the Government—

(i) to the importance of ensuring that persons employed in the service of the State should be guaranteed the right to establish trade unions, a principle that derives from Convention No. 87, which has been ratified by Peru, and under Article 2 of which workers, without distinction whatsoever, shall have the right to establish organisations of their own choosing without previous authorisation;

(ii) to the importance it attaches to the principle that it is not appropriate to prohibit all political activities by occupational organisations in general terms, but that the judicial authorities should be entrusted with the task of pronouncing on abuses that might be committed by organisations that had lost sight of the fact that their fundamental objective, according to the resolution concerning the independence of the trade union movement adopted by the Conference in 1952, is " the economic and social advancement of the workers ";

(iii) to the importance it attaches to the opinion expressed by the Committee of Experts on the Application of Conventions and Recommendations that, although the founders of an organisation are not freed from the duty of observing formalities as to publicity or other similar formalities which may be prescribed by legislation, these formalities must not be such as to be equivalent in practice to previous authorisation, and that, when registration confers on the organisations the basic rights that they need in furthering and defending the interests of their members, the fact that registration can be refused at the discretion of the authorities leads to a situation that is not very different from that in cases in which previous authorisation is required;

(iv) to the importance that must be attached to the provisions of Articles 5 and 6 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), provisions that are infringed by section 23 of Presidential Decree No. 009 as amended by Presidential Decree No. 021, which requires a minimum number of trade unions or federations for the establishment of organisations of higher degree and prevents the establishment of federations and confederations bringing together the trade unions or federations of different activities in a specific locality or area;

(v) to the importance that it attaches to the opinion expressed by the Committee of Experts on the Application of Conventions and Recommendations, when examining a provision similar to that of section 11 of Presidential Decree No. 009, which provides that a trade union can exist only if it organises more than 50 per cent. of the workers concerned, namely that such a provision is not in conformity with Article 2 of Convention No. 87, places a major obstacle in the way of the establishment of trade unions and has the indirect result of prohibiting the establishment of a new trade union whenever a trade union already exists in the undertaking or establishment concerned;

(vi) to the desirability of studying any reforms that may be necessary to bring Peruvian legislation, as soon as possible, into harmony with the principles and considerations set forth in clauses (i) to (v) above;

(d) in respect of the allegations relating to the minimum number of 20 members required for the establishment of a trade union, to request the Government to state whether workers in work centres with fewer than 20 members can unite with those of other work centres to form a trade union and, if so, subject to what conditions;

(e) in respect of the allegation of the complainants that under section 10 of Presidential Decree No. 009 trade union officers are denied by law the power of conferring a mandate on third parties to carry out business on behalf of the trade union, to request the Government to send its observations as soon as possible;

(f) in respect of the dismissals of trade union officers alleged by the complainants, which are mentioned in paragraph 457 above, to request the Government to send its observations as soon as possible;

(g) to take note of this interim report, on the understanding that the Committee will submit a further report when it has received from the Government the observations and information referred to in subparagraphs *(d)*, *(e)* and *(f)* of this paragraph.

Case No. 365 :

Complaint Presented by the Union of Congolese Workers and the General Union of Trade Union Federations of Congolese Farmers and Workers against the Government of the Congo (Leopoldville)

461. This case was first examined by the Committee at its meeting in June 1964, when it submitted an interim report to the Governing Body in paragraphs 354 to 367 of its 76th Report, which was approved by the Governing Body at its 159th Session (June-July 1964).

462. It was alleged that on 15 October 1963, while on a tour of inspection of the local sections of the complaining organisation, its National President, Mr. Raymond Beya, was arbitrarily arrested and imprisoned. In its observations contained in communications dated 3 January and 12 February 1964 the Government stated that Mr. Beya had been sentenced in virtue of a judgment made in due form by the police court at Butembo on 17 October 1963. In the communication dated 3 January 1964 the Government declared that he was at liberty.

463. At its meeting in June 1964 the Committee, in paragraph 367 of its 76th Report, recommended the Governing Body to request the Government to be good enough to furnish the text of the judgment in question and of the reasons on which it was based. This request was transmitted to the Government by a letter dated 18 June 1964.

464. In a letter dated 10 October 1964 the Government stated that it had written to the Attorney-General asking for the information requested by the Committee, but that, " as the control of Northern Kivu by the rebels prevents any communication with the authorities of that region ", the Attorney-General had not been able to furnish the information.

465. At its meeting in November 1964 the Committee took note of this communication and decided to request the Government to furnish the information in question as soon as possible. The Government was informed of this decision by a letter dated 17 November 1964.

466. On 19 January 1965 the Government stated in reply that it still did not have in its possession the judgment relating to the case of Mr. Beya " because of the confused situation still subsisting in the north-eastern part of the country as a result of the rebellion ".

467. This reply was noted by the Committee at its meeting in February 1965, when the Committee decided again to request the Government to furnish the text of the judgment as soon as possible.

468. On 17 July 1965 the General Union of Trade Union Federations of Congolese Farmers and Workers (U.G.C.S.P.T.C.) addressed a complaint to the I.L.O. in which it is alleged that on 29 June 1965 Mr. Beya was in the vicinity of Goma, in Northern Kivu, where he had gone to give a course within the framework of a workers' education programme and to organise a works council in a nearby undertaking, when he was suddenly arrested by armed police, on the orders of the Provincial Labour Inspector, Mr. Sivanzire Bonaventure. The complainants state that on 17 July 1965 he was still being held in prison without trial and that this had caused the suspension of the activities of his organisation.

469. On 8 August 1965 the North Kivu Provincial Committee of U.G.C.S.P.T.C. addressed a complaint to the I.L.O. It is alleged that Mr. Sylvestre Kalunga, the secretary of the organisation for the Walitale territory, was murdered by the District Officer of that territory. As regards Mr. Raymond Beya, this complainant states that, having already been arrested in 1963 and imprisoned without trial, he was arrested, ill-treated and arbitrarily imprisoned on 4 August 1964 and held without trial until November 1964, when he was released. On 29 September 1964, it is alleged, Mr. Oscar Nkole, Provincial Inspector of the Union, was also arrested and ill-treated in Ruthurn territory and imprisoned as a thief in order to prevent the unions from operating in Ruthurn. He was never brought to trial and was released in November 1964.

470. The complaint of U.G.C.S.P.T.C. dated 8 August 1965 was transmitted to the Government, for its observations, by a letter dated 27 August 1965. No observations on this complaint have been received.

471. On 11 August 1965 the Government furnished its observations on the complaint of U.G.C.S.P.T.C. dated 17 July 1965. The Government states that the allegations against Labour Inspector Sivanzire Bonaventure (see paragraph 468 above) are without foundation. The Government forwarded a statement by this inspector in which he declares that in February-March 1964 he was sent to make inquiries in Northern Kivu into the activities of Mr. Beya and Mr. Nkole (who is referred to in the complaint dated 8 August 1965). Mr. Bonaventure states that these "self-styled trade unionists" first used as a front for their activities the Union of Congolese Workers and then changed to another union,

P.A.N.A.T.R.A., finally joining another union, U.G.C.S.P.T.C. On 9 June 1965, he declares, Messrs. Beya and Nkole went to C.E.C. (the meaning of these initials is not explained) in Goma and withdrew 50,000 francs as an advance from the accountant, in the absence of himself and the labour officer. This money had been intended to be used to pay five clerks who had been dismissed from C.E.C. The two trade unionists, says Mr. Bonaventure, paid two of the clerks but retained the remaining 30,000 francs. As they refused to attend to give an explanation he took action against them as embezzlers of public funds.

472. In many cases in the past where trade unionists have been arrested for political offences or for offences under ordinary law the Committee has emphasised the importance it attaches to ensuring that such persons should be tried within the shortest possible period by an impartial and independent judicial authority.[1]

473. In these circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government to the importance which the Governing Body has always attached to ensuring that trade unionists arrested for political offences or for offences under ordinary law should be tried within the shortest possible period by an impartial and independent judicial authority;

(b) to request the Government to inform the Governing Body as a matter of urgency, having regard to the principle enunciated above, as to the present situation with regard to Mr. Beya and Mr. Nkole;

(c) to request the Government once again to furnish the text of the judgment by virtue of which Mr. Beya was sentenced at Butembo on 17 October 1963;

(d) to request the Government to furnish its observations on the complaint presented on 8 August 1965 by the General Union of Trade Union Federations of Congolese Farmers and Workers.

Case No. 385:

Complaints Presented by the World Federation of Trade Unions, the Latin American Confederation of Christian Trade Unionists and the International Federation of Christian Trade Unions against the Government of Brazil

474. This case was first examined by the Committee at its 39th Session in February 1965, when it submitted an interim report to the Governing Body in paragraphs 133 to 152 of its 81st Report. The Committee considered the matter again at its 40th Session, in May 1965, when it submitted a further interim report in paragraphs 271 to 277 of its 83rd Report. The 81st and 83rd Reports of the Committee were approved by the Governing Body at its 161st (March 1965) and 162nd (May-June 1965) Sessions respectively.

475. The case raised two series of allegations: one relating to the placing of trade union organisations under control, and the other to measures taken against trade union leaders.

Allegations relating to the Placing of Trade Union Organisations under Control

476. With regard to the first series of allegations the Committee, at its meeting in May 1965, took note of statements by the Government that the placing of trade union organisations under control had affected only 10 per cent. of such organisations and

[1] See Fourth Report, Case No. 5 (India), paras. 18-51, Case No. 10 (Chile), paras. 52-88, and Case No. 130 (United Kingdom-Malaya), paras. 140-161; Sixth Report, Case No. 47 (India), paras. 704-736, and Case No. 49 (Pakistan), paras. 770-813; 12th Report, Case No. 87 (India), paras. 233-240, and Case No. 63 (Union of South Africa), paras. 257-276; 13th Report, Case No. 62 (Netherlands), paras. 18-89; 16th Report, Case No. 112 (Greece), paras. 57-86; 17th Report, Case No. 104 (Iran), paras. 157-221; 24th Report, Case No. 142 (Honduras), paras. 97-148; 25th Report, Case No. 136 (United Kingdom-Cyprus), para. 154, and Case No. 140 (Argentina), para. 266; 27th Report, Case No. 143 (Spain), para. 186, and Case No. 152 (United Kingdom-Northern Rhodesia), para. 410; 62nd Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 152; 67th Report, Case No. 303 (Ghana), para. 318; 84th Report, Case No. 423 (Honduras), para. 75.

had been dictated solely by imperative reasons of public order, that this control had been raised in the case of 398 organisations and that, by June 1965, it would also have been raised in the case of the remaining organisations, numbering less than 100. The Committee therefore recommended the Governing Body to request the Government to be good enough to keep it informed as to developments in this connection.

477. In this connection the Government furnished the following information in two communications dated respectively 4 August and 5 November 1965. The control under which 600 of the 4,000 Brazilian trade union organisations had been placed was terminated entirely on 25 June 1965; the organisations concerned were given 90 days within which to hold elections; in the case of 50 per cent. of them this procedure has been concluded; in the case of the others it is in progress and all measures have been taken, declares the Government, to expedite the conclusion. Finally, the Government indicates that, of the seven national confederations of workers, only that of the seafarers has still not held elections, but that the preparations are being made and they will be held shortly.

478. In these circumstances the Committee recommends the Governing Body, while emphasising once again the importance which it attaches to the fact that the placing of trade union organisations under control may entail a serious danger of restricting the right of workers' organisations to elect their representatives in full freedom and to organise their administration and activities, to note the Government's statement that the control of trade union organisations in Brazil has terminated and that elections are now taking place, and to request the Government to be good enough to continue to keep the Governing Body informed of further developments with regard to this matter.

Allegations relating to Measures Taken against Trade Union Leaders

479. With regard to the allegations relating to measures taken against trade union leaders the Committee, at its meeting in May 1965, recommended the Governing Body, as it had already done at its meeting in February, to request the Government to be good enough to furnish information concerning the proceedings taken in the case of the detained trade union leaders and to furnish the texts of the judgments, when they had been handed down, together with the reasons adduced therein.

480. With regard to the particular case of Mr. Clodsmith Riani, the Government, in a communication dated 27 May 1965, states: " The prosecutions brought against Mr. Riani in the military courts and in the ordinary courts are proceeding normally. However, the absence of a judgment is due to the many motions filed by counsel for the accused, and which relate to the discovery of evidence and to the summoning of further witnesses."

481. In a communication dated 6 November 1965 the Government stated that Mr. Riani was liberated on 29 September 1965, following *habeas corpus* proceedings. The Government stated further that the person concerned had again been detained since then " on another charge ". In conclusion, the Government declared that further *habeas corpus* proceedings had been instituted before the higher military court, which was to deal with the matter on 10 November 1965.

482. In a communication dated 11 November 1965 the Government now states that the higher military court, on 10 November 1965, denied the application for *habeas corpus* made to it on behalf of Mr. Riani; the Government further states that a third application for *habeas corpus* has been made on behalf of Mr. Riani and that it will keep the Governing Body informed as to the outcome of the further proceedings which are pending.

483. The Committee notes that the higher military court, as reconstituted by Institutional Act No. 2 of 27 October 1965, shall consist of 15 judges appointed for life by the President of the Republic, with the title of minister, four being selected from among serving general officers of the Army, three from among serving general officers of the Navy, three from among serving general officers of the Air Force, and five being civilians.

484. While noting that a third application for *habeas corpus* has been instituted, the Committee considers it necessary to draw the very special attention of the Governing Body to the exceptionally serious nature of the circumstances of this case. Mr. Riani, who at the moment of his original arrest was President of the National Confederation of Industrial Workers of Brazil, was also, and still is, a deputy member of the Governing Body of the International Labour Office. He was imprisoned for the first time on 6 April 1964. Having been freed following *habeas corpus* proceedings on 29 September 1965, he was again detained on another charge. A second application for *habeas corpus* was denied and a third application is pending. Without expressing any opinion on the substance of the charges brought against Mr. Riani, the Committee must draw attention to its established jurisprudence [1] in accordance with which it has always emphasised that, where trade unionists are arrested for political offences or common law crimes, the persons concerned should receive a fair trial at the earliest possible moment by an impartial and independent judicial authority. This principle represents the application to the questions submitted to the Committee of the provisions of articles 9, 10 and 11 of the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations as a common standard of achievement for all peoples and all nations, which are in the following terms:

Article 9. No one shall be subjected to arbitrary arrest, detention or exile.

Article 10. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11. (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

This principle, which the Committee has applied to all the complaints of this nature which have been submitted to it in accordance with the procedure established by mutual agreement between the United Nations and the International Labour Organisation, assumes a quite special importance when the person concerned is a member or deputy member of the Governing Body of the I.L.O. Article 40 of the Constitution of the I.L.O. provides that members of the Governing Body shall enjoy " such privileges and immunities are as necessary for the independent exercise of their functions in connection with the Organisation ". The Governing Body must necessarily regard with grave concern a case in which a person to whom these provisions apply remains in detention, without having been tried by an impartial and independent judicial authority, for a period of 19 months, and above all after having been freed under *habeas corpus* procedure.

485. In these circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government of Brazil to the importance of the considerations set forth in paragraph 484 above;

(b) to request the Government of Brazil to take the necessary measures to ensure that the case is dealt with on its merits within a very short period;

(c) to request the Government to forward to the Governing Body the texts of the *habeas corpus* judgments already given or to be given and of the judgments to be given on the merits of the case;

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[1] See Fourth Report, Case No. 5 (India), paras. 18-51, Case No. 10 (Chile), paras. 52-58, and Case No. 30 (United Kingdom-Malaya), paras. 140-161; Sixth Report, Case No. 47 (India), paras. 704-736, and Case No. 49 (Pakistan), paras. 770-813; 12th Report, Case No. 87 (India), paras. 233-240, and Case No. 63 (Union of South Africa), paras. 257-276; 13th Report, Case No. 62 (Netherlands), paras. 18-89; 16th Report, Case No. 112 (Greece), paras. 57-86; 25th Report, Case No. 140 (Argentina), para. 266; 62nd Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 152; 67th Report, Case No. 303 (Ghana), para. 318.

(d) to request the Government to forward to the Governing Body, not later than 1 February 1966, information as to the position reached in the proceedings and as to the situation of Mr. Riani at that time.

486. With regard to the cases of the trade union leaders other than Mr. Riani the Government, in a communication dated 22 June 1965, gives the following information concerning 42 of the 47 trade union leaders referred to by W.F.T.U.: 11 are at liberty with no charges pending against them, 15 are at liberty while their cases are being investigated, nine are abroad, four have fled, and three are detained pending trial.

487. The Committee recommends the Governing Body to take note of the information furnished by the Government and to request the Government to be good enough to keep it informed of further developments regarding the persons concerned.

488. In a communication dated 4 October 1965 the Latin American Confederation of Christian Trade Unionists alleges that the military court of Belo Horizonte recently pronounced the following sentences: Mr. Antonio Faria Lopez, former President of the Belo Horizonte Bank Employees' Union, 18 years' imprisonment; Mr. Fausto Drumond, former President of the I.A.P.B. of Minas Gerais, 15 years' imprisonment; Mr. José Boggione, former Secretary of the Belo Horizonte Bank Employees' Union, 15 years' imprisonment; Mr. Alberto José dos Santos, former Secretary of the same organisation, ten years' imprisonment. According to the complainants the persons concerned, sentenced on the ground of subversion, were in reality sentenced because of their trade union activities. The complainants allege further that under Decree No. 40 the Government requires candidates in trade union elections to submit an ideology certificate, a good conduct certificate and another certificate proving that they enjoy their political rights.

489. The text of this communication was transmitted to the Government for its observations by a letter dated 21 October 1965, to which no reply has so far been received.

490. In these circumstances the Committee recommends the Governing Body to request the Government to be good enough to furnish its observations on the communication dated 4 October 1965 from the Latin American Confederation of Christian Trade Unionists.

* * *

491. With regard to the case as a whole the Committee recommends the Governing Body—

(a) to note the Government's statement that the control of trade union organisations in Brazil has terminated and that elections are now taking place, and to request the Government to be good enough to continue to keep the Governing Body informed of further developments with regard to this matter;

(b) with regard to the particular case of Mr. Riani—

(i) to draw the attention of the Government of Brazil to the importance of the considerations set forth in paragraph 484 above;

(ii) to request the Government of Brazil to take the necessary measures to ensure that the case is dealt with on its merits within a very short period;

(iii) to request the Government to forward to the Governing Body the texts of the *habeas corpus* judgments already given or to be given and of the judgments to be given on the merits of the case;

(iv) to request the Government to forward to the Governing Body, not later than 1 February 1966, information as to the position reached in the proceedings and as to the situation of Mr. Riani at that time;

(c) to request the Government to be good enough to keep it informed as to further developments in the situation with regard to the measures taken against trade union leaders other than Mr. Riani, and to furnish the texts of any judgments handed down and of the reasons adduced therein;

(d) to request the Government to be good enough to furnish its observations on the allegations made by the Latin American Confederation of Christian Trade Unionists in its communication dated 4 October 1965;

(e) to take note of the present interim report, it being understood that the Committee will submit a further report to the Governing Body when it has received the information and observations referred to in subparagraphs *(a)*, *(b)*, *(c)* and *(d)* above.

Case No. 399 :

Complaints Presented by the General Confederation of Labour of Argentina against the Government of Argentina

492. This case was examined previously by the Committee at its 40th Session (May 1965), when it submitted an interim report, which appears in paragraphs 278 to 304 of its 83rd Report, approved by the Governing Body at its 162nd Session.

493. In paragraph 304 of this report the Committee, having examined the allegations of the complainants and the reply of the Government, set forth certain recommendations and a request for information in the following terms:

With regard to the case as a whole the Committee recommends the Governing Body—

(a) as regards the allegations relating to non-attendance by the Argentine Workers' delegation at the 48th Session of the International Labour Conference, to decide that there would be no object in continuing to examine this aspect of the case;

(b) as regards the allegations relating to interference by public authorities in the finances of trade unions, to take note of Argentine legislation on the supervision of administration of trade union property and funds, to call the Government's attention to the considerations set out in paragraphs 285 to 288 above, and to invite it to re-examine the said legislation in the light thereof, particularly as regards the reference of the results of administrative audits to a law court so as to ensure due process of law and, if appropriate, application of sanctions by the court;

(c) to take note of the present interim report, on the understanding that the Committee will report further to the Governing Body when it has received the information from the Government referred to in paragraph 298 above.

494. The Government sent additional information in a communication dated 27 August 1965.

495. Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Allegations relating to Government Interference in the Finances of Trade Unions

496. In its communication of 27 August 1965 the Government gives certain information relating to the allegations concerning interference by the public authorities in trade union finances, which were discussed by the Committee in paragraphs 280 to 289 of its 83rd Report and on which it gave its final conclusions in paragraph 304 *(b)* of that report; these conclusions are reproduced in paragraph 493 of the present report.

497. The Government indicates in this connection the purpose of the activities of the Audit Department, which comes under the Directorate General of Occupational Associations of the Ministry of Labour, as well as the procedure to be followed. The Government adds that the fact that the activities carried on are confidential to the parties concerned meets the reservation expressed on the possibility that any organisation being investigated may be made an object of publicity.

498. The Committee notes with interest that the information supplied by the Government throws some light on the practical application of the relevant legislation, but considers

that it contains no element that might alter the conclusions that it has reached on these allegations and which are reproduced in paragraph 493 of the present report.

Allegations relating to Proceedings against Trade Union Officers

499. When the Committee examined these allegations for the first time at its 40th Session, observing that officers of more than 300 organisations were facing proceedings for reasons of state security and that the various cases were before the courts, it asked the Government to send it information on the exact nature of the offences with which these trade union officers were charged and to keep it informed of any development that might arise.

500. In its communication of 27 August 1965 the Government confines itself to stating that it has asked the judicial authorities for the relevant information, which will be sent to the Committee as soon as it is received.

501. The Committee observes that the statement of the Government contains no information enabling it to go further in the study of these allegations at the present stage.

502. In these circumstances the Committee is compelled once more to request the Government to send concrete information as soon as possible on the exact nature of the offences with which officers of more than 300 trade union organisations are charged.

* * *

503. In view of the foregoing the Committee recommends the Governing Body to take note of this interim report, on the understanding that the Committee will submit a further report when it has received the information it has decided to request from the Government, as indicated in paragraph 502 above.

Case No. 419 :

Complaints Presented by the National Union of C.A.T.C. Unions of the Republic of the Congo, the International Federation of Christian Trade Unions, the African Trade Union Confederation and the International Federation of Commercial, Clerical and Technical Employees against the Government of the Congo (Brazzaville)

504. This case has already come before the Committee at its 39th and 40th Sessions, held respectively in February and in May 1965. On both occasions the Committee submitted interim reports to the Governing Body, which adopted them at its 161st Session (March 1965) and at its 162nd Session (May 1965). The first of these reports is to be found in paragraphs 176 to 193 of the Committee's 81st Report, and the second in paragraphs 360 to 374 of its 83rd Report.

505. The case originally involved two sets of allegations, one concerned with action taken against the National Union of C.A.T.C. Unions and its leaders, and the other relating to the arrest and ill-treatment of two trade unionists from Malawi.

506. As regards the second set of allegations, the Committee has submitted its final conclusions to the Governing Body, which has approved them.[1] No reference will therefore be made to them in the paragraphs which follow, which will deal exclusively with the set of allegations which remains outstanding.

507. This aspect of the case, the detailed background to and analysis of which may be found in the Committee's 81st Report [2], is essentially concerned with discriminatory action taken against the National Union of C.A.T.C. Unions, the ransacking of its premises and the arrest of its leaders, including its President, Mr. Fulgence Biyaoula, who is alleged to have been tortured as well.

[1] See 83rd Report, paras. 362-367.

[2] See paras. 176-181, 183-188, and 190-192.

508. At its 39th Session in February 1965 the Committee began by noting the assurances given in Addis Ababa to the Director-General by the Minister of Labour of the Congo (Brazzaville) to the effect that Mr. Biyaoula was not being subjected to torture, that his life was not in danger at all and that he would enjoy the guarantees of normal judicial procedure when he appeared in the near future before the courts. The Committee noted also that in its reply to the allegations in question the Government confined itself to declaring that "the Committee on Freedom of Association might designate one or more of its members to visit the Congo (Brazzaville) at the I.L.O.'s expense to inquire on the spot into the allegations made by the critics of [this] country's Government", and took the view that at that stage it should once more urge the Government to be good enough to furnish detailed observations on each of the specific allegations made by the various complaining organisations. In these circumstances it recommended the Governing Body in paragraph 193 of its 81st Report—

. . . . . .

(a) to reaffirm strongly the importance it attaches to the principles—

(i) that workers should have the right to establish and join organisations of their own choosing;

(ii) that workers' organisations should have the right to elect their representatives in full freedom, and that such representatives should be protected against any action being taken against them by reason of their trade union activities;

(iii) that trade unions should not be liable to be dissolved by administrative authority;

(b) to emphasise that measures of detention of trade unionists may involve a serious interference with the exercise of trade union rights if they are not accompanied by adequate judicial safeguards and to stress that it should be the policy of every government to take care to ensure the observance of human rights and especially of the right of all detained persons to receive a fair trial at the earliest possible moment by an impartial and independent judicial authority;

(c) to request the Government to be good enough to furnish detailed observations on the allegations referred to in paragraphs 187 and 188 of this report and information as to whether the assurances given to the Director-General by the Minister of Labour in the course of their interviews in Addis Ababa, referred to in paragraph 180 of this report, have been respected and, in particular, as to whether Mr. Biyaoula has received a fair trial attended by all the guarantees of normal judicial procedure and, if so, to be good enough to furnish a copy of the judgment and of the reasons adduced therein.

509. The foregoing conclusions were conveyed to the Government by letter dated 10 March 1965, followed by a reminder letter dated 5 April 1965. The Government replied in a communication dated 29 April 1965, which was brought to the notice of the Committee at its 40th Session in May 1965.

510. On that occasion the Committee observed that in the communication in question the Government failed to answer the specific questions asked in subparagraph *(c)* of paragraph 193 of the Committee's 81st Report, quoted above, but confined itself to renewing the invitation to the Committee to visit the Congo to which reference is made in paragraph 508 above.

511. In these circumstances the Committee felt that it must reaffirm the conclusions set forth in subparagraphs *(a)* and *(b)* of paragraph 193 of its 81st Report, and recommend the Governing Body to urge the Government strongly to be good enough to furnish the observations requested of it in subparagraph *(c)* of the same paragraph as soon as possible. This recommendation was approved by the Governing Body.

512. Furthermore, the Committee, and subsequently the Governing Body, drew the Government's attention to the resolution concerning freedom of association and protection of the right to organise adopted by the First African Regional Conference of the International Labour Organisation (Lagos, December 1960), which, in paragraph 7, "Requests the Governing Body of the International Labour Office to invite governments in respect of whose countries complaints may be made to the Governing Body Committee on Freedom of Association to give their wholehearted co-operation to that Committee, in particular by replying to requests for observations made to them and by taking the fullest possible account of any recommendations which may be made to them by the Governing Body following

examination of such complaints", and, in paragraph 8, "Requests the Governing Body to accelerate as far a possible the procedure of its Committee on Freedom of Association and to give greater publicity to the conclusions of that Committee, particularly when certain governments refuse to co-operate loyally in the consideration of complaints submitted against them".

513. The conclusions referred to in the two preceding paragraphs were brought to the notice of the Government by letter dated 8 June 1965, to which no reply has been received to date, despite a reminder letter sent on 17 September 1965.

514. Furthermore, on 6 July 1965 the Director-General received a telegraphic communication signed by the President and the General Secretary of the International Federation of Christian Trade Unions informing him that the trade unionists imprisoned in Brazzaville were due at any moment to be arraigned before a people's court, and begging his " energetic and urgent " intervention. Following the receipt of this communication the Director-General, on 8 July 1965, cabled its contents to the Minister of Foreign Affairs of the Congo (Brazzaville), urging that the matter be given special attention and that the Director-General be kept informed of developments. This communication from the Director-General has likewise remained unanswered.

515. In the circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government once again to the request made by the First African Regional Conference of the International Labour Organisation (Lagos, December 1960) that governments in respect of whose countries complaints may be made should be invited to give their wholehearted co-operation to the Committee, in particular by replying to requests for observations made to them and by taking the fullest possible account of any recommendations which may be made to them by the Governing Body following examination of such complaints;

(b) to draw the attention of the Government of the Congo (Brazzaville) to the importance which the Governing Body has always attached to the right of all detained persons to receive a fair trial at the earliest possible moment;

(c) to express its grave concern at the failure of the Government of the Congo (Brazzaville) to reply to the communication of the Director-General dated 8 July 1965 relating to trade unionists imprisoned in Brazzaville who were alleged to be due to be arraigned at any moment before a people's court;

(d) to request the Government to state whether Mr. Biyaoula, President of the National Union of C.A.T.C. Unions, has received a fair trial attended by all the guarantees of normal judicial procedure and, if so, to furnish a copy of the judgment and of the reasons adduced therein;

(e) to confirm the conclusions which it reached when the case was first examined and which are contained in subparagraphs *(a)* and *(b)* of paragraph 193 of the 81st Report of the Committee cited in paragraph 508 above;

(f) to request the Government once again to furnish detailed observations on the allegations relating to measures taken against the National Union of C.A.T.C. Unions referred to in paragraphs 187 and 188 of the 81st Report of the Committee.

Case No. 421 :

Complaint Presented by the Arab Federation of Petroleum Workers (Cairo) against the Government of the United Kingdom in respect of Aden

516. The complaint of the Arab Federation of Petroleum Workers (Cairo), dated 23 November 1964, and the observations thereon furnished by the Government, on 25 January 1965, were considered by the Committee at its meeting in February 1965, when the Committee submitted to the Governing Body the interim report contained in paragraphs 194 to 203 of its 81st Report.

517. The United Kingdom has ratified the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and has declared them to be applicable without modification to Aden.

518. The complainants alleged that the following executive members of the Aden Petroleum Trade Union had been arrested by the authorities in Aden without valid reason: Messrs. Farouk Mekkawi, Ahmed Ali Hiethem and Mohamed El Aboudi, arrested on 27 August 1964; Messrs. Ahmed Abdel Malek, Taha Ali Mohamed Saad, Naser Omar, Ali Ahmed Hammami and Ahmed Hiedra, arrested on 14 October 1964; Mr. Taha Ghanem, arrested on 15 October 1964.

519. It appeared from the Government's reply dated 25 January 1965, analysed more fully in paragraphs 197 to 201 of the Committee's 81st Report, that of the nine persons named Messrs. Mohamed El Aboudi and Taha Ali Mohamed Saad had been released, while the Government had no record of any person named Ahmed Abdel Malek having been arrested on 14 October 1964.

520. The Committee observed, in paragraph 202 of its 81st Report, that in numerous cases in the past [1] in which trade union officers or members were preventively detained it has pointed out that in all such cases such measures may involve a grave interference with the exercise of trade union rights which it would seem necessary to justify by the existence of a serious emergency and which would be open to criticism unless accompanied by adequate judicial safeguards applied within a reasonable period, and that it should be the policy of every government to take care to ensure the observance of human rights and especially of the right of all detained persons to receive a fair trial at the earliest possible moment.

521. The Committee submitted to the Governing Body the recommendations contained in paragraph 203 of its 81st Report, which reads as follows:

In these circumstances the Committee, while appreciating the troubled nature of the situation in Aden in recent years, recommends the Governing Body—

(a) to draw the attention of the Government to the importance which it attaches to the observance of the right of all detained persons to receive a fair trial at the earliest possible moment;

(b) to request the Government to be good enough to indicate whether any of the persons indicated are still in detention and, if so, whether legal proceedings have been brought against them or when it is anticipated that such proceedings will be instituted;

(c) to take note of the present interim report. . . .

522. In a communication dated 26 May 1965 the Government states that no trade union officials or members are in detention because of trade union activities, that detentions are kept under review and that detainees are released to the extent that this is possible without impairing the capacity of the security authorities to conduct their operations against the terrorist acts that still persist.

523. In a communication dated 13 August 1965 the Government states that of the nine persons listed by the complainant, five have so far been released, including a Mr. Abdel Malik Israel Mohamed (if this is the person referred to by the complainants as Mr. Ahmed Abdel Malek). The four persons still in detention are Messrs. Faruq Mohamed Abdul

[1] See Fourth Report, Case No. 5 (India), paras. 18-51, Case No. 10 (Chile), paras. 52-88, and Case No. 30 (United Kingdom-Malaya), paras. 140-161; Sixth Report, Case No. 47 (India), paras. 704-736, and Case No. 49 (Pakistan), paras. 770-813; 12th Report, Case No. 87 (India), paras. 233-240, Case No. 63 (Union of South Africa), paras. 257-276, and Case No. 16 (France-Morocco), paras. 292-428; 13th Report, Case No. 62 (Netherlands), paras. 18-89; 16th Report, Case No. 112 (Greece), paras. 57-86; 17th Report, Case No. 104 (Iran), paras. 157-221; 24th Report, Case No. 142 (Honduras), paras. 97-148; 25th Report, Case No. 136 (United Kingdom-Cyprus), para. 154; 27th Report, Case No. 143 (Spain), para. 186, and Case No. 152 (United Kingdom-Northern Rhodesia), para. 410; 66th Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 409; 67th Report, Case No. 303 (Ghana), para. 318; 72nd Report, Case No. 260 (Iraq), para. 91; 74th Report, Case No. 363 (Colombia), para. 213.

Rahiman Makkawi (referred to by the complainants as Farouk Mekkawi), Ali Ahman Ali Hamami (named by the complainants as Ali Ahmed Hammami), Ahmed Haidra (named by the complainants as Ahmed Hiedra) and Taha Ahmad Ghanim (named by the complainants as Taha Ghanem). The authorities state that these four persons cannot at present be brought to trial, that they are detained under Emergency Regulations and that their release date cannot be anticipated, as their presence at large at this time would be prejudicial to the maintenance of public order and security. The Government affirms again that the detention of the persons in question arises solely from the need to combat subversion and terrorism and is no way connected with trade union activities.

524. In these circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government once again to the importance which it attaches to the observance of the right of all detained persons to receive a fair trial at the earliest possible moment;

(b) to draw attention to the fact that the four trade unionists still in detention have now been held for over 12 months without trial;

(c) to express the hope that, in accordance with the principle enunciated in subparagraph *(a)* above, these persons will either be released or brought to trial at the earliest possible moment;

(d) to request the Government to inform the Governing Body as a matter of urgency as to what steps it is intended to take in this connection;

(e) to take note of the present interim report, it being understood that the Committee will report further on the matter to the Governing Body when the information referred to in subparagraph *(d)* above has been received.

Case No. 422 :

Complaints Presented by the Latin American Confederation of Christian Trade Unionists against the Government of Ecuador

525. This case was examined by the Committee at its sessions in February and May 1965 when it made interim reports.[1] In the 83rd Report, approved by the Governing Body at its 162nd Session (May 1965), the Committee made definitive recommendations on allegations relating to the intervention of the authorities in a conflict which had arisen on the Huayllamba estate. In the present report the Committee examines the remaining allegations, which relate to the detention of a number of trade union officers and to the infringement of trade union rights by the authorities in the province of Chimborazo.

526. The original complaint was submitted by the Latin American Confederation of Christian Trade Unionists (C.L.A.S.C.) on 24 November 1964. It was then forwarded to the Government, which sent in its observations on 5 January 1965. The complainants submitted another complaint in a letter dated 23 December 1964, which was also forwarded to the Government.

527. Ecuador has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Allegations regarding Detention of Trade Union Officers

528. In its communication dated 24 November 1964 C.L.A.S.C. declared, *inter alia*, that the Ecuadorian Federation of Catholic Workers (C.E.D.O.C.) was being systematically subjected to discrimination and prosecution which constituted an infringement of freedom of association. In September 1964 trade union leaders Francisco Checa and Carlos Aroca

[1] See 81st Report, paras. 204-209, and 83rd Report, paras. 375-386.

were incarcerated at Machachi on being apprehended attending a meeting of peasants convened to found a peasants' league for that locality. At approximately the same time, at Naranjito, trade unionists Pedro Moreno Rocha, Carlos Idovro Vergara and Mesías Zamora Pérez were imprisoned for distributing leaflets to peasants with the aim of convening a meeting to found another peasants' league.

529. In its reply dated 5 January 1965 the Government declared that C.E.D.O.C. had never been subjected to any discrimination, nor had its leaders been persecuted. The organisation concerned enjoyed the same safeguards for pursuing its trade union activity as other workers' associations formed in compliance with the law and recognised by the Government.

530. When examining the case at its 39th Session in February 1965 the Committee observed that the Government had referred neither to the specific allegations contained in the original complaint regarding the imprisonment of Francisco Checa, Carlos Aroca, Pedro Moreno Rocha, Carlos Idovro Vergara and Mesías Zamora Pérez, nor to the allegations contained in the complainants' letter of 23 December 1964, according to which Hugo Espinosa, a C.E.D.O.C. leader, had been arrested and was being kept incommunicado and other leaders, Luis Cajas and Teodoro Reinoso, had also been arrested, although they were subsequently released. The Committee considered that the elements submitted by the Government in its reply were not sufficient to enable the situation to be evaluated in the light of the allegations presented by the complainants; consequently it recommended the Governing Body [1] to request the Government to furnish its detailed observations on the various events mentioned in the original complaint and in the complainants' letter of 23 December 1964.

531. The Government sent two further communications relating to this case on 6 and 8 April 1965. However, since neither of these contained observations on the arrest of the trade union officers whose names had been cited, the Committee, having examined the case further at its 40th Session in May 1965, recommended the Governing Body to ask the Government once more to send its observations thereon. The relevant passage of paragraph 386 of the 83rd Report reads as follows:

> In all the circumstances the Committee recommends the Governing Body—
>
> . . . . . .
>
> *(b)* with respect to the allegations relating to the arrest of union leaders Francisco Checa, Carlos Aroca, Pedro Moreno Rocha, Carlos Idovro Vergara, Mesías Zamora Pérez, Hugo Espinosa, Luis Cajas and Teodoro Reinoso ... to request the Government once more to furnish its observations at the earliest possible date.

532. By letter dated 27 August 1965 the Government replied to the above reiterated request with the statement that the arrests in question had not been made on the ground of trade union activities, since such activities were fully guaranteed, but on the ground of penal offences such as were sanctioned in all legal systems.

533. The Committee observes that in its brief communication the Government does not deny that all the persons named by the complainants were indeed arrested, but rather appears to confirm this. However, the Government does not agree with the complainants when it states that the arrests were due to penal offences, whereas they claim that the object was to victimise the arrested persons for their trade union activities. Nor does the Government explain the specific character of the offences or other acts ascribed to the arrested persons, or whether judicial proceedings have been taken against them, or, if so, what was the result in each case.

534. On many occasions [2] when allegations that trade union leaders or workers had been arrested or detained on account of trade union activities have been met by governments

[1] See 81st Report, para. 209.

[2] See Sixth Report, Case No. 18 (Greece), paras. 323-326, Case No. 44 (Colombia), paras. 593-595, and Case No. 49 (Pakistan), paras. 807-811; 11th Report, Case No. 72 (Venezuela), para. 6 *(c)*; 12th Report, Case No. 65 (Cuba), paras. 102-105, Case No. 66 (Greece), paras. 140-146, Case No. 68 (Colombia),

with statements that the arrests or detentions were made for subversive activities, for reasons of internal security or for common law crimes, the Committee has followed the rule that the governments concerned should be requested to submit further and as precise information as possible concerning the arrests or detentions and the exact reasons therefor. If in certain cases the Committee has concluded that allegations relating to the arrests or detentions of trade union militants did not call for further examination, this has been after it has received information from the governments showing sufficiently precisely and with sufficient detail that the arrests or detentions were in no way occasioned by trade union activities but solely by activities outside the trade union sphere which were either prejudicial to public order or of a political character.[1] In cases where trade unionists have been sentenced, the Committee has also followed the practice of asking governments to communicate the texts of the judgments, with their grounds.[2]

535. Moreover, the Committee has also observed on previous occasions that where persons had been sentenced on grounds having no relation to trade union rights the matter would fall outside its competence [3], but has emphasised that the question as to whether such a matter is one relating to a criminal offence or to the exercise of trade union rights cannot be determined unilaterally by the government concerned.[4]

536. Accordingly, the Committee recommends the Governing Body to take note of the statements made by the Government in its letter of 27 August 1965 and, having regard to the contents of paragraphs 534 and 535 above, to ask the Government to send as soon as possible more complete information on this aspect of the case, including an account of the offences with which each of the trade unionists whose names are cited has been charged, the result of the proceedings and the text of any judgments given with their grounds.

Allegations respecting Infringement of Trade Union Rights in the Province of Chimborazo

537. The complainants' letter of 23 December 1964 referred also to problems which had arisen regarding the peasants in the province of Chimborazo, where the attitude taken by the civil and military chief of the province had prevented the workers from organising and proclaiming their rights, including payment of over four years' arrears of wages. At its 39th and 40th Sessions the Committee deferred examination of this aspect of the case because it had not received the Government's observations. The relevant parts of paragraph 386 of the 83rd Report read as follows:

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paras. 167-169; 15th Report, Case No. 110 (Pakistan), para. 241; 22nd Report, Case No. 58 (Poland), para. 106 *(d)*; 25th Report, Case No. 136 (United Kingdom-Cyprus), paras. 93-178, and Case No. 158 (Hungary), para. 332; 27th Report, Case No. 156 (France-Algeria), para. 273, and Case No. 159 (Cuba), para. 370; 52nd Report, Case No. 143 (Spain), para. 48; 62nd Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 152; 74th Report, Case No. 294 (Spain), para. 191; 76th Report, Case No. 364 (Ecuador), para. 342; 81st Report, Case No. 385 (Brazil), para. 148; 83rd Report, Case No. 425 (Cuba), para. 168.

[1] See Second Report, Case No. 31 (United Kingdom-Nigeria), para. 79; Third Report, Case No. 6 (Iran), para. 36; Sixth Report, Case No. 22 (Philippines), paras. 377-383; 12th Report, Case No. 16 (France-Morocco), paras. 386-398; 17th Report, Case No. 104 (Iran), para. 219; 19th Report, Case No. 110 (Pakistan), paras. 74-77; 24th Report, Case No. 142 (Honduras), paras 130-134; 25th Report, Case No. 140 (Argentina), para. 263; 52nd Report, Case No. 143 (Spain), para. 48; 62nd Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 152; 74th Report, Case No. 294 (Spain), para. 191; 76th Report, Case No. 364 (Ecuador), para. 342; 81st Report, Case No. 385 (Brazil), para. 148; 83rd Report, Case No. 425 (Cuba), para. 168.

[2] See Sixth Report, Case No. 22 (Philippines), paras. 377-383; 12th Report, Case No. 69 (France), para. 446, and Case No. 61 (France-Tunisia), paras. 447-492; 17th Report, Case No. 97 (India), paras. 120-156; 26th Report, Case No. 147 (Union of South Africa), paras. 107-111; 34th Report, Case No. 130 (Switzerland), para. 6; 49th Report, Case No. 213 (Federal Republic of Germany), para. 73; 58th Report, Case No. 234 (Greece), para. 588, and Case No. 262 (Cameroon), para. 657; 72nd Report, Case No. 294 (Spain), para. 101; 81st Report, Case No. 385 (Brazil), para. 149; 83rd Report, Case No. 425 (Cuba), para. 168.

[3] See 58th Report, Case No. 253 (Cuba), para. 632; 67th Report, Case No. 303 (Ghana), para. 318.

[4] See 27th Report, Case No. 143 (Spain), para. 106; 28th Report, Case No. 147 (Union of South Africa) para. 237; 44th Report, Case No. 200 (Union of South Africa), para. 162; 58th Report, Case No. 253 (Cuba), para. 632; 67th Report, Case No. 303 (Ghana), para. 318.

In all the circumstances the Committee recommends the Governing Body—

. . . . . .

(b) . . . with respect to the allegations relating to infringements of trade union rights in Chimborazo province, to request the Government once more to furnish its observations at the earliest possible date.

538. In its above-mentioned letter of 27 August 1965 the Government states only, with respect to this allegation, that all workers' organisations have enjoyed and continue to enjoy freedom in exercising their rights within the framework of the law.

539. The Committee considers that the complainants' allegations in this regard do not contain sufficiently definite statements, specifying acts ascribed to the authority against which the complaint is made, which could provide substance for the examination of this aspect of the case. For instance, the complaint does not contain such allegations as refusal to register a union, or dissolution of a union, or prohibition of meetings, nor does it allege any specific act which might prevent or hinder the free exercise of the right to organise or to bargain collectively. The Committee recalls that other allegations made in this case, regarding the intervention of the authorities in a conflict which had arisen on the Huayllamba estate in the province of Chimborazo, have already been the subject of a definitive recommendation by the Committee.[1] Accordingly, and without prejudice to any complaints which may be made in the future with regard to this same matter, the Committee recommends the Governing Body to take note of the Government's reply and to decide, with the above reservation, that there is no object in continuing to examine this aspect of the case.

* * *

540. In these circumstances the Committee recommends the Governing Body—

(a) with respect to the allegations regarding infringement of trade union rights in the province of Chimborazo, to take note of the statements made by the Government in its letter of 27 August and to decide, with the reservation expressed in paragraph 539 above, that there is no object in continuing to examine this aspect of the case;

(b) with respect to the allegations regarding the arrest of the trade union leaders Francisco Checa, Carlos Aroca, Pedro Moreno Rocha, Carlos Idovro Vergara, Mesías Zamora Pérez, Hugo Espinosa, Luis Cajas and Teodoro Reinoso, to take note of the statements made by the Government in the same letter and to ask the Government to send as soon as possible more complete information on this aspect of the case, including an account of the offences with which each of the trade unionists whose names are cited has been charged, and the result of the proceedings, and the text of any judgments given with their grounds;

(c) to take note of this interim report on the understanding that the Committee will submit a further report as soon as it has received the additional information for which the Government is to be asked.

Case No. 442 :

Complaint Presented by the Autonomous Trade Union Federation of Guatemala against the Government of Guatemala

541. The complaint by the Autonomous Trade Union Federation of Guatemala (FASGUA) was submitted in a letter dated 11 May 1965. This letter was duly forwarded to the Government, which sent in its observations on 16 June 1965. The complainants have not made use of the right to submit additional information in support of their complaint.

542. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

[1] See 83rd Report, paras. 385 and 386 *(a)*.

543. The complaint alleges that although the Government authorised the May Day celebrations in the capital two days before the event, it prohibited them in the rest of the country. The complainants state that the authorisation given to FASGUA to hold a parade and a meeting in the capital was in fact worthless because the parade took place under the control of the police who, on the pretext that elements hostile to the Government and unconnected with the workers' organisations were distributing printed May Day greetings to the workers, broke up the parade and arrested the main trade union leaders. The following were arrested and are stated to be still in prison: Miguel Valdez Girón, Gilberto Barillas and Francisco de Jesús Mayén, members of the executive committee of FASGUA; and Antonio Ovando Sánchez, Marco Aurelio García Benavente, Arturo Hernández, Elfego H. García, Alberto Bautista, Juan Lemus and others, former leaders or active members of the organisation. The arrest of Miguel Valdez Girón, Francisco de Jesús Mayén and Antonio Ovando Sánchez was alleged to have taken place only a few days after their release from prison, where they had been held in accordance with " security measures " taken under special legislation, by which the Government can detain citizens for up to six months without trial.

544. In its observations dated 16 June 1965 the Government states that since its installation it has laid down and strictly followed the principle that all citizens should be guaranteed their legal rights and it has at no time, not even when the democratic institutions of the country were threatened, pursued any aim other than that of safeguarding public order and well-being. The Government adds that it has had to cope with a number of difficult situations, such as the criminal attacks in which several of its officials have died, among them the former Deputy Minister of National Defence, but even so it has never taken repressive action.

545. The Government states that the complaint is unfounded. The May Day parade this year was carried out without any hindrance and no restrictions were placed on it. As regards the arrest of trade union leaders the Government states generally that the Guatemalan Constitution safeguards the autonomy of the judiciary and courts and that nobody is arrested in Guatemala unless he has committed an offence. It points out that the functions of trade union leadership do not exempt any person from compliance with the laws of the land or from the jurisdiction of the courts which are competent to judge unlawful actions, and that while the Government collaborates with the trade union movement it cannot grant privileged legal status to trade union leaders who so far forget their responsibilities as to engage in unlawful acts. The Government concludes that it will ask the appropriate authorities for details concerning the allegation and that, if the I.L.O. wishes, it will forward particulars of the charges against the individuals in question.

546. In various earlier cases the Committee has stated that the right to call public meetings, especially on May Day, is an important aspect of trade union rights.[1]

547. The Committee observes that, in reply to the complainants' allegation that the Government allowed May Day to be celebrated in the capital but not in the remainder of the country, the Government replies that in fact no restriction was imposed. The complainants have not submitted any evidence, nor have they availed themselves of their right to submit additional information in support of their complaint. Accordingly, the Committee considers that no useful purpose would be served by continuing its examination of this allegation.

548. In these circumstances and for the reasons given in the preceding paragraph, the Committee recommends the Governing Body to take note of the Government's statement that no restriction was imposed on the celebration of May Day this year and to decide that no useful purpose would be served by continuing its examination of this aspect of the case.

[1] See Third Report, Case No. 17 (France-Tunisia), para. 51; Sixth Report, Case No. 40 (France-Tunisia), para. 487; 12th Report, Case No. 16 (France-Morocco), paras. 399-406; 15th Report, Case No. 99 (France), paras. 21-28.

549. As regards the complainants' allegations that as a result of the May Day parade a number of trade unionists, nine of whom are named in the complaint, were arrested, and that the legislation in force in Guatemala, under the heading of security measures, makes it possible to keep persons under arrest for six months without bringing them to trial and that three trade unionists (see paragraph 543 above) have been held by virtue of these powers, the Committee observes that the Government's reply appears to refer to these allegations only indirectly.

550. One of the principles laid down under the procedure for examining allegations concerning the breach of trade union rights is that, when detailed allegations are submitted, the Committee cannot be satisfied with replies from governments which confine themselves to comments of a general character.[1] In this case the Committee welcomes the Government's statement that it will ask the appropriate authorities to supply the information needed to ascertain the truth about the complaint.

551. In these circumstances the Committee recommends the Governing Body to take note of the fact that the Government intends to ask the appropriate authorities to supply the information needed to ascertain the truth about the complaint and to ask the Government to be good enough to forward, as soon as possible, its specific observations on the allegations referred to in the previous paragraph with, in particular, precise information concerning the position vis-à-vis the courts of the following trade unionists: Miguel Valdez Girón, Gilberto Barillas, Francisco de Jesús Mayén, Antonio Ovando Sánchez, Marco Aurelio García Benavente, Arturo Hernández, Elfego H. García, Alberto Bautista and Juan Lemus; and to decide to postpone its examination of this aspect of the case until it has received these specific observations and details from the Government.

552. In all the circumstances and with regard to the case as a whole the Committee recommends the Governing Body—

(a) with respect to the alleged prohibition of trade union meetings to celebrate May Day this year, to take note of the Government's statement that no restrictions were imposed on this commemoration and to decide that no useful purpose would be served by continuing its examination of this aspect of the case;

(b) with respect to the complainants' allegations that as a result of the parade on May Day this year a number of trade unionists were arrested and that legislation is in force in Guatemala—and has been applied to three trade unionists—which makes it possible to keep persons under arrest for up to six months without trial, to note that the Government will ask the appropriate authorities to supply the information needed to ascertain the truth about the complaint and to request the Government to be good enough to forward, as soon as possible, its specific observations on these allegations, giving details, in particular, about the position of the trade unionists whose names are listed in paragraph 551 above;

(c) to take note of the present interim report, it being understood that the Committee will submit a further report on this case when it has received the observations and information requested from the Government in subparagraph *(b)* above.

Geneva, 11 November 1965. *(Signed)* Roberto AGO,
Chairman.

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[1] See First Report, para. 31.

INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

SUPPLEMENT

Vol. XLIX, No. 2 *April 1966*

Reports of the Governing Body Committee on Freedom of Association (86th, 87th, 88th)

EIGHTY-SIXTH REPORT

EIGHTY-SEVENTH REPORT

EIGHTY-EIGHTH REPORT

INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

SUPPLEMENT

Vol. XLIX, No. 2 *April 1966*

Reports of the Governing Body Committee on Freedom of Association

Eighty-sixth Report [1]

INTRODUCTION

1. The Committee on Freedom of Association set up by the Governing Body at its 117th Session (November 1951) met at the International Labour Office, Geneva, on 8 and 9 November 1965, under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body. The members of the Committee of Belgian, Indian, Irish and Moroccan nationality were not present during its examination of the cases relating to Belgium (Case No. 376), India (Cases Nos. 420, 424 and 436), Ireland (Case No. 455) and Morocco (Case No. 445) respectively.

[1] For the First, Second and Third Reports of the Committee on Freedom of Association see International Labour Organisation: *Sixth Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1952), Appendix V; for the Fourth, Fifth and Sixth Reports, see idem: *Seventh Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1953), Appendix V; for the Seventh, Eighth, Ninth, Tenth, 11th and 12th Reports, see idem: *Eighth Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1954), Appendix II; for the 13th and 14th Reports, see *Official Bulletin*, Vol. XXXVII, 1954, No. 4; for the 15th and 16th Reports, see ibid., Vol. XXXVIII, 1955, No. 1; for the 17th and 18th Reports, see ibid., Vol. XXXIX, 1956, No. 1; for the 19th, 20th, 21st, 22nd, 23rd and 24th Reports, see ibid., Vol. XXXIX, 1956, No. 4; for the 25th and 26th Reports, see ibid., Vol. XL, 1957, No. 2; for the 27th and 28th Reports, see ibid., Vol. XLI, 1958, No. 3; for the 29th to 45th Reports, and communications relating to the 23rd and 27th Reports, see ibid., Vol. XLIII, 1960, No. 3; for the 46th to 57th Reports, see ibid., Vol. XLIV, 1961, No. 3; for the 58th Report, see ibid., Vol. XLV, No. 1, Jan. 1962, Supplement; for the 59th and 60th Reports, see ibid., Vol. XLV, No. 2, Apr. 1962, Supplement I; for the 61st to 65th Reports, see ibid., Vol. XLV, No. 3, July 1962, Supplement II; for the 66th Report, see ibid., Vol. XLVI, No. 1, Jan. 1963, Supplement; for the 67th and 68th Reports, see ibid., Vol. XLVI, No. 2, Apr. 1963, Supplement I; for the 69th, 70th and 71st Reports, see ibid., Vol. XLVI, No. 3, July 1963, Supplement II; for the 72nd Report, see ibid., Vol. XLVII, No. 1, Jan. 1964, Supplement; for the 73rd to 77th Reports, see ibid., Vol. XLVII, No. 3, July 1964, Supplement II; for the 78th Report, see ibid., Vol. XLVIII, No. 1, Jan. 1965, Supplement; for the 79th to 81st Reports, see ibid., Vol. XLVIII, No. 2, Apr. 1965, Supplement; for the 82nd to 84th Reports, see ibid., Vol. XLVIII, No. 3, July 1965, Supplement II; and for the 85th Report, see ibid., Vol. XLIX, No. 1, Jan. 1966, Supplement.

2. In accordance with the procedure laid down in paragraph 12 of its 29th Report, as amended by paragraph 5 of its 43rd Report, the Committee recommends the Governing Body to examine the present report at its 164th Session.[1]

3. The Committee considered—*(a)* 21 cases in which the complaints had been communicated to the governments concerned for their observations, namely the cases relating to Belgium (Case No. 376), Japan (Case No. 398), Pakistan (Case No. 407), Honduras (Case No. 408), Bolivia (Case No. 409), India (Cases Nos. 420 and 424), United States (Puerto Rico) (Case No. 430), Malta (Case No. 431), India (Case No. 436), Congo (Leopoldville) (Case No. 437), Greece (Case No. 438), Paraguay (Case No. 439), Costa Rica (Case No. 444), Morocco (Case No. 445), Panama (Case No. 446), Uganda (Case No. 448), United Kingdom (St. Christopher Nevis-Anguilla) (Case No. 449), Bolivia (Case No. 451), Honduras (Case No. 454), and Ireland (Case No. 455), and *(b)* a complaint relating to the Dominican Republic (Case No. 428), which was submitted to the Committee for opinion prior to being communicated to the government concerned.

Cases the Examination of Which the Committee Has Adjourned

4. The Committee adjourned until its next session its examination of the cases relating to India (Case No. 436), Paraguay (Case No. 439), Morocco (Case No. 445), Panama (Case No. 446), Uganda (Case No. 448), United Kingdom (St. Christopher Nevis-Anguilla) (Case No. 449), Honduras (Case No. 454) and Ireland (Case No. 455), in which it has not yet received the observations of the governments concerned. With regard to the case relating to India (Case No. 436) the Committee took note of a communication from the government concerned stating that it was awaiting the outcome of pending judicial proceedings before forwarding its observations; with regard to the case relating to Uganda (Case No. 448) the Committee took note of a communication from the government concerned stating that its observations would be forwarded; with regard to the case relating to Panama (Case No. 446) the Committee took note of a communication from the government concerned stating that it was awaiting information from the competent authorities.

5. The Committee adjourned until its next session the case relating to Bolivia (Case No. 409), with respect to which it is still awaiting information previously requested from the government concerned, and the case relating to Japan (Case No. 398), with respect to which the Committee has requested the Director-General to obtain further information from the government concerned before it formulates its recommendations to the Governing Body.

6. The Committee also adjourned until its next session its examination of the cases relating to Belgium (Case No. 376), Pakistan (Case No. 407), Honduras (Case No. 408), Congo (Leopoldville) (Case No. 437) and Costa Rica (Case No. 444).

Cases in Which the Committee Submits Its Conclusions to the Governing Body

7. In the present report the Committee submits for the approval of the Governing Body the conclusions which it has now reached concerning the remaining cases before it, namely the cases relating to India (Cases Nos. 420 and 424), United States (Puerto Rico) (Case No. 430), Malta (Case No. 431), Greece (Case No. 438), and Bolivia (Case No. 451), and the complaint relating to the Dominican Republic (Case No. 428), which was submitted to the Committee for opinion. These conclusions may be briefly summarised as follows:

(a) the Committee recommends that the complaint relating to the Dominican Republic (Case No. 428), which was submitted to it for opinion, should, for the reasons indicated in paragraphs 8 to 11 of this report, be dismissed without being communicated to the government concerned;

[1] The 86th, 87th and 88th Reports of the Committee on Freedom of Association were examined and approved by the Governing Body at its 164th Session (February-March 1966).

(b) the Committee recommends that, for the reasons indicated in paragraphs 12 to 84 of this report, the cases relating to India (Case No. 424), United States (Puerto Rico) (Case No. 430), Malta (Case No. 431) and Greece (Case No. 438) should be dismissed as not calling for further examination;

(c) with regard to the cases relating to India (Case No. 420) and Bolivia (Case No. 451), the Committee, for the reasons indicated in paragraphs 85 to 154 of this report, has presented an interim report stating certain conclusions to which it wishes to draw the attention of the Governing Body.

Complaint Which the Committee Recommends Should Be Dismissed without Being Communicated to the Government Concerned

Case No. 428 :

Complaint Presented by the Association of Independent Taxi-Drivers of Santo Domingo against the Government of the Dominican Republic

8. By a letter dated 12 January 1965 the Association of Independent Taxi-Drivers of Santo Domingo alleged, in very general terms and without giving any details, that trade union and human rights are violated in the Dominican Republic and requested the I.L.O. to send a representative to confirm the truth of the allegations on the spot.

9. Before transmitting the complaint to the Government of the Dominican Republic the Director-General, by a letter dated 27 January 1965, informed the organisation in question that any further information which it might care to submit in substantiation of its complaint should be forwarded to him within a period of one month. No communication containing additional information has so far been received from the Association of Independent Taxi-Drivers.

10. In accordance with the procedure in force [1] the Director-General decided to submit the complaint to the Committee for its opinion as to whether it was sufficiently substantiated to justify him in communicating it to the government concerned.

11. As the complainants have not availed themselves of the opportunity offered to them to furnish further information in substantiation of their complaint, which is couched in terms too vague to permit of an examination of the matter on its merits, the Committee recommends the Governing Body to decide that the complaint should be dismissed without being communicated to the government concerned.

Cases Which the Committee Considers Do Not Call for Further Examination

Case No. 424 :

Complaint Presented by the Miners' Trade Unions International (Trade Department of the World Federation of Trade Unions) against the Government of India

12. The complaint of the Miners' Trade Unions International is contained in a communication addressed directly to the I.L.O. on 10 December 1964. The Government of India furnished its observations on the complaint by a letter dated 12 April 1965.

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[1] See Ninth Report, para. 23 *(d)*.

13. India has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Allegations relating to Anti-Union Discrimination

14. The complainants allege that repressive and discriminatory measures are taken against officers and members of unions affiliated to the Mineworkers' Federation of India (All India Trade Union Congress). One of each operates at the Bankola mine and the Babisole mine. These are referred to by the complainants as " Red Flag Unions ".

15. It is alleged that the management of the Bankola mine, West Bengal, is trying to crush the Red Flag Union. Mr. B. Kurmi, a member, is alleged to have been brutally attacked on 12 September 1964 and then falsely charged with theft by the manager of the mine, Mr. Sharma. Mr. Sharma is alleged to have led, on 17 September 1964, a crowd of gangsters who set fire to workers' dwellings. The police arrived and arrested some 30 officers of the Red Flag Union but, states the complainant, the manager himself was arrested on 19 September. A week later the General Secretary and Committee Secretary of the Coal Miners' Federation of West Bengal were arrested, but later released on bail. Since then, it is alleged, the management has recruited criminal elements to harass the miners.

16. At the Babisole mine, West Bengal, it is alleged, about 100 officers of the Red Flag Union have been victimised. The management is said to be reducing production by dismissing permanent workers and refusing them their legal dues. Nine officers of the union are said to have been falsely charged in four legal actions. An armed police picket has been placed in the mine. It is alleged that when the management complains about a worker he is arrested at once by the police before inquiries are started, but that complaints by workers are rejected by the police. One member, Mr. Nandi, is alleged to have been arrested when he tried to lodge a complaint with the police.

17. The situation is alleged to be the same at the Girimint, Adjay, New Jemehary Khas and Chapui Khas mines.

18. The Government declares that all the mines referred to are in the throes of severe labour indiscipline because of the struggle for recognition between rival unions.

19. At the Bankola mine 400 of the 2,000 workers belong to the Colliery Mazdoor Congress (affiliated to the Hind Mazdoor Sabha), which has been recognised by the management. The union affiliated to the All India Trade Union Congress (A.I.T.U.C.) has about 150 members and has not been recognised. Rivalry between the two unions has caused open disorder and the police have had to intervene. The Government says that a similar situation prevails in other mines.

20. In September 1964 the A.I.T.U.C. union complained that persons hired by the Bankola colliery management had attacked workers' quarters and leaders of the union on 12 September. This was found to be untrue. The Deputy Chief Inspector of Mines investigated the alleged attack on Mr. Kurmi but found no evidence. A charge against him of having stolen a drill machine is pending in the court. As regards the setting on fire of workers' dwellings on 17 September 1964, about 55 workers of different groups (not 30 union officers, as alleged) were arrested and several cases connected with this incident are pending in the courts. To avoid future incidents, the manager of the mine was transferred from the district. The allegation relating to the recruitment of criminal elements to harass the miners, says the Government, has been found to be baseless and no complaint on this point has been made by the Hind Mazdoor Sabha union.

21. As regards the alleged victimisation of officers of the A.I.T.U.C. union at the Babisole colliery, the Government states that the only complaint received was one relating to Mr. H. Singh. It was found that he had been assaulted by an aggrieved workman. The A.I.T.U.C. union withdrew its complaints.

22. As regards the alleged lay-off of permanent workers, the Government states that two seams were closed from 8 September to 14 September 1964 and an open-cast quarry was closed from 8 to 19 September. On investigation it was found that the two seams were closed by order of the Mines Department because of violations of the Mines Act. The quarry was closed because water had rendered it unsafe. Most of the 130 workers affected were given alternative work as opportunity arose and only 15 had to be retrenched. The management had failed to pay minimum guaranteed wages to the workers concerned, as required by the Coal Award of 1956, and this matter had been taken up by the Regional Labour Commissioner.

23. Although no complaint had been received from the union regarding the arrest of Mr. Nandi (see paragraph 16 above), the Government states that a complaint charging him with obstructing the manager and director of the Babisole mine is pending before a court.

24. While pointing out that the complainants have not cited any specific cases to support their allegations regarding other collieries, the Government states that in September 1964 the A.I.T.U.C. union lodged a complaint of terrorisation of workers at the Chapui Khas colliery. On investigation it was found that three members of the union had beaten up a member of the rival union and had been suspended for ten days. Two other complaints of assault of union leaders are under investigation.

25. It would appear that in the collieries concerned an inter-union struggle is being waged, often with violence, between members of two rival unions of miners. Certain cases of violence and arson have given rise to criminal court proceedings. So far as these cases are concerned no sufficient evidence appears to have been furnished to prove that the employers as such were implicated in what took place. So far as the closure of certain seams is concerned, this appears to have been done for justifiable reasons not connected with the exercise of trade union rights. The only provable fault on the part of the employers appears to have been failure to pay minimum wages to certain workers who were laid off and this, according to the Government, is being dealt with in accordance with the legal procedure laid down. In these circumstances, the Committee does not consider that the complainants have furnished sufficient proof that violations of trade union rights have been committed by the employers, the police or other authorities.

26. The Committee therefore recommends the Governing Body to decide that these allegations do not call for further examination.

Allegations relating to the Food Situation

27. It is alleged that essential foodstuffs have disappeared from the market in the mining areas and been cornered by black marketeers, who charge the workers exorbitant prices. Miners have to absent themselves and lose wages in order to find food. Employers agreed to open shops with reasonable prices but, it is alleged, no mine owners have done so. There are a few co-operative shops in the mines but they cannot get adequate supplies.

28. The Government states that there has been a shortage of grain for some time and the rise in commodity prices has caused hardship to the whole population as well as the miners. So far as the miners are concerned account was taken of this in the Coal Award of 1956 and two wage increases were accorded by the Coal Mining Wage Board in the last two years. In 1962 the Indian Labour Conference evolved as a relief measure a scheme to open fair-price stores in larger undertakings. Two hundred and sixty co-operative stores have been set up in the mining areas and the question of supplies is being given constant attention.

29. These allegations raise questions related to difficulties of food supply being experienced in India which do not appear to be directly related to the exercise of trade union rights, and the Committee accordingly recommends the Governing Body to decide that they do not call for further examination.

Allegations relating to Bonus Payments

30. The complainants allege that mine owners in the private and public sectors have never paid a production bonus, although the Government accepted the decision of the Bonus Commission that mine owners should pay a bonus to the miners. The Mineworkers' Federation of India has threatened direct action if bonuses are not paid to India's 4 million miners.

31. The Government states that under the statutory system prevalent in coal mines bonus is paid on the basis of quarterly attendance. In December 1961 the Government appointed a Bonus Commission to work out norms governing bonus payments based on profits in all industries. In January 1964 the Commission made its recommendations, which were accepted by the Government, with some modifications, in September 1964. Details of proposed legislation to give effect to the Commission's recommendations in the form accepted were discussed by the Standing Labour Committee in December 1964 and March 1965, but no agreement was reached between employers and workers. The Government has decided to proceed with the enactment of the Bonus Bill, taking account of the different views expressed.

32. It does not appear that, either under the law or under any binding award or agreement, employers are bound to pay a production bonus, although legislation is contemplated, and at present bonuses are paid on the basis of quarterly attendance. In these circumstances the complainants have not shown that the non-payment of a production bonus has infringed trade union rights or any acquired rights of the workers.

33. The Committee therefore recommends the Governing Body to decide that these allegations do not call for further examination.

* * *

34. In all the circumstances the Committee recommends the Governing Body to decide that the case does not call for further examination.

Case No. 430 :

Complaint Presented by the Latin American Confederation of Christian Trade Unionists against the Government of the United States in respect of Puerto Rico

35. The complaint of the Latin American Confederation of Christian Trade Unionists (C.L.A.S.C.) is contained in a communication addressed directly to the I.L.O. on 27 February 1965. The Government of the United States furnished its observations in two communications dated 5 May and 26 July 1965.

36. The United States has not ratified the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Allegations relating to a Strike of Employees of the Sundale Manufacturing Corporation

37. The complainants state that from 30 September 1964 onwards the Puerto Rican Federation of Democratic Trade Unions met with executives of the Sundale Manufacturing Corporation, Ponce, in efforts to negotiate an agreement for its employees. As these efforts failed, the Conciliation Office was asked to intervene, but, it is alleged, the employers refused conciliation. An indefinite strike began on 23 November 1964.

38. Subsequently, the owners of the firm came to Puerto Rico and further negotiation took place but, it is alleged, the manager of the firm brought up matters not connected with

the dispute and prevented an agreement being reached. Further negotiations were also inconclusive. On 30 January 1965 the factory was closed for economic reasons.

39. On 8 February 1965, say the complainants, a truck attempted to cross the picket line, which had been there for 78 days. Pickets persuaded the driver not to enter the factory. On 9 February police arrived at the picket and, it is alleged, a truck then arrived, the driver of which was accompanied by a special policeman. According to the complainants, a police lieutenant ordered the driver to enter and forbade the pickets to speak to him, this being contrary to the law, which permits peaceful persuasion by pickets. However, it is alleged, the commander of the police persisted in ordering the driver to enter and, when the pickets tried to speak to him, one of them was arrested, and a striker, Mrs. Justina Cruz, was also arrested because she protested. It is alleged further that another picket, Mr. Vera Vera, was arrested and beaten and that Miss Iris Santiago, a further picket arrested for protesting, was beaten and dragged along the street. Another union member, Mr. F. Velázquez, was also arrested. Afterwards, public protests were organised.

40. In its communication dated 5 May 1965 the Government of the United States explained that the Constitution and laws of Puerto Rico guarantee and protect the right to strike and that the right to picket and to dissuade persons from working is also protected, but that the right to use force to prevent the crossing of a picket line is not protected.

41. The Government stated that an investigation of the incidents occurring during the strike was being undertaken by the District Attorney of the city of Ponce, that an investigation had also been ordered by the Legislative Assembly of Puerto Rico, and that the Government was prepared to obtain information on the factual issues from the competent authorities, if the Committee so desired.

42. At its meeting in May 1965 the Committee decided to request the Government to be good enough to forward an official factual statement on the matter from the competent authorities and, in particular, to inform the Committee as to the outcome of the investigation being made by the District Attorney of Ponce and of that ordered by the Legislative Assembly of Puerto Rico.

43. On 26 July 1965 the Government furnished a copy of a report on the matter from the Office of the Attorney-General in San Juan, based on the investigation made by the District Attorney of Ponce.

44. The District Attorney took sworn statements from four police officers involved and statements from seven strikers or union officials.

45. The investigation shows, says the Government, that on 9 February 1965, the day when the material factual incidents took place, Police Lieutenant Rovira Ramos was informed by a truck owner, Mr. F. Delgado, that his trucks would not be permitted to enter the factory premises, and that the lieutenant and other policemen went to the site. A truck arrived and, according to the report, Mr. Velázquez and some of the strikers tried unsuccessfully to persuade the driver not to enter the factory. When the truck moved forward, it is stated, Mr. Velázquez stood in front of it, used foul language and stated that no truck would be allowed to enter. He was arrested for breach of the peace by Police Officer Osvaldo Vélez and then tried to escape and was chased by the officer. At this point, says the report, Mrs. Justina Ortiz (not Cruz) assaulted the officer with a cudgel and was arrested. She resisted, and some women strikers, including Miss Iris Santiago, started shouting and moved in front of the moving truck. The police pushed them aside to prevent them being knocked down.

46. Later in the same day, according to the report, Mr. Vera Vera, a union leader, threw a rock at a truck leaving the factory, breaking the windscreen. He was arrested, and some of the strikers, including Miss Iris Santiago, tried to obstruct the police. Miss Santiago was charged with a violation of article 137 of the Penal Code concerning the obstruction of justice.

47. In the ensuing trials in the courts Mrs. Justina Ortiz was found guilty of aggravated assault and battery and fined 25 dollars; Mr. Velázquez was sentenced to a fine of 50 dollars or 60 days in jail; Mr. Vera Vera was found guilty before a jury on a charge of preventing a police officer from performing his duties, a felony. Miss Santiago, charged with resisting a police officer, was acquitted.

48. The Committee has always applied the principle that allegations relating to the right to strike are not outside its competence in so far as they affect the exercise of trade union rights.[1] It has also pointed out that the right of workers and their organisations to strike as a legitimate means of defending their occupational interests is generally recognised.[2] The Committee has also emphasised the importance that it attaches to the principle that pickets acting in accordance with the law should not be subject to interference by the public authorities.[3]

49. In the present case it appears that three of the four persons arrested by the police for acts in violation of the Penal Code were eventually found guilty by the courts. The fourth was acquitted on a relatively minor charge.

50. The only point on which there is real conflict of evidence is whether or not the police interfered with the right of peaceful picketing and the right to try to dissuade workers from working, rights which are guaranteed by the laws of Puerto Rico. According to the complainants the police forbade strikers on 9 February 1965 to try to persuade a truck driver not to enter the factory. According to the report of the District Attorney of Ponce they were not prevented from speaking to the truck driver, but they failed to persuade him. In respect to this question as to credibility it is to be observed that no one tried to prevent the strikers from persuading a truck driver on 8 February and that, on that day, the picket lines had been operating for 78 days without any complaint of interference with them ever having been made.

51. In all the circumstances, and having regard to the fact that the right to strike and to picket peacefully are guaranteed by the law, the Committee does not consider that the complainants have offered sufficient proof in support of their allegations that the rights in question were violated.

52. In view of the nature of the report furnished by the District Attorney of Ponce and of the verdicts given by the courts the Committee does not now consider it necessary to await the outcome of the parallel investigation ordered by the Legislative Assembly of Puerto Rico before formulating its conclusions.

53. The Committee therefore recommends the Governing Body to decide that these allegations do not call for further examination.

Allegations relating to the Legislation of Puerto Rico

54. The complainants allege that the laws are one-sided and favour the employers and ask where is the right to strike embodied in the laws and where is the right of association if fear of the employers prevents the workers from organising freely.

[1] See 28th Report, Case No. 143 (Spain), para. 109, Cases Nos. 141, 153 and 154 (Chile), para. 202, and Case No. 169 (Turkey), para. 297; 47th Report, Case No. 143 (Spain), para. 66; 58th Report, Case No. 221 (United Kingdom-Aden), para. 109; 65th Report, Case No. 266 (Portugal), para. 77; 66th Report, Case No. 294 (Spain), para. 481; 71st Report, Case No. 173 (Argentina), para. 67; 72nd Report, Case No. 211 (Canada), para. 27; 78th Report, Case No. 364 (Ecuador), para. 79; 83rd Report, Case No. 399 (Argentina), para. 293.

[2] See Fourth Report, Case No. 5 (India), paras. 18-51; 12th Report, Case No. 60 (Japan), paras 10-83; 28th Report, Cases Nos. 141, 153 and 154 (Chile), para. 202; 30th Report, Case No. 167 (Honduras), para. 76, Case No. 181 (Ecuador), para. 94, Case No. 143 (Spain), para. 130, and Case No. 172 (Argentina), para. 778; 58th Report, Case No. 192 (Argentina), para. 447; 65th Report, Case No. 266 (Portugal), para. 77; 68th Report, Case No. 294 (Spain), para. 137; 78th Report, Case No. 364 (Ecuador), para. 79; 83rd Report, Case No. 399 (Argentina), para. 293.

[3] See 25th Report, Case No. 136 (United Kingdom-Cyprus), para. 170.

55. In its communication dated 5 May 1965 the Government refers to the specific provisions in the Constitution and the legislation which guarantee the right to strike and the right to organise and prohibit reprisal by employers. Charges of violation of these rights can be filed with the Puerto Rican Labor Relations Board. Copies of the relevant provisions have been furnished.

56. The allegations made are in such general terms and not supported by any specific illustrations that the Committee feels that it is quite unnecessary to examine the legislation in greater detail, considering that the allegations are too vague to permit of an examination of them on their merits.

57. The Committee therefore recommends the Governing Body to decide that these allegations do not call for further examination.

* * *

58. In these circumstances the Committee recommends the Governing Body to decide that the case does not call for further examination.

Case No. 431 :

Complaint Presented by the Malta Customs Federation and the Customs and Excise Officers' Association against the Government of Malta

59. The complaint is contained in a telegram dated 13 February 1965 addressed to the I.L.O. by the Malta Customs Federation and in a communication dated 25 March 1965 submitted jointly by that organisation and the Customs and Excise Officers' Association, Malta. The Government of Malta furnished its observations on the complaint by a communication dated 22 May 1965.

60. Malta ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), on 4 January 1965.

61. The two complaining unions, which organise customs officers in the landing and warehousing branch and the customs and excise branch respectively, have set up a joint committee, with a view to obtaining better promotion prospects for customs officers. On 11 January 1964 they asked the Government for a closed-shop agreement, so that senior posts in the customs department would be reserved for customs officers and closed to members of the general service. Executive and administrative officers of the general service in Malta are organised by the Society of Administrative and Executive Civil Servants.

62. After making threats of industrial action the complainants held discussions with the Government on 15 April, 11 September and 3 December 1964, and on the last occasion, it is alleged, the Government promised to " finalise the claim " in the first week of January 1965. However, nothing further had happened by the third week in January 1965 and the complainants decided to order a ban on overtime and working to rule as from midnight on 24-25 January 1965.

63. On 23 January the Government informed the complainants that the filling of existing senior posts and the provisions of additional such posts were matters of managerial prerogative and could not therefore be the subject of agreement or industrial disputes. At the same time the Government offered to create five senior posts. As a counter-proposal the complainants asked for ten posts and certain improvements in promotion.

64. At this point the Society of Administrative and Executive Civil Servants entered the field. Considering that the complaining unions were trying to reserve exclusively for their members higher posts to which general service officials in the Society could also

legitimately aspire, the Society, it is alleged, sent a written undertaking to the Government that its members would be prepared to do the work of the customs even in the event of direct action.

65. When industrial action began, it is alleged, the Government set in motion a plan under which officers of the general service " were made to take over from customs officers to perform work outside office hours ". This helped to render ineffective the ban on overtime from 25 January to 24 February 1965.

66. The complainants also contend that the Society's offer to the Government was contrary to " work to rule " restrictions issued by the staff side of the Malta Government Joint Council. The General Workers' Union, the biggest union in Malta, on the other hand, had supported the complainants by ordering those of its members who were customs and excise guards not to undertake any work which was not previously done by them.

67. On 29 January 1965 the complainants informed the Government that they were contemplating more drastic measures because " civil servants directly interested in the dispute were being ordered to perform work normally done by customs officers ". It is alleged that, encouraged by the support of the Society, the Government issued statements commending members of the general service and condemning the customs men and threatening the latter with disciplinary action.

68. The Malta Customs Federation and the Society are both affiliated to the Confederation of Malta Trade Unions. On 1 February 1965 the Federation informed the General Council of the Society's alleged offer to the Government to help to break the strike. The General Council appointed a conciliation commission, but it could not effect a settlement. In the end, it is said, the General Council decided " to censor *privately* the Society ".

69. On 22 February 1965 discussions with the Government were reopened. The complainants concluded an agreement with the Government and the dispute ended on 24 February. According to this agreement the Government approved various appointments and the creation of four additional senior posts, provision was made for automatic promotion of junior officers after five years' service, and both sides agreed " to refrain from disciplinary action ".

70. In conclusion the complainants ask the I.L.O. to censor the Society of Administrative and Executive Civil Servants and to condemn the offer which it made to the Government.

71. In its communication dated 22 May 1965 the Government states that the complaint is directed against another union and that the alleged infringement of trade union rights " is not and cannot be attributed to the Government ". In these circumstances the Government does not wish to comment on the substance of the complaint. The Government furnishes a letter received from the Confederation of Malta Trade Unions in which the latter states that it does not concur in the complaint.

72. It appears that the complaining organisations sought a closed-shop agreement for the main purpose of ensuring that promotion to higher customs posts should be reserved for their members. They resorted to direct action in the form of working to rule and banning overtime. The attempt to secure a closed shop was resisted by another organisation, catering for general service personnel, which wished to retain for its members the possibility of access to the posts in question. In order to weaken the direct action by the customs men, the general service organisation voluntarily offered to instruct its members to perform the overtime work normally done by customs officers. Essentially, therefore, the case revolves around the issue of union security arrangements and involves an inter-union struggle over this issue.

73. In the past [1] the Committee has declined to entertain allegations relating to voluntarily concluded union security arrangements, basing its reasoning on the statement in

[1] See 13th Report, Case No. 96 (United Kingdom), paras. 115-139; 15th Report, Case No. 114 (United States), paras. 36-64, and Case No. 102 (Union of South Africa), paras. 166-174; 17th Report, Case No. 120 (France), paras. 78-98; 26th Report, Case No. 162 (United Kingdom), paras. 12-19; 30th Report, Case No. 182 (United Kingdom), paras. 101-108.

the report of the Committee on Industrial Relations set up by the International Labour Conference in 1949 [1] that the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), could in no way be interpreted as authorising or prohibiting union security arrangements, such questions being matters for regulation in accordance with national practice. In those cases the Committee has rejected not only allegations relating to union security arrangements already effected by collective agreement but also, as in Case No. 182 relating to the United Kingdom [2], allegations relating to inter-union disputes occasioned by the fact that, as in the present case, one union was " exerting pressure to secure what, if it should be successful, would be a closed shop and a union security arrangement in fact ".

74. In these circumstances the Committee recommends the Governing Body to decide that the allegations do not call for further examination.

Case No. 438 :

Complaint Presented by the Pan-Hellenic Federation of Workers in Electricity and Public Utility Undertakings against the Government of Greece

75. The complaint of the Pan-Hellenic Federation of Workers in Electricity and Public Utility Undertakings is contained in a telegram addressed directly to the I.L.O. on 16 April 1965. Although informed of their right to supply additional information to substantiate their allegations, the complainants have not done so. The complaint was transmitted for comment to the Government, which replied by a communication dated 27 July 1965.

76. Greece has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

77. The complainants allege that a strike called for on 15 and 16 April 1965 by the employees of the Athens and Piraeus public electricity undertaking was broken by the Government, which subjected the workers to " political mobilisation "—an unconstitutional measure in the view of the complainants—and arrested about 30 strikers.

78. In its observations the Government confirms having requisitioned workers. It explains, however, that such action was taken only in respect of a limited number of the staff, namely the technical staff whose presence was vitally necessary to keep the turbines running. The Government adds that the action in question was taken to implement a decision of the Minister for Industry, which was itself based on provisions of the legislation in force which lay down that " requisition measures in respect of staff shall be ordered by the competent ministers, after the Prime Minister has so decided, with the aim of coping with situations of all kinds which might hinder economic development or which might jeopardise the normal life of the State or the social life of the country ".

79. The Government declares that its intention, when it ordered the measure of requisition, was not to infringe freedom of association or the right to strike, but purely " to ensure adequate protection of the public and avoid perturbations in the economic development of the country ". The Government adds that, generally speaking, " the requisitioning of the staff of a public utility undertaking placed in entirely exceptional circumstances of urgent necessity is only ordered very rarely and when there are no other means of ensuring the functioning of that undertaking ".

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[1] See *Record of Proceedings*, International Labour Conference, 32nd Session, Geneva, 1949 (Geneva, I.L.O., 1951), Appendix VII, p. 468.

[2] See 30th Report, para. 108.

80. On a number of occasions in the past the Committee has had occasion to examine cases having similar or comparable features.[1] In those cases the Committee noted that the requisition of workers was of an exceptional nature in a labour dispute in view of the gravity of its consequences with regard to personal freedoms and trade union rights. It also considered that measures such as the requisition of workers on the occasion of a labour dispute could be justified only by the need to ensure the working of essential services or industries whose suspension would lead to an acute crisis.

81. In the present case it is difficult to determine whether the stopping of the turbines, which according to the Government would have resulted in the cutting off of electric current, the bringing to a standstill of urban transport, etc., would have led to an " acute crisis ". However, since the Government declares that the measure of requisition in question—to which, moreover, recourse is very rarely had as a general rule—was not intended as a deliberate strike-breaking measure or as an infringement of freedom of association, the Committee recommends the Governing Body, while drawing the Government's attention to the observations made in paragraph 80 above, to decide that this aspect of the case does not call for further examination.

82. As regards the arrests alleged to have been made, the Government states that the persons who after the requisition did not return to work were arrested and detained for 24 hours. Although sentenced to detention by the judge of first instance before whom they appeared, according to the Government they were acquitted on appeal.

83. In these circumstances, the persons concerned having been released, the Committee considers that no useful purpose would be served by continuing its examination of this aspect of the case and recommends the Governing Body to consider it as closed.

84. As regards the case as a whole the Committee recommends the Governing Body—

(a) to draw the Government's attention to the fact that the requisition of workers should be only of an exceptional nature in a labour dispute in view of the gravity of its consequences with regard to personal freedoms and trade union rights;

(b) to decide, subject to the above reservation, that the case does not call for further examination.

Interim Conclusions in the Cases relating to India (Case No. 420) and Bolivia (Case No. 451)

Case No. 420 :

Complaint Presented by the Calcutta Port Commissioners Workers' Union against the Government of India

85. The complaint of the Calcutta Port Commissioners Workers' Union is contained in three communications dated 21 October and 26 December 1964 and 6 April 1965. The Government of India furnished its observations thereon by two communications dated 17 April and 28 September 1965.

86. India has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

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[1] See 36th Report, Case No. 192 (Argentina), paras. 77-105; 67th Report, Case No. 299 (Greece), paras. 90-98; 71st Report, Case No. 273 (Argentina), paras. 54-76; 75th Report, Case No. 353 (Greece), paras. 108-122.

Allegations relating to Workers' Housing Rights

87. In their communications dated 21 October and 26 December 1964 the complainants state that the Commissioners for the Port of Calcutta, a central government undertaking, employ about 30,000 Class IV employees, entitled under the Rules of the Commissioners to rent-free quarters or a house rent allowance in lieu thereof. It is alleged that responsible officers of the Port Authority have been making illegal profits by letting outsiders occupy quarters and that the Authority as such has been allowing Class III workers to occupy Class IV quarters at a higher rent. On 6 April 1965 the complainants furnished details of a housing case affecting a member of the union employed as a carpenter.

88. In its communication dated 17 April 1965 the Government states that the Port Commissioners have 3,600 rent-free quarters for their Class IV employees. They have also a number of quarters for Class III employees, who pay 10 per cent. of their wages as rent. Under the rules, only permanent Class IV employees are entitled to quarters and a waiting list is maintained, quarters being allotted strictly according to priority on the list. No outsiders, says the Government, are allotted quarters, but some of those given quarters sub-let their quarters or share them with outsiders, and those who do this are evicted. Some Class IV employees, including the person referred to in the communication dated 6 April 1965, were upgraded to Class III and were allowed to stay on in their old quarters at a token rent.

89. The allegations relate in short to what are regarded by the complainants as irregularities in the allotment of quarters to Class IV employees. No evidence has been adduced by the complainants to show that in regard to housing allotments any discrimination has been practised on trade union grounds or otherwise or that any subsisting collective agreement has been violated.

90. In these circumstances the Committee recommends the Governing Body to decide that these allegations do not call for further examination.

Allegations relating to an Infringement of the Industrial Disputes Act, 1947

91. The complaining organisation raised an industrial dispute before the Regional Labour Commissioner, in the manner prescribed, over the workers' housing question. While the dispute was pending, it is alleged, the authorities made an agreement with another union providing for the payment of rent allowance to a category of workers employed as porters. These persons were " A category " workers entitled to 15 rupees house allowance since 1 October 1957, pursuant to a binding recommendation of the Classification and Categorisation Committee. The complainants consider that this agreement deprived the workers in question of their acquired rights and constituted a violation of section 33 of the Industrial Disputes Act, 1947, which provides that, during the continuation of conciliation or other proceedings regarding a dispute, conditions of service may not be changed. It is alleged that the authorities made the agreement in order to discredit the complaining organisation in the eyes of the porters in question.

92. The Government states that the porters in question were " A category " porters, who are piece-rated workers. As such they had not figured at all in the recommendation of the Classification and Categorisation Committee. To bring them into line with monthly-rated workers the Commissioners appointed a joint committee of their officers and representatives of the two recognised unions, the Calcutta Port Shramik Union and the National Union of Port Trust Employees, to examine their position. In accordance with their report, a revised incentive piece-rate scheme came into operation in February 1964 which gave these porters parity with other employees as regards rent allowances. They were also paid an indemnity retroactive to 1 October 1957. The Government states that the scheme was not implemented while conciliation proceedings were pending over a dispute raised by the complainants; there is therefore no truth in the allegation of violation of section 33 of the Industrial Disputes Act, 1947.

93. In these circumstances, having regard to the explanations given by the Government and observing also that the complainants themselves have not specified the dates between which the dispute raised by them was pending, the Committee considers that the complainants have not furnished sufficient proof in support of their allegations that section 33 of the Industrial Disputes Act, 1947, was infringed.

94. The Committee therefore recommends the Governing Body to decide that these allegations do not call for further examination.

Allegations relating to Disciplinary Measures against Workers Who Occupied Vacant Quarters

95. It is alleged that Class IV workers who were without quarters began to occupy any premises they found vacant. Most of those who did so were suspended, generally for two months. But, it is alleged, the authorities discriminated unfairly in this respect against the complaining organisation, 15 of whose members were suspended, on dates varying from 2 August 1963 to 2 February 1964, apart from one on 12 February 1963, for six or seven months, without any reason being given. The union raised a formal industrial dispute before the Regional Labour Commissioner challenging the validity of the measures taken. It is alleged that the Conciliation Officer ordered the Port Authority not to take departmental proceedings against the suspended workmen or change their other conditions of service but that, in violation of the order, the Authority did start proceedings against them and illegally stopped or reduced their subsistence allowance. The complainants furnished a purported copy of a letter dated 18 June 1964 from the Conciliation Officer to the Chief Labour Officer of the Calcutta Port Commissioner drawing his attention to the obligation under section 33 of the Industrial Disputes Act, 1947, not to take proceedings against the suspended workmen.

96. The Government states that disciplinary action is taken against employees who occupy quarters in an unauthorised manner, without discrimination because of their union affiliation. The 15 members of the complaining union mentioned were suspended for this reason, eight of them being allowed to resume work when they vacated the premises. While agreeing that an industrial dispute had been raised in this connection, the Government denies that these measures were taken during the period of conciliation proceedings, which terminated after discussions held on 29 June and 19 July 1964.

97. It is agreed by both parties that a dispute was raised under the Industrial Disputes Act, 1947, over the case of the suspended workmen. The allegation made, however, is that during the proceedings, lasting apparently from 18 June to 19 July 1964, further departmental proceedings were taken against the suspended workmen, including the stopping or reduction of their subsistence allowance, contrary to the provisions of the Act. As the Government has not commented on this particular aspect of the matter, the Committee requests the Government to furnish its observations thereon.

Allegations relating to Disciplinary Measures in General against Workers

98. The complainants allege that the Port Authority and the Government have no right to take any disciplinary measures at all against employees of Calcutta Port because rules governing service conditions have not been issued, although the issue of such rules was the condition on which the Port Authority was granted exemption from the application of the Industrial Employment (Standing Orders) Act, 1946.

99. The Government states that rules regulating terms and conditions of service have been framed under section 31 of the Calcutta Port Act, 1890, and that the Fundamental and Supplementary Rules governing the conditions of service of central government servants have also been made applicable to the port employees. There are also the Disciplinary and Appeal Rules, 1964.

100. These general allegations are not directly linked by the complainants with any specific allegation of infringements of trade union rights and the Committee, therefore, recommends the Governing Body to decide that they do not call for further examination.

Alleged Acts of Anti-Union Discrimination in respect of Grading and Promotion to the Detriment of the Members of the Complaining Organisation

101. The complainants allege that various officers and members of their union have been discriminated against, because of their union affiliation, by being refused or deprived of promotion or being illegally deprived of acquired seniority rights to the advantage of junior or less skilled employees. In this connection, the complainants refer to the cases of Mr. A. K. Mukherjee, Mr. N. Das and Mr. Chakraborty, respectively general secretary, assistant secretary and organising secretary of the union and Messrs. D. Singh, S. K. Sarkar, S. J. N. Roy, S. Chatterjee and S. Ghosh, all active members of the union, and also to the case of the greasers employed in the Hydraulic Power Station.

102. The complainants allege also that unfair labour practices happen daily in Calcutta Port. It is not possible for each workman to go to the courts, state the complainants, because litigation is expensive and takes too long, a few years elapsing before a decision is reached, and because the authorities are vindictive towards workers who take such action.

103. The complainants also criticise the procedure for settling disputes under the Industrial Disputes Act, 1947. In the cases of Messrs. Roy, Chatterjee and Ghosh the union formally raised an industrial dispute but, it is alleged, the Regional Labour Commissioner had failed to give a ruling after about three years, while the Minister of Labour has refused to refer the cases of Messrs. Chakraborty and Mukherjee to a tribunal for adjudication.

104. The Government states that most of these cases have been handled without success by the Conciliation Officer and that in each case the action taken by the employers was found to be " in accordance with seniority rules " or employment rules, and that referral to a tribunal for adjudication was refused for this reason or because the allegations of victimisation made were " found to be without substance ".

105. It further appears that where employees of a Government concern raise a dispute which is not settled by a conciliation officer it does not go forward for settlement by adjudication unless the competent authority gives permission. This happened certainly in the cases of Mr. Chakraborty and Mr. Mukherjee, and, perhaps, in the case of the greasers of the Hydraulic Power Station. In the cases of Messrs. Roy, Chatterjee and Ghosh the position is not clear because the complainants say that the Labour Commissioner has failed to give a ruling after three years, while the Government states that the action taken was in accordance with seniority rules.

106. In view of the fact that the complainants allege that court procedure is too lengthy and expensive for workers to have recourse to it—a point on which the Government has made no comment—the Committee requests the Government to be good enough to explain what remedy is open to the worker whose case is not settled by conciliation and according to what rules and by whom the decision is taken as to whether his case may be adjudicated and to state how these rules were applied in the particular cases referred to in paragraph 101 above.

Allegations relating to Discriminatory Treatment with regard to the Granting of Loans

107. According to long-standing practice, state the complainants, Class IV workers have been entitled to obtain temporary loans from the Inferior Staff Loan Fund and Class III workers loans from the Port Commissioners' Co-operative Credit Society. But, it is alleged, several Class IV workers who have been reclassified as Class III and most of whom belong to the complaining organisation have been refused loans from the Credit Society and so cannot have loans from either fund.

108. The Government states that loans from the Port Commissioners' Fund are available only to Class IV employees and not, therefore, to Class IV employees who have been promoted to Class III. The Co-operative Credit Society advances loans to workers in the first three classes. Through shortage of funds it has been unable to enrol new members. The Commissioners are therefore amending the Loan Fund rules to allow the new Class III employees to have temporary loans until the Credit Society is able to accept them as members.

109. The Committee does not consider that it has sufficient evidence before it to show that any anti-union discrimination has been practised in the granting of loans. That being so it is not concerned, in the absence of evidence that the question is directly related to the exercise of trade union rights, with what provision may be made for the granting of loans to employees.

110. The Committee therefore recommends the Governing Body to decide that these allegations do not call for further examination.

Allegations relating to Casual Labour

111. The complainants state in their communication dated 21 October 1964 that the Port Commissioners employ many workers through a casual labour contractor and that these workers, who have worked as much as ten years side by side with the port workers, get no benefit of provident funds, bonus, sick leave, annual leave with pay, etc. and are employed all this time as casual workers generally at lower pay even though in fact their employment is permanent.

112. In their communication dated 26 December 1964, the complainants allege that the employer has begun to engage casual labourers directly for the Chief Mechanical Engineer's Department, instead of through a contractor, in order to avoid having to employ those who have been casually employed for a long time and have presented grievances through the complaining union. According to the complainants this has resulted in a lowering of the wages paid to casual workers even though the employers no longer have to pay commission to a contractor.

113. The union raised a formal dispute on this matter before the Regional Labour Commissioner and, at a tripartite meeting on 3 December 1964, the Port Authority, it is alleged, agreed to request the employment exchange to give preference in regard to engagement to casual workers who had previously been engaged through the contractor. This undertaking not being honoured, state the complainants, the matter was referred to the Conciliation Officer, who wrote formally to the Port Commissioners' Chief Labour Officer asking him to make the necessary representation to the Labour Exchange (a purported copy of this letter, dated 23 December 1964, is furnished by the complainants). But, it is alleged, no action was taken, and new casual workers continue to be engaged at lower rates and in inferior conditions and without medical benefits. In the view of the complainants this is being done in order to discredit and weaken the union.

114. The Government states that the majority of the port workers are now decasualised. Recently one contractor failed to supply casual workers because of difficulties created, according to the Government, by the complaining organisation. The Commissioners, therefore, have had to recruit casual workers from the Labour Exchange.

115. The Government declares that a formal request was made to the Labour Exchange to consider the recruitment and placement, against requisitions by the Chief Mechanical Engineer, of men formerly employed by labour contractors as casual labour in the Chief Mechanical Engineer's Department. This arrangement is now working and they are being paid the general rate for this class of casual labour in other departments. The Medical Attendance Rules and Provident Fund Rules are not applicable to any casual workers so that, says the Government, it is baseless to claim that their non-application to casual workers in the Chief Mechanical Engineer's Department is a discrimination against them because they belong to the complaining organisation.

116. As the position with regard to casual labour appears to have been regularised it would not appear that any useful purpose would be served by pursuing further the allegation that, prior to these arrangements, they were discriminated against as members of the complaining organisation, an allegation which, in any event, was in somewhat general terms.

117. In these circumstances the Committee recommends the Governing Body to decide that these allegations do not call for further examination.

Allegations relating to Inhumane Treatment of Workers

118. A number of cases of alleged inhumane treatment for workers who have suffered severe injury or incapacity in the course of their employment are cited by the complainants in their communication dated 26 December 1964.

119. The Government explained the measures that have been taken to provide artificial limbs, to pay statutory compensation and, where appropriate, to offer alternative work to the persons concerned.

120. None of these cases appears to raise any issues directly related to the exercise of trade union rights.

121. In these circumstances the Committee recommends the Governing Body to decide that these allegations do not call for further examination.

Allegations relating to the Right to Strike

122. The complainants allege that the right to strike has been recognised as a " fundamental right " by the Government, but that the Government takes drastic action to break any strike and allows the police to interfere illegally with the trade union rights of the workers.

123. The Government states that the right to strike is a fundamental right under the Constitution. It is exercised subject to the conditions laid down in sections 10 (3), 22 and 23 of the Industrial Disputes Act, 1947. Contraventions are subject to the penal provisions of the Act but this course is rarely pursued.

124. The Committee has always applied the principle that allegations relating to the right to strike are not outside its competence in so far as they affect the exercise of trade union rights.[1] In the present case, however, the allegations are in such general terms that the Committee considers them to be too vague to permit of their being examined on their merits.

* * *

125. With regard to the case as a whole the Committee recommends the Governing Body—

(a) to decide, for the reasons indicated in paragraphs 87 to 94, 98 to 100 and 107 to 124 above, that the allegations relating to workers' housing rights, to an infringement of the Industrial Disputes Act, 1947, to disciplinary measures in general against workers, to discriminatory treatment with regard to the granting of loans, to casual labour, to inhumane treatment of workers and to the right to strike do not call for further examination;

[1] See 28th Report, Case No. 143 (Spain), para. 109, Cases Nos. 141, 153 and 154 (Chile), para. 202, and Case No. 169 (Turkey), para. 297; 47th Report, Case No. 143 (Spain), para. 66; 58th Report, Case No. 221 (United Kingdom-Aden), para. 109; 65th Report, Case No. 266 (Portugal), para. 77; 66th Report, Case No. 294 (Spain), para 481; 71st Report, Case No. 173 (Argentina), para. 67; 72nd Report, Case No. 211 (Canada), para. 27; 78th Report, Case No. 364 (Ecuador), para. 79; 83rd Report, Case No. 399 (Argentina), para. 293.

(b) to take note of the present interim report with regard to the remaining allegations, it being understood that the Committee will report further thereon when it has received additional information and observations which it has decided to request the Government to be good enough to furnish.

Case No. 451 :

Complaint Presented by the Latin American Confederation of Christian Trade Unionists against the Government of Bolivia

126. The complaint by the Latin American Confederation of Christian Trade Unionists (C.L.A.S.C.) was submitted in a direct letter to the I.L.O. dated 26 July 1965. It was forwarded to the Government, which sent in its observations on 1 September 1965.

127. Bolivia has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but not the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

128. The Confederation's letter dated 26 July 1965 was accompanied by copies of four presidential decrees: No. 07171 dated 17 May 1965, No. 07172 dated 18 May 1965 and Nos. 07204 and 07205 dated 3 June 1965.

129. The complainants allege that these decrees constitute a flagrant breach of the principles of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which has been ratified by Bolivia, in that they place the trade union movement under the control of the Military Government Junta and create a unified trade union movement at all levels from the individual union up to the central national organisation. The complainants likewise allege that the four decrees in practice amount to a new General Labour Act since they lay down new standards affecting even the smallest details of trade union organisation. The complainants add that all elections held before 17 May 1965 (when the first of these four decrees was issued) have been declared null and void and that accordingly since that date all trade union leaders have been disqualified from office. Furthermore, the decrees are alleged to specify 26 July 1965 as the date on which all unions must hold further elections to appoint new officials; these elections must be held in the presence of an official of the Ministry of Labour who must make a record of the proceedings. Before an election, the names of the candidates must be notified to the Ministry of Labour, which is empowered to eliminate those regarded as " politically contaminated ". After the election, the Ministry must be informed of the names of the winners and has power to disallow such elections as it thinks fit. According to the complainants, the decrees lay stress on the fact that the union leaders may not be members of political parties or maintain contact with them, and state that no person may be re-elected after he has held trade union office for one year. The complainants take the view that this requirement is disastrous for a trade union movement in an underdeveloped country which cannot find the men to replace all the officials in each union, federation and confederation. Lastly, the complainants state that the conditions laid down in the decrees for the dissolution of a trade union are open to abuse since they allow dissolution to be ordered on such grounds as sabotage, which would allow the Junta a very wide margin of discretion and give it another powerful weapon for interference in trade union affairs.

130. The Government in its reply dated 1 September 1965 states that the Military Junta has had to take over because demagogic policies combined with the dominance of the Government party were threatening to bring the country to anarchy and the unions were exercising an iron grip on the working masses whom they no longer genuinely represented. The Government adds that the unions had modern means of propaganda such as powerful, highly mobile radio systems through which they incited the working classes to rebel against the new Government, and that the union leaders were encouraging the population to make use of the arms which had been distributed to the workers for the purpose of securing politi-

cal domination. The Government states that it had had no alternative but to issue the decrees in question in order to remove corrupt union leaders and clean up the union movement. This entailed filling the senior offices in the union movement with new men. The Government adds that it behaved perfectly fairly and those leaders who wished were at liberty to leave the country. Referring to the decrees, the Government states that they are interim measures designed to pacify the country and rebuild its institutions, of which the trade unions are among the most important, but only on condition that they actually represent the will of the majority of their members and not that of closed groups who operate for political purposes and contrary to the legitimate interests of the working class. The Government concludes by stating that the decrees have been—and will be—applied only in cases where there is no alternative and that in any event the courts, staffed by impartial judges, are open to persons who consider themselves injured if they can substantiate their complaints; the courts provide every safeguard and there is nothing to be feared by those who have recourse to them—as many in fact have done.

131. The Committee observes that of the four decrees in question, three—Decrees Nos. 07171 dated 17 May 1965, 07172 dated 18 May 1965 (issuing regulations for the application of the previous decree) and 07205 dated 3 June 1965 (supplementing the two previous decrees)—deal mainly with the reorganisation of the trade unions and the elections to be held for this purpose. The fourth decree—No. 07204 dated 3 June 1965—is more general in character and supplements Title IX of the Presidential Decree of 23 August 1943 issued in pursuance of the General Labour Act. Accordingly, the allegations concerning interference with the right of the unions to elect their representatives will be dealt with separately from the allegations dealing with the other provisions of Decree No. 07204.

Allegations regarding Interference with the Right of Trade Unions to Elect Their Representatives

132. The complainants allege that, after declaring all trade union elections before 17 May to be null and void, the Government issued four decrees (Nos. 07171, 07172, 07204 and 07205), laying down a whole series of conditions governing the holding of elections and the submission of candidatures, which were at variance with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

133. The Government admits the existence of these decrees, which, it states, had to be issued because there was no alternative method of eliminating corrupt trade union leaders and cleaning up the trade union movement, since the former leaders maintained an iron grip on the working masses whom they no longer genuinely represented. The Government also declares that the decrees have always been regarded as interim measures and have not been and will not be employed except in cases where there is no alternative.

(a) *Allegations concerning Interference by the Authorities in Trade Union Elections.*

134. Decree No. 07171 states (section 2) that all trade unions in Bolivia must renew their leadership on the basis of democratic elections within 40 days of the date on which the unions at the departmental and national levels were due to be reorganised. A similar clause is embodied in section 4 of Decree No. 07172. Section 5 of Decree No. 07205 fixes 26 June 1965 as the date for the elections and section 10 of the same decree stipulates that in order to be valid the elections must be supervised by a representative of the Ministry of Labour and Social Security or by the civil or military authorities of the district. Section 6 of Decree No. 07172 stipulates that the Ministry of Labour and Social Security shall recognise only trade union officials who have been elected in accordance with these requirements. Section 7 of Decree No. 07205 states that workers seeking trade union office must make application, together with full personal particulars, to the Ministry of Labour ten days before the date on which the elections are due to be held; unless this is done, the elections will not be valid. Section 8 states that, in order to allow the democratic process to operate freely in each

union, there must be at least two candidates. Finally, section 11 of Decree No. 07205 requires the Ministry of Labour and Social Security, after verifying each case so as to ensure that all the conditions laid down in Presidential Decrees Nos. 07171, 07172 and 07205 have been complied with, to issue a ministerial decision approving the composition of the executive in each union, failing which the elections will not be legal and will be held to be null and void.

135. The Committee has emphasised on several occasions the importance which it has always attached to the principle that workers' organisations should have the right to elect their representatives in full freedom. This is one of the vital aspects of freedom of association and means that governments should refrain from any interference which may curtail this right or impede its lawful exercise.[1] The Committee notes that the decrees in question contain a number of clauses which involve interference by the public authorities in various stages of the electoral process, beginning with the obligation to submit the candidates' names beforehand to the Ministry of Labour, together with personal particulars, continuing with the presence of a representative of the Ministry of Labour or the civil or military authorities at the elections, and culminating with the approval of the elections by ministerial decision, without which they are invalid. In an earlier case[2] the Committee has observed that there exist in a number of countries legal provisions whereby an official who is independent of the public authorities—such as a trade union registrar—may take action, subject to an appeal to the courts, if complaint is made or there are reasonable grounds for supposing that irregularities have taken place in a trade union election contrary to law or to the rules of the organisation concerned; again, irregularities of this kind may give rise to action in the ordinary courts. But the Committee considered in this case that this was quite a different situation from that which arises when the elections are stated in general terms to be valid only after being approved by the administrative authorities, and it noted that the I.L.O. Committee of Experts on the Application of Conventions and Recommendations had observed that such provisions were not compatible with the principle embodied in Article 3, paragraph 2, of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), to the effect that the public authorities should refrain from any interference which would restrict or impede the lawful exercise by organisations of their right to elect their representatives in full freedom.[3]

136. Accordingly, while the Committee takes note of the Government's statement that the decrees in question are interim measures which have not been and will not be applied except in cases where there is no alternative, it considers that they are not compatible with the foregoing principle of the right to hold free elections.

137. In these circumstances the Committee recommends the Governing Body to call the Government's attention to the fact that the provisions of Decrees Nos. 07171, 07172 and 07205 relating to intervention by the public authorities at the different stages of the procedure of electing trade union leaders are incompatible with the guarantees to which trade unions are entitled under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which has been ratified by Bolivia, and suggests therefore that the Government should consider amending them so that the trade unions can elect their representatives freely, and that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof.

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[1] See First Report, Case No. 2 (Venezuela), paras. 127-129; Fourth Report, Case No. 30 (United Kingdom-Malaya), para. 156; Sixth Report, Case No. 40 (France-Tunisia), paras. 508-514; 14th Report, Case No. 105 (Greece), paras. 135-137; 23rd Report, Case No. 111 (U.S.S.R.), para. 157; 27th Report, Case No. 159 (Cuba), para. 380 *(a)*; 32nd Report, Case No. 179 (Japan), para. 20 *(a)*; 36th Report, Case No. 185 (Greece), para. 168; 49th Report, Case No. 211 (Canada), para. 247; 58th Report, Case No. 234 (Greece), para. 571, and Case No. 253 (Cuba), para. 639; 65th Report, Case No. 266 (Portugal), para. 45.

[2] See 65th Report, Case No. 266 (Portugal), para. 45.

[3] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 43rd Session, Geneva, 1959 (Geneva, I.L.O., 1959), para. 57, pp. 112-113.

(b) *Allegations relating to Persons Eligible for Election to Trade Union Office.*

138. Section 3 of Decree No. 07171 lays down that to be a member of the executive of any workers' organisation it shall be an essential requirement that the candidate shall be a worker actively employed by the undertaking or employing body in question, to which section 3 of Decree No. 07172 adds that a trade union official shall forfeit his right to office automatically on ceasing to be an employee of the undertaking or employing body concerned, on assuming an active political function or on entering a branch of employment different from and removed from that of the undertaking where he has been employed. Section 7 of Decree No. 07204 stipulates, among other conditions with which members of trade union executives must comply, that they must never have been sentenced to corporal punishment by a court of law, and that they must have been in the regular employment of the undertaking for not less than a year. Section 8 of the same decree lays down that the term of office of a trade union official shall be for one year, and he may not be re-elected to office in the same trade union or in a workers' organisation of a higher degree until a certain period has elapsed.

139. In a number of earlier cases the Committee has had to consider whether the making of election to trade union office subject to conditions is consistent with the right of workers to elect their representatives in full freedom.

140. As regards the provisions stipulating that candidates must be actively employed by the undertaking or employing body concerned and that if they leave that undertaking they forfeit their right to trade union office, the Committee took the view in an earlier case that the fact that a member of a union executive who was dismissed would lose not only his employment but also his right to participate in the administration of his trade union meant that the management could in this way " interfere with the right of the workers to elect their representatives in full freedom, a right which constitutes one of the essential aspects of freedom of association ".[1] The Committee also recalls the statement by the Committee of Experts on the Application of Conventions and Recommendations that, when provisions in national legislation provide that all the trade union leaders shall belong to the occupation in respect of which the organisation carries on its activities, the guarantees laid down in the Convention may be impaired. In fact, in such cases, the dismissal of a worker who is a trade union leader may, by reason of the fact that dismissal causes him to lose his status as a trade union officer, infringe the freedom of activity of the organisation and its right to elect representatives in freedom, and may even leave the way open for acts of interference by the employer.[2]

141. As concerns the ban on the holding of trade union office by anyone who has been sentenced for an offence, the Committee observed in another case where the grounds incompatible with, or disqualifying from, the holding of office included sentence " by any court whatsoever, except for political offences, to a term of imprisonment of one month or more " that this general provision could be interpreted in such a way as to exclude from responsible trade union posts any individuals convicted for activities connected with the exercise of trade union rights, such as violation of the laws governing the press, and thus to curtail unduly the right of trade union members to elect their representatives freely.[3]

142. The Committee considers that in the present case the scope of the ban is so wide that it could also extend to those convicted of offences the nature of which was not such as to be prejudicial to the proper exercise of official trade union functions.

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[1] See 14th Report, Case No. 105 (Greece), paras. 135-137; 32nd Report, Case No. 179 (Japan), paras. 18 and 20.

[2] See *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit., para. 61, p. 113.

[3] See Sixth Report, Case No. 40 (France-Tunisia), para. 513.

143. With respect to the ban on the re-election of trade union officials the Committee recalls the opinion expressed by the Committee of Experts on the Application of Conventions and Recommendations that such a provision is not compatible with Article 3, paragraph 1, of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), under which workers' organisations should have the right " to elect their representatives in full freedom ". The Committee fully shares this opinion and considers, moreover, that such a ban could have serious repercussions on the normal development of a trade union movement lacking in persons capable of adequately carrying out the functions of trade union office.

144. The Committee therefore considers that the aforementioned conditions attached by Decrees Nos. 07171, 07172 and 07204 to election to trade union office are not consistent with the right which should be enjoyed by all workers to elect their representatives in full freedom.

145. In these circumstances the Committee recommends the Governing Body to draw the Government's attention to the fact that the provisions of Decrees Nos. 07171, 07172 and 07204 preventing the re-election of trade union officials and attaching other conditions to their election (being actively employed by the undertaking concerned, and not having been sentenced for an offence) are inconsistent with the right guaranteed by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), to all workers to elect their representatives in full freedom, and to suggest in consequence that the Government examine the possibility of amending these provisions so as to enable workers' organisations to elect their representatives in full freedom.

Allegations relating to Decree No. 07204 of 3 June 1965

(a) *Allegations relating to the Number of Organisations That May Be Formed.*

146. The complainants allege that Decree No. 07204 has established a single trade union system, obligatory at all levels, from the individual union through the intermediate levels to the single national confederation.

147. Section 4 of Decree No. 07204 lays down that only one trade union may be formed in each undertaking or firm, to be known as the " employees' union ", and to embrace all the employees of the undertaking in question, irrespective of their occupation, functions, skills or activities. Section 33 states that unions of employees of undertakings with work centres in various departments of the Republic may form national federations. Mixed unions may also form a national federation.

148. As the Committee has pointed out on a number of occasions [1], Article 2 of Convention No. 87 provides that workers and employers shall have the right to establish and to join organisations " of their own choosing ". This provision of the Convention is in no way intended as an expression of support either for the idea of trade union unity or for that of trade union diversity. It is intended to convey on the one hand that in many countries there are several organisations among which the workers or the employers may wish to choose freely, and, on the other hand, that workers and employers may wish to establish new organisations in a country where no such diversity has hitherto been found. In other words, although the Convention is evidently not intended to make trade union diversity an obligation, it does at least require this diversity to remain possible in all cases. Accordingly, any

[1] See Sixth Report, Case No. 12 (Argentina), para. 318, Case No. 2 (Venezuela), paras. 1012 (1) and 1013 (1), and Case No. 3 (Dominican Republic), para. 1024; 15th Report, Case No. 103 (United Kingdom-Southern Rhodesia), para. 212; 21st Report, Case No. 19 (Hungary), para. 26; 23rd Report, Case No. 111 (U.S.S.R.), para. 107; 27th Report, Case No. 143 (Spain), para. 144; 36th Report, Case No. 190 (Argentina), para. 202; 48th Report, Case No. 191 (Sudan), para. 72; 49th Report, Case No. 211 (Canada), para. 233; 54th Report, Case No. 179 (Japan), para. 188 *(f)* (i); 57th Report, Case No. 231 (Argentina), para. 124 *(b)*; 58th Report, Case No. 168 (Paraguay), para. 80 *(b)*; 65th Report, Case No. 266 (Portugal), para. 24; 68th Report, Case No. 313 (Dahomey), para. 56.

governmental attitude involving the " imposition " of a single trade union organisation would be contrary to Article 2 of Convention No. 87.

149. In these circumstances the Committee recommends the Governing Body to draw the Government's attention to the importance it has always attached to the principle that workers and employers should have the right to establish and to join organisations " of their own choosing ", as laid down by Article 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which has been ratified by Bolivia, and to suggest in consequence to the Government that it consider amending Decree No. 07204 to bring it into line with the aforementioned principle.

(b) *Allegations relating to the Dissolution of Trade Unions.*

150. The complainants allege that one of the grounds on which trade unions may be dissolved under the terms of Decree No. 07204 is sabotage, which in their opinion is open to a wide variety of interpretations and places in the hands of the Junta yet another powerful means of intervention in trade union affairs.

151. The Government has made no comment on this point in its reply.

152. Section 21 of Decree No. 07204 lays down that—

> Section 129 of the Decree issuing regulations for the administration of the General Labour Act shall read:
>
> " Trade unions may be dissolved only by a final judgment with executory force given by a labour court at the conclusion of summary proceedings, on one of the following grounds:
>
> . . . . . .
>
> *(d)* proved sabotage."

153. Before proceeding with its examination of this aspect of the case the Committee would be glad if the Government would be good enough to inform it as to what are the exact provisions in force in the country as regards penal sanctions for sabotage, and it decides therefore to postpone examination of this aspect of the case pending receipt of the information in question.

* * *

154. In all the circumstances, and having regard to the case as a whole, the Committee recommmends the Governing Body—

(a) to draw the Government's attention to the fact that the provisions of Decrees Nos. 07171, 07172 and 07205 referring to intervention by the public authorities at the different stages of the procedure of electing trade union officials are incompatible with the guarantees to which trade unions are entitled under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which has been ratified by Bolivia, and to suggest therefore that the Government should consider amending them so as to enable workers' organisations to elect their representatives freely, the public authorities being obliged to refrain from any interference which would restrict this right or impede the lawful exercise thereof;

(b) to draw the Government's attention to the fact that the provisions of Decrees Nos. 07171, 07172 and 07204 preventing the re-election of trade union officials and attaching other conditions to their election (being actively employed by the undertaking concerned, and not having been sentenced for an offence) are inconsistent with the right guaranteed by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), to all workers to elect their representatives in full freedom, and to suggest in consequence that the Government examine the possibility of amending these provisions so as to enable workers' organisations to elect their representatives in full freedom;

(c) to draw the Government's attention to the importance it has always attached to the principle that workers and employers should have the right to establish and to join organisations " of their own choosing ", as laid down by Article 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which has been ratified by Bolivia, and to suggest in consequence to the Government that it consider amending Decree No. 07204 to bring it into line with the aforementioned drinciple;

(d) to draw the Government's attention to the fact that the provision of Decree No. 07204 preventing the forming of proper trade unions in recently established undertakings is not in keeping with the principle laid down by Article 2 of Convention No. 87 that all workers should have the right to establish organisations of their own choosing, and to suggest that its amendment be considered so as to enable all workers to establish their own organisations in accordance with the aforementioned principle;

(e) to request the Government to inform the Committee as to what are the exact provisions in force in the country as regards penal sanctions for sabotage, and to decide in the meantime to postpone examination of this aspect of the case;

(f) to bring the foregoing conclusions to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

Geneva, 11 November 1965.

(Signed) Roberto AGO,
Chairman.

Eighty-seventh Report [1]

Introduction

1. The Committee on Freedom of Association set up by the Governing Body at its 117th Session (November 1951) met at the International Labour Office, Geneva, on 14 February 1966, under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body. The member of the Committee of Brazilian nationality was not present during its examination of the case relating to Brazil (Case No. 385).

2. In accordance with the procedure laid down in paragraph 12 of its 29th Report, as amended by paragraph 5 of its 43rd Report, the Committee recommends the Governing Body to examine the present report at its 164th Session.[2]

3. The Committee considered—*(a)* 46 cases in which the complaints had been communicated to the governments concerned for their observations, namely the cases relating to Sudan (Case No. 191), Singapore (Case No. 194), Thailand (Case No. 202), United Kingdom (Southern Rhodesia) (Cases Nos. 251 and 414), Portugal (Case No. 266), Libya (Case No. 274), Belgium (Case No. 281), Cuba (Cases Nos. 283, 329 and 425), United Kingdom (Aden) (Case No. 291), United Kingdom (Case No. 292), Spain (Cases Nos. 294, 383, 397 and 400), Ghana (Case No. 303), Greece (Case No. 309), Peru (Case No. 335), Panama (Case No. 349), Dominican Republic (Case No. 350), Greece (Case No. 353), Mexico (Case No. 358), Dominican Republic (Case No. 360), Colombia (Case No. 363), Congo (Leopoldville) (Case No. 365), Federal Republic of Germany (Case No. 371), Haiti (Case No. 373), Honduras (Case No. 381), Brazil (Case No. 385), Guatemala (Case No. 396), Argentina (Case No. 399), Upper Volta (Case No. 403), Honduras (Case No. 408), Cameroon (Case No. 418), Congo (Brazzaville) (Case No. 419), United Kingdom (Aden) (Case No. 421), Ecuador (Case No. 422), Honduras (Case No. 423), Congo (Leopoldville) (Case No. 427), Portugal (Case No. 432), Ecuador (Case No. 433), Guatemala (Case No. 442), Greece (Case No. 453) and Bolivia (Case No. 456); and *(b)* three complaints relating to Burundi (Case No. 401), one complaint relating to Cuba (Case No. 458) and 28 complaints relating to Venezuela (Case No. 462), which were submitted to the Committee for opinion prior to being communicated to the governments concerned.

Cases the Examination of Which the Committee Has Adjourned

(a) *Case Which the Committee Considers to Be Urgent.*

4. The Committee adjourned until its next session its examination of the case relating to the Congo (Brazzaville) (Case No. 419), in which it is still awaiting further information previously requested from the government concerned. The Committee requests the government concerned to furnish the information in question as a matter of urgency.

(b) *Other Cases.*

5. The Committee adjourned until its next session the cases relating to Portugal (Case No. 266), Libya (Case No. 274), Greece (Case No. 309), Panama (Case No. 349), Dominican Republic (Case No. 350), Greece (Case No. 353), Mexico (Case No. 358), Argentina (Case No. 399), Upper Volta (Case No. 403), Ecuador (Cases Nos. 422 and 433) and Guatemala (Case No. 442), in which it is still awaiting further information previously requested from the governments concerned, the case relating to the United Kingdom (Aden) (Case No. 291), in which further information previously requested from the government concerned was

[1] See above, footnote 1, p. 1.

[2] See above, footnote 1, p. 2.

received too late to permit of its being examined at the present session, and the cases relating to Spain (Cases Nos. 294, 383, 397 and 400), in which part of the further information previously requested from the government concerned has been received. With regard to the case relating to Greece (Case No. 353) the Committee took note of a communication from the government concerned stating that the information in question was not yet available; with regard to the case relating to Argentina (Case No. 399) the Committee took note of a communication from the government concerned stating that the information in question could not be furnished by the date requested; with regard to the case relating to Guatemala (Case No. 442) the Committee took note of a communication from the government concerned stating that the request for further information had been referred to the competent authorities.

6. The Committee adjourned until its next session the case relating to Bolivia (Case No. 456), in which it has not yet received the observations of the government concerned.

7. The Committee also adjourned until its next session the cases relating to Singapore (Case No. 194), Belgium (Case No. 281), Peru (Case No. 335), Honduras (Cases Nos. 381 and 423) and Portugal (Case No. 432).

Cases in Which the Committee Submits Its Conclusions to the Governing Body

8. In the present report the Committee submits for the approval of the Governing Body the conclusions which it has now reached concerning the remaining cases before it, namely the cases relating to Sudan (Case No. 191), Thailand (Case No. 202), United Kingdom (Southern Rhodesia) (Cases Nos. 251 and 414), Cuba (Cases Nos. 283, 329 and 425), United Kingdom (Case No. 292), Ghana (Case No. 303), Dominican Republic (Case No. 360), Colombia (Case No. 363), Congo (Leopoldville) (Case No. 365), Federal Republic of Germany (Case No. 371), Haiti (Case No. 373), Brazil (Case No. 385), Guatemala (Case No. 396), Honduras (Case No. 408), Cameroon (Case No. 418), United Kingdom (Aden) (Case No. 421), Congo (Leopoldville) (Case No. 427) and Greece (Case No. 453), and the complaints relating to Burundi (Case No. 401), Cuba (Case No. 458) and Venezuela (Case No. 462), which were submitted to the Committee for opinion. These conclusions may be briefly summarised as follows:

(a) the Committee recommends that the complaints relating to Burundi (Case No. 401) and Venezuela (Case No. 462), which were submitted to it for opinion, should, for the reasons indicated in paragraphs 9 to 13 of this report, be dismissed as irreceivable under the procedure in force, without being communicated to the governments concerned;

(b) the Committee recommends that the complaint relating to Cuba (Case No. 458), which was submitted to it for opinion, should, for the reasons indicated in paragraphs 14 to 17 of this report, be dismissed without being communicated to the government concerned;

(c) the Committee recommends that, for the reasons indicated in paragraphs 18 to 34 of this report, the cases relating to the Federal Republic of Germany (Case No. 371) and Congo (Leopoldville) (Case No. 427) should be dismissed as not calling for further examination;

(d) with regard to the cases relating to Sudan (Case No. 191), United Kingdom (Southern Rhodesia) (Cases Nos. 251 and 414) and Colombia (Case No. 363), the Committee, for the reasons indicated in paragraphs 35 to 91 of this report, has reached certain conclusions to which it wishes to draw the attention of the Governing Body;

(e) with regard to the cases relating to Thailand (Case No. 202), Cuba (Cases Nos. 283, 329 and 425), United Kingdom (Case No. 292), Ghana (Case No. 303), Dominican Republic (Case No. 360), Congo (Leopoldville) (Case No. 365), Haiti (Case No. 373), Brazil (Case No. 385), Guatemala (Case No. 396), Honduras (Case No. 408), Cameroon (Case No. 418), United Kingdom (Aden) (Case No. 421) and Greece (Case No. 453), the Committee, for the reasons indicated in paragraphs 92 to 293 of this report, has presented an interim report stating certain conclusions to which it wishes to draw the attention of the Governing Body.

COMPLAINTS WHICH THE COMMITTEE RECOMMENDS SHOULD BE DISMISSED AS IRRECEIVABLE UNDER THE PROCEDURE IN FORCE

9. The Director-General has received, either directly or through the United Nations, a number of complaints which are not receivable under the provisions of the existing procedure.

10. The complaints in question are irreceivable for one or other of two reasons: *(a)* one because it emanates from an international organisation of workers not having consultative status with the I.L.O. and not having affiliates in the country concerned [1]; *(b)* 30 because they emanate from national organisations of workers other than those to which the complaints relate, having no direct interest in the matters raised in the allegations.[2]

11. So far as the first category is concerned, the Director-General has received through the United Nations a communication dated 18 November 1965, emanating from the International Federation of Christian Agricultural Workers' Unions and containing allegations of infringements of trade union rights in Burundi (Case No. 401).

12. With regard to complaints falling within the second category the Director-General has received—

(a) two communications containing allegations of infringements of trade union rights in Burundi (Case No. 401) forwarded by the French Democratic Confederation of Labour on 8 November 1965, and by the Dominica Technical, Clerical and Commercial Workers' Union on 12 November 1965;

(b) 28 communications containing allegations of infringements of trade union rights in Venezuela (Case No. 462) forwarded during November 1965 and January 1966 by various locals or branches of the Workers' Centre of Revolutionary Cuba.

13. The Committee recommends the Governing Body to decide that, for the reasons indicated in paragraph 10 above, the complaints referred to in paragraphs 11 and 12 above are not receivable under the procedure in force.

COMPLAINT WHICH THE COMMITTEE RECOMMENDS SHOULD BE DISMISSED WITHOUT BEING COMMUNICATED TO THE GOVERNMENT CONCERNED

Case No. 458:

Complaint Presented by the Industrial Chemistry Federation of Cuba (in Exile) against the Government of Cuba

14. In a communication sent from Miami (United States) on 13 October 1965, the Industrial Chemistry Federation of Cuba (in exile) declares that the workers José Luis Prado and Luis Sánchez Fernández are serving long sentences in the Isla de Pinos prison, and that their state of health is seriously undermined because they are compelled to perform forced labour and lack medical care. The complainants ask the I.L.O. to intercede with the Cuban Government to end the forced labour of the persons concerned.

15. Before transmitting the complaint to the Cuban Government the Director-General wrote to the complaining organisation, on 25 October 1965, informing it that any further information it might wish to submit in substantiation of its complaint should be forwarded to him within one month. No communication containing additional information has so far been received from the Industrial Chemistry Federation of Cuba (in exile).

[1] See 29th Report, para. 9.

[2] Ibid.

16. In accordance with the procedure in force [1], the Director-General decided to submit the complaint to the Committee for its opinion as to whether it was sufficiently substantiated to justify him in communicating it to the government concerned.

17. As the complainants have not availed themselves of the opportunity offered to them to furnish further information in substantiation of their complaint, from the text of which it is not possible to deduce the reasons for which the persons named were sentenced and, in consequence, the relation—if any—between the sentences and trade union activities, so that it is impossible to judge the case on its merits, the Committee recommends the Governing Body to decide that the complaint should be dismissed without being communicated to the government concerned.

Cases Which the Committee Considers Do Not Call for Further Examination

Case No. 371:

Complaint Presented by the World Federation of Trade Unions against the Government of the Federal Republic of Germany

18. The Committee has already submitted interim reports on this case to the Governing Body in paragraphs 242 to 252 of its 74th Report, paragraphs 197 to 203 of its 78th Report and paragraphs 254 to 261 of its 83rd Report.

19. It was alleged in this case that Messrs. Franz Moritz and Horst Benz, delegates from the Sixth Congress of the Confederation of Free German Trade Unions (F.D.G.B.), held in East Berlin, had wished to transmit a fraternal message to the Extraordinary Congress of the Confederation of Trade Unions of the Federal Republic of Germany (D.G.B.) held in Düsseldorf in 1963, but were arrested and subsequently sentenced for breach of the legislation which prohibits the Communist Party in the Federal Republic of Germany and for introducing and attempting to distribute documents endangering the security of the State. Both the persons in question had been released after serving part of their sentences.

20. At its meeting in May 1965 the Committee, recalling previous requests which had already been made to the Government in this connection, recommended the Governing Body, in paragraph 261 of its 83rd Report, once again to request the Government to furnish the text of the document which gave rise to the penal proceedings, together with the judgments and the grounds adduced therein (that is to say, the judgment of the court which imposed the sentences and the judgment of the Federal Court rejecting an appeal lodged by Mr. Moritz).

21. The 83rd Report of the Committee was approved by the Governing Body at its 162nd Session (May-June 1965) and the above request for information was brought to the notice of the Government by a letter dated 3 June 1965. On 10 January 1966 the Government forwarded the texts of the judgment given by the Düsseldorf Provincial Court on 17 December 1963—in which is incorporated the text of the document which gave rise to the proceedings—and of the judgment given by the Federal Court on 15 April 1964 dismissing the appeal of Mr. Franz Moritz.

22. The document in question is a kind of manifesto containing statements of the aims of the trade union movements in the Federal Republic of Germany and Eastern Germany and criticisms of Western political and military policy. Part of the document extols the merits of the socialist state and the usefulness of the work of the trade unions in such a society; it then proceeds to more purely political issues. It refers to " militarists, Fascists and anti-Semites who used to serve Hitler and now have influential posts in the administration and economy of the Federal Republic ", counsels the West German trade unions to " rely on the strength which is offered to you by the existence of the German Democratic Republic and the whole socialist camp " and expresses regret that they " are not in power, as we are in the

[1] See Ninth Report, para. 23 *(d)*.

German Democratic Republic ". The document then denounces the alleged desire of the Federal Republic for atomic armament and continues: " In the long run . . . there will be no more capitalism, no more class war, no more working class in West Germany . . . the lesson taught by Karl Marx is still valid for West German trade unions today: the unions, as a rallying point for resistance against capitalist violence, must not only fight the practical effects of the capitalist system but must also use their organised strength as a lever for the final liberation of the working class." The document expresses the ideas of the East German trade unions for bringing about German national unity under the leadership of the working class, but criticises the leaders of D.G.B. for being anti-communist, and calls upon those unions " to tolerate no longer the abuse of West German trade unions in the interests of anti-communist bosses and militarists ". It concludes with the expression of a desire to see a strengthening of relations between the two trade union movements in Germany.

23. The Düsseldorf Provincial Court sentenced the accused for offences against the German Penal Code and the Federal Constitutional Court Act. It found that Mr. Benz sought through his activity to set up a communist dictatorship in the Federal Republic and knew that this could be done only by setting aside the principles of the Constitution regarding democratic elections and legislative processes set forth in section 88 of the Penal Code, and that he carried the document with him to promote that purpose. Both Mr. Benz and Mr. Moritz, said the court, knew that the Communist Party and any furtherance of its activity were prohibited by law and that to serve the objects of F.D.G.B. by handing over its message was to serve the Communist Party. On the basis of the evidence given by the accused, the court found that, while believing in their cause, they realised that the purpose of their journey was to seek to further the establishment of a communist political and social order in the Federal Republic, which in itself was a criminal offence, as they knew, although they believed that what they did was not wrong. The court found both the accused guilty of offences under sections 42 and 47 of the Federal Constitutional Court Act, which provide that any person who acts deliberately in a manner contrary to the decision of that court to dissolve the Communist Party shall be punished. In the view of the court the document carried by the accused openly agitated in favour of the establishment of an undemocratic system setting aside the constitutional provisions set out in section 88 of the Penal Code and so rendered them guilty of promoting anti-constitutional activities in the sense of section 93 of the Penal Code. Certain other charges were found not proven.

24. The judgment of the Federal Court adds no further elements of assistance to the Committee in formulating its conclusions.

25. The Committee is not called upon to express any view on the political implications of the views expressed by the accused and in the document they carried or on the legislative provisions which outlaw the Communist Party in the Federal Republic and create a number of offences in respect of attempting to further its aims. It would appear, however, from the document carried by the accused and from the grounds adduced in the judgment of the Düsseldorf Provincial Court, that the visit of Messrs. Benz and Moritz to the Federal Republic had political purposes falling outside the scope of normal trade union activities.

26. In these circumstances the Committee recommends the Governing Body to decide that the case is so purely political in character that it is inappropriate to pursue the matter further.

Case No. 427:

Complaint Presented by the Union of Congolese Workers against the Government of the Congo (Leopoldville)

27. The complaint of the Union of Congolese Workers is contained in a telegram dated 12 January 1965 addressed directly to the I.L.O. The complainants were informed of their right to present additional information in support of their allegations, but they did not do so. The complaint was forwarded to the Government for its observations and the latter replied by two communications dated 27 January and 7 August 1965.

28. The Congo (Leopoldville) has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

29. The complainants allege that two trade unionists, Mr. Atumenga and Mr. Mukuakani, belonging respectively to the Union of Congolese Workers (U.T.C.) and the General Labour Federation of the Congo were arbitrarily arrested at Kikwit.

30. In a telegram dated 27 January 1965 the Government stated that it had urgently requested information on this case from the authorities in Kwilu Province and had taken steps to have the men released.

31. In a later communication dated 7 August 1965 the Government stated that the two men, who had been arrested by the local authorities at Kikwit, had been released immediately after their trial. The Government pointed out that they had been charged by the Special General Commissioner for the Province of Kwilu with making gratuitous accusations against established authority. Fifteen days after their arrest they were tried at Kikwit by a court which condemned them to pay a 1,000-franc fine for slander. The Government added that the accused had paid the fine and, regarding the matter as closed, had no intention of appealing.

32. The Committee notes in the first place that U.T.C. confines itself in its complaint to reporting the arrest of Mr. Atumenga and Mr. Mukuakani, without claiming that it was connected with their trade union activities or membership. It also notes that the complaining organisation, when given the opportunity of providing additional information in support of its allegations, did not take advantage of it.

33. The Committee also notes that, according to the Government, the causes of the proceedings against the two men seem to be unrelated to their trade union activities or membership, and they themselves, by deciding not to appeal, appear to regard the matter as closed.

34. In these circumstances, and having regard also to the fact that the persons concerned have been released, the Committee recommends the Governing Body to decide that the case does not call for further examination.

Definitive Conclusions in the Cases relating to Sudan (Case No. 191), United Kingdom (Southern Rhodesia) (Cases Nos. 251 and 414) and Colombia (Case No. 363)

Case No. 191:

Complaints Presented by the Confederation of Arab Trade Unions, the World Federation of Trade Unions and the Sudan Railway Workers' Union against the Government of the Sudan

35. The Committee has already examined this case at its meetings in May 1960 [1], February 1961 [2], February 1962 [3], February 1964 [4] and November 1965.[5]

36. Sudan has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), but has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

[1] See 48th Report, paras. 56-90.
[2] See 52nd Report, paras. 79-122.
[3] See 60th Report, paras. 110-162.
[4] See 74th Report, paras. 149-156.
[5] See 85th Report, paras. 247-265.

37. Paragraph 265 of the 85th Report of the Committee, which contains the recommendations made by the Committee at its meeting in November 1965 as approved by the Governing Body at its 163rd Session (November 1965), reads as follows:

In these circumstances the Committee recommends the Governing Body—

(a) to note with satisfaction that the Trade Unions (Amendment) Ordinance, 1960, which has been the subject of various allegations, was repealed on 7 April 1965;

(b) to note the Government's statements, in its communication dated 24 June 1965, that the right of organisation is now governed, as before the events of 1958 which gave rise to the complaints, by the Trade Unions Ordinance, 1948, that trade unions are now being formed and operating in freedom and that the freedom of the trade union press has been restored;

(c) to request the Government, having regard to its statement that all trade unionists now have complete freedom of movement, to confirm that all the trade unionists sentenced to imprisonment by courts martial under the military régime, including in particular those indicated in paragraph 264 above, are now at liberty.

38. In a communication dated 9 December 1965 the Government of the Sudan confirmed that all the trade unionists named in paragraph 264 of the Committee's 85th Report, who had been sentenced to imprisonment under the previous régime, have been set free and are resuming their former activities in freedom, and that, since the end of that régime in October 1964, representatives of the Trade Union Federation and other democratic organisations have participated in the government of the country, particularly in the Constituent Assembly elected in October 1965. Since the restoration of the transitional Constitution, with its guarantees of freedom of association, expression and movement, following the revolution of October 1964, the Government states, trade unions have enjoyed complete freedom to send representatives to attend international conferences and to affiliate with international federations and confederations.

39. In these circumstances the Committee recommends the Governing Body—

(a) to note with satisfaction the Government's confirmation that all the trade unionists imprisoned under the previous régime have been set free and are resuming their former activities in freedom;

(b) to note further the Government's statement that, following the restoration of the constitutional guarantee of freedom of association in the Sudan, trade unions have enjoyed complete freedom to send representatives to attend international conferences and to affiliate with international federations and confederations;

(c) to suggest to the Government that it may now care to consider the possibility of taking the necessary measures with a view to ratifying the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Cases Nos. 251 and 414:

Complaints Presented by the International Confederation of Free Trade Unions, the International Federation of Free Teachers' Unions, the Postal, Telegraph and Telephone International, the International Federation of Industrial Organisations and General Workers' Unions and the World Federation of Trade Unions against the Government of the United Kingdom in respect of Southern Rhodesia

40. These cases comprise two series of allegations, one relating to the detention of trade unionists and the other to the provisions of the Industrial Conciliation Act, 1959. Since the last session of the Committee, on 8 and 9 November 1965, the situation has been affected by the unilateral declaration of independence by the authorities in Southern Rhodesia on 11 November 1965. In the light of the factual situation existing at the present time, the Government of the United Kingdom, referring itself more especially to the allegations relating to the detention of trade unionists, addressed a communication to the Director-General on 7 February 1966, in which, after explaining the attitude it had adopted with

regard to this case, vis-à-vis the authorities in Southern Rhodesia, prior to 11 November 1965, the Government indicates that it will again take up the matter with the competent authorities when full constitutional authority has been restored in Southern Rhodesia. This communication is more fully analysed in paragraphs 64 and 65 below.

41. The Government of the United Kingdom has ratified the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), and has undertaken, with the agreement of the Government of Southern Rhodesia, to apply its provisions without modification to Southern Rhodesia. The Government of the United Kingdom, which has also ratified the Right of Association (Agriculture) Convention, 1921 (No. 11), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), has reserved its decision regarding the application of the provisions of these Conventions to Southern Rhodesia.

Allegations relating to Detentions of Trade Unionists

42. Allegations relating to detentions of trade unionists were raised in the complaint by the International Confederation of Free Trade Unions, submitted to the I.L.O. in a letter dated 4 September 1964. Additional information was supplied in letters dated 20 October and 4 November 1964. The International Federation of Industrial Organisations and General Workers' Unions lodged a complaint in a letter dated 29 September 1964, making the same allegations as I.C.F.T.U. All these communications were forwarded to the Government for its observations as they were received, and the Government replied by three letters dated 6 and 9 November 1964 and 15 February 1965.

43. The above communications were before the Committee at its meeting in February 1965, when the Committee, as indicated below, decided to request the Government to furnish fuller information. Since that time further documents of complaint from the World Federation of Trade Unions, dated 27 February 1965, and from I.C.F.T.U., dated 27 April 1965, have been received and transmitted to the Government, which replied by a communication dated 2 September 1965.

44. In its communication dated 4 September 1964 I.C.F.T.U. alleged that eight trade unionists had been detained, without trial, at the Wha Wha Prison, while another, Mr. Josias Maluleke, had been restricted to the Gonakudzingwa Restriction Centre. The eight detainees were named as follows : Mr. E. G. Watunga, General Secretary, Commercial Workers' Union; Mr. I. Chigwendere, Acting General Secretary, African Trades Union Congress (A.T.U.C.); Mr. S. Mteyaunga, General Treasurer, A.T.U.C.; Mr. I. Nyarota, President, Paint Manufacturing Workers' Union; Mr. P. Veremu, General Secretary, Paint Manufacturing Workers' Union; Mr. M. Nzirimasanga, Financial Secretary, Zimbabwe African Congress of Unions (Z.A.C.U.); Mr. C. Kanda, Organising Secretary, Cold Storage Workers' Union; Mr. N. Mumba, Organising Secretary, Z.A.C.U. The case of Mr. Veremu was raised in its communication dated 29 September 1964 by the International Federation of Industrial Organisations and General Workers' Unions, to which his union is affiliated. In its communication dated 20 October 1964 I.C.F.T.U. stated that, in addition, Mr. D. Mudzi, Clerk, A.T.U.C., had been detained at the Wha Wha Prison, and four more trade unionists detained at Gonakudzingwa: Messrs. M. Mpofu, Branch Chairman, African Railway Workers' Union; Mr. V. Moyo, Shop Steward, Municipal Workers' Union; Mr. S. Ndlovu, Committee Member, Municipal Workers' Union; Mr. J. Chatagwe, Branch Organiser, Commercial Workers' Union. The names of three further alleged detainees at the Marandellas Camp were given by I.C.F.T.U. in its communication dated 4 November 1964 as Mr. E. B. Dengwani, Administrative Secretary, Catering and Hotel Workers' Union; Mr. T. T. Japa, Branch Chairman, Municipal Workers' Union; Mr. A. Ndlovu, General Secretary, Z.A.C.U.

45. In a communication dated 6 November 1964 the Government of the United Kingdom forwarded the following observations prepared by the Government of Southern

Rhodesia. It was stated that the allegations were groundless, that there were no restrictions on freedom of association for trade union purposes and that no repressive measures had been taken against trade unions. There were 59 registered and eight unregistered trade unions, with a total of over 400 officials, none of whom, said the Government of Southern Rhodesia, were prevented from carrying out their normal trade union activities and functions. The nine persons mentioned in the complaint of I.C.F.T.U. dated 4 September 1964, it was stated, were not restricted or detained because of their trade union activities but for subversive activities in no way connected with trade unionism. The Government of Southern Rhodesia considered that the Committee should " invite the complaining organisation to withdraw its misplaced assertion ".

46. In a further communication from the Government of the United Kingdom dated 9 November 1964 it was confirmed that Mr. Veremu was detained in the same circumstances.

47. In a communication dated 15 February 1965 from the Government it was stated that, according to the Government of Southern Rhodesia, the three persons mentioned in the complaint of I.C.F.T.U. dated 4 November 1964 had been detained for subversive activities not in any way connected with trade unionism and that, of the other 14 persons named in the earlier complaints, only six were trade unionists or officials, namely Messrs. Watunga, Chigwendere, Mteyaunga, Nyarota, Veremu and Nzirimasanga. The Government of Southern Rhodesia repeated in substance its earlier remarks concerning the exercise of freedom of association in Southern Rhodesia.

48. When the Committee considered the case at its meeting in February 1965, it pointed out that in the past [1], where allegations that trade union leaders or workers have been arrested or detained on account of trade union activities have been met by governments with statements that the arrests or detentions were made for subversive activities for reasons of internal security or for common law crimes, the Committee has always followed the rule that the governments concerned should be requested to submit further information as precise as possible concerning the arrests or detentions and the exact reasons therefor. If in certain cases the Committee had concluded that allegations relating to the arrest or detention of active trade unionists do not call for further examination, this had been after it had received information from the governments showing in a sufficiently clear and detailed way that the arrests or detentions were in no way occasioned by trade union activities but solely by activities outside the trade union sphere which were either prejudicial to public order or of a political nature.[2]

49. The Committee observed that the Government had given no detailed reasons for the detentions and compulsory residence orders which it admitted to have been issued in the case of the individuals mentioned by the complainants.

50. In accordance with the practice referred to in paragraph 48 above the Committee therefore decided to request the Government to be good enough to inform it of the exact reasons for the arrest or banishment of the individuals in question.

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[1] See Sixth Report, Case No. 18 (Greece), paras. 323-326, Case No. 44 (Colombia), paras. 593-595, and Case No. 49 (Pakistan), paras. 807-811; 11th Report, Case No. 72 (Venezuela), para. 6 *(c)*; 12th Report, Case No. 65 (Cuba), paras. 102-105, Case No. 66 (Greece), paras. 140-146, and Case No. 68 (Colombia), paras. 167-169; 15th Report, Case No. 110 (Pakistan), para. 241; 22nd Report, Case No. 58 (Poland), para. 106 *(d)*; 25th Report, Case No. 136 (United Kingdom-Cyprus), paras. 93-178, and Case No. 158 (Hungary), para. 332; 27th Report, Case No. 156 (France-Algeria), para. 273, and Case No. 159 (Cuba), para. 370; 52nd Report, Case No. 143 (Spain), para. 48; 62nd Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 152; 74th Report, Case No. 294 (Spain), para. 191; 76th Report, Case No. 364 (Ecuador), para. 342; 78th Report, Case No. 383 (Spain), para. 253.

[2] See Second Report, Case No. 31 (United Kingdom-Nigeria), para. 79; Third Report, Case No. 6 (Iran), para. 36; Sixth Report, Case No. 22 (Philippines), paras. 337-383; 12th Report, Case No. 16 (France-Morocco), paras. 386-398; 17th Report, Case No. 104 (Iran), para. 219; 19th Report, Case No. 110 (Pakistan), paras. 74-77; 24th Report, Case No. 142 (Honduras), paras. 130-134; 25th Report, Case No. 140 (Argentina), para. 263; 52nd Report, Case No. 143 (Spain), para. 48; 62nd Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 152; 74th Report, Case No. 294 (Spain), para. 191; 76th Report, Case No. 364 (Ecuador), para. 342; 78th Report, Case No. 383 (Spain), para. 253.

51. Noting, moreover, that the complainants alleged that the persons mentioned were arrested without being tried, the Committee, in view of the importance it has always attached to the right of all detained persons to receive a fair trial at the earliest possible moment [1], decided to request the Government to be good enough to inform it whether legal proceedings had been instituted against the persons concerned and, if so, to furnish copies of the judgments given and of the reasons adduced therein.

52. These requests for further information were transmitted to the Government by a letter dated 9 March 1965.

53. In a communication dated 27 February 1965 W.F.T.U. alleged that various trade union leaders had been placed in detention without trial. Several of the persons referred to were persons already cited by I.C.F.T.U. In addition the following eight further persons were alleged to have been detained: Mr. L. Nkala, Deputy Secretary, Bulawayo Region, Z.A.C.U.; Mr. J. Maika, President, Textile Workers' Union; Mr. E. Mpofu, Organising Secretary, Municipal Workers' Union; Mr. A. Mkwanazi, Branch Committee Member, Municipal Workers' Union; Mr. B. Mguni, Secretary, National Union of Building Workers; Mr. L. Sihwa, President, Artisan Workers' Union; Mr. X. Lubimbi, President, Bakery and Confectionery Workers' Union; Mr. L. Masahwi, General Secretary, Dairy Workers' Union.

54. W.F.T.U. alleged also that on 27 January 1965 the Government of Southern Rhodesia had declared Z.A.C.U. to be an unlawful organisation, as being " dangerous or prejudicial to peace, good order, or constitutional government ".

55. On 27 April 1965 I.C.F.T.U. submitted a revised list of 28 trade unionists alleged to be under detention or restriction at Wha Wha, Marandellas or Gonakudzingwa. I.C.F.T.U. said that four of the trade unionists referred to in paragraph 44 above had been released —Messrs. E. G. Watunga, S. Ndlovu, E. B. Dengwani and T. T. Japa—together with a Mr. O. Chikowero, not previously mentioned. The 28 persons still said to be detained included the remaining 13 of the 17 named in paragraph 44 above and three of the persons named by W.F.T.U. (see paragraph 53)—Messrs. B. Mguni, E. Mpofu and L. Nakala. I.C.F.T.U. did not mention the other five named by W.F.T.U. The 12 new names in the I.C.F.T.U. list were Messrs. M. Dengazi, Southern Rhodesia Tobacco Workers' Union; P. C. Bvunzawabaya, Organising Secretary, Motor Trade Workers' Union; C. Mudakureba, Commercial and Allied Workers' Union; C. Muza, Regional Organiser, Z.A.C.U.; A. Dunjana, Branch Chairman, Tailor and Garment Workers' Union; A. Masawi, Regional Organiser, Z.A.C.U.; J. M. Matshazi, Railway African Workers' Union; P. J. Mpofu, General Secretary, Agricultural and Plantation Workers' Union; J. R. Mzimela, Commercial and Allied Workers' Union; I. Nkomo, Municipal Workers' Union; Z. Phiri, African Railway Workers' Union; and J. B. Shura, Regional Secretary, Z.A.C.U.

56. The complaint of W.F.T.U. dated 27 February 1965 was transmitted to the Government on 15 March 1965; that of I.C.F.T.U. dated 27 April 1965 was sent to the Government on 6 May 1965.

57. At its meeting in May 1965 the Committee adjourned its examination of the case as it had not received either the Government's observations on the two last-mentioned complaints or the further information requested by the Committee at its preceding session.

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[1] See Fourth Report, Case No. 5 (India), paras. 18-51; Case No. 10 (Chile), paras. 52-88, and Case No. 30 (United Kingdom-Malaya), paras. 140-161; Sixth Report, Case No. 47 (India), paras. 704-736, and Case No. 49 (Pakistan), paras. 770-813; 12th Report, Case No. 87 (India), paras. 233-240, and Case No. 63 (Union of South Africa), paras. 257-276; 13th Report, Case No. 62 (Netherlands), paras. 18-89; 16th Report, Case No. 112 (Greece), paras. 57-86; 17th Report, Case No. 104 (Iran), paras. 157-221; 24th Report, Case No. 142 (Honduras), paras. 97-148; 25th Report, Case No. 136 (United Kingdom-Cyprus), para. 154; 27th Report, Case No. 143 (Spain), para. 186, and Case No. 152 (United Kingdom-Northern Rhodesia), para. 410; 62nd Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 152; 67th Report, Case No. 303 (Ghana), para. 318.

58. In a communication dated 2 September 1965 the Government of the United Kingdom stated that the Government of Southern Rhodesia had requested that the following reply be forwarded:

The Government notes that despite the several observations already made and considered by the Committee on 18 February 1965 the Committee was unable to invite the complaining organisations to withdraw their misplaced assertions and that the Committee now calls for further detailed information on certain points of the complaint made by the International Confederation of Free Trade Unions and the International Federation of Industrial Organisations and General Workers' Unions of alleged infringements of trade union rights. The observations already furnished were made to assist the Committee in their assessment of the merits of the complaints and were not intended as evidence in rebuttal of the allegations. The observations were unambiguous. The persons concerned were not detained or subjected to compulsory residence orders for any trade union association or trade union activities, but for subversion.

It is the view of Government that as the Committee, despite the assurance given, wish to examine the complaints in greater detail, they should call upon the complaining organisations to submit the factual evidence, if any, on which they made their complaint, that the persons concerned were detained or made subject to compulsory residence orders because of their trade union associations or trade union activities.

The allegations by the World Federation of Trade Unions are substantially the same as those by the International Confederation of Free Trade Unions and the International Federation of Industrial Organisations and General Workers' Unions and our observations on those complaints apply equally to those now made by the World Federation of Trade Unions.

59. At its meeting in November 1965 the Committee adjourned its examination of the case until its present session.

60. On 2 December 1965 I.C.F.T.U. submitted to the I.L.O. further allegations relating to the detention of trade unionists. In addition to the persons named in its complaint dated 27 April 1965, declared I.C.F.T.U., the following trade unionists had been restricted at the Gonakudzingwa camp, without trial, some of them for over one year: Messrs. Z. Sigola, F. Chimbganda, J. Kabiya, J. S. Moyo, M. Togwe, J. Mzaca and J. M. Goromonzi, all belonging to the Rhodesia African Teachers' Association; Mr. L. Zaranyika, Chairman of the Mangwende East Branch of the Rhodesia African Teachers' Association; Mr. G. Mudavanhu, (Southern) Rhodesia Petrol and Oil Storage Distributive Workers' Union.

61. I.C.F.T.U. referred also to the case of Mr. Edward Chifamba, General Secretary of the (Southern) Rhodesia Post and Telecommunications Workers' Association. The complainant alleged that he was arrested on 17 November 1965 in Salisbury, immediately after a meeting of his union convened in post office premises with the express permission of the Postmaster-General, that is to say, while he was performing his normal trade union functions. It was stated that Mr. Chifamba had been suspended from his post office employment and was being held under the emergency legislation providing for the holding of any person for up to 30 days and that there was an imminent danger of his being subject to restricted residence thereafter.

62. Support for this complaint was expressed in communications addressed to the I.L.O., on 7 December 1965 and 4 January 1966, by the International Federation of Free Teachers' Unions and the Postal, Telegraph and Telephone International respectively.

63. A copy of the complaint of I.C.F.T.U. dated 2 December 1965 was transmitted to the Government of the United Kingdom on 22 December 1965 for any comments that the Government might wish to make thereon.

64. In a communication dated 7 February 1966 the Government of the United Kingdom, referring especially to the complaint of I.C.F.T.U. dated 2 December 1965 (see paragraph 60 above), declares that it deplores all infringements of trade union rights. It goes on to point out that the allegations relating to detentions of trade unionists raised in this case were the subject of considerable correspondence and discussions prior to 11 November 1965 with the then Southern Rhodesian authorities, in the course of which the Government of the United Kingdom urged those authorities to co-operate to the fullest possible extent with

the Committee in its examination of the case and, in particular, to provide the information requested by the Committee. It urged the same authorities to consider most carefully the various allegations which had been made, and if in any particular case it appeared that an individual had been arrested or detained in such circumstances as to constitute an infringement of trade union rights to take appropriate steps to remedy the situation urgently.

65. However, states the Government of the United Kingdom, " the former Government of Southern Rhodesia illegally purported to declare independence on 11 November 1965, on which date Mr. Smith and his Ministers were dismissed from office ". The Government concludes by saying that " when fully constitutional authority has been restored in Rhodesia the complaints communicated by the I.C.F.T.U. and other bodies, together with the observations already made by the Committee . . . will be brought in due course to the attention of the competent authorities ".

66. In view of the serious political developments in Southern Rhodesia to which the Government of the United Kingdom refers in its communication dated 7 February 1966, no useful purpose would be served by further consideration of the observations prepared by the Government of Southern Rhodesia which were forwarded by the Government of the United Kingdom on 2 September 1965.

67. In these circumstances the Committee recommends the Governing Body—

(a) to take note of the communication dated 7 February 1966 from the Government of the United Kingdom and, in particular—

(i) to take note with satisfaction of the Government's assurance that it deplores all infringements of trade union rights and of the representations it made to the authorities in Southern Rhodesia, prior to the unilateral declaration of independence by the authorities in Southern Rhodesia on 11 November 1965, urging those authorities to co-operate with the Committee and furnish information requested by it and to take urgent steps to remedy any infringement of trade union rights that might be found to have occurred;

(ii) to take note of the Government's further assurance that, when fully constitutional authority has been restored in Southern Rhodesia, the complaints presented in this case and the observations already made by the Committee will be brought in due course to the attention of the competent authorities;

(b) to request the Government of the United Kingdom to be good enough to keep the Governing Body informed of further developments in the matter.

Allegations relating to the Provisions of the Industrial Conciliation Act, 1959

68. The Committee, having already considered these allegations at its meetings in November 1961 [1], May 1962 [2], October 1962 [3], May 1963 [4], February 1964 [5], November 1964 [6] and February 1965 [7], examined them further at its meeting in May 1965, when it submitted to the Governing Body the conclusions and recommendations contained in paragraphs 90 to 111 of its 83rd Report, which was approved by the Governing Body at its 162nd Session (May-June 1965).

69. At its meeting in May 1965 the Committee had before it the text of the Industrial Conciliation Amendment Act, 1964, which the Government had furnished, when it resumed

[1] See 58th Report, paras. 590-621.
[2] See 62nd Report, paras. 144-177.
[3] See 66th Report, paras. 400-446.
[4] See 70th Report, paras. 43-54.
[5] See 74th Report, paras. 157-162.
[6] See 78th Report, paras. 111-116.
[7] See 81st Report, paras. 67-70.

its examination of the allegations still outstanding—those relating to the registration of trade unions under the Industrial Conciliation Act, 1959, and those relating to the organising rights of agricultural workers and domestic servants.

70. So far as the registration issue was concerned, the Committee observed that, while the new Act had made provision for the right of appeal to the Industrial Court in all cases where the registration or proposed changes in the existing registration of a trade union or employers' organisation were refused by the Industrial Registrar, section 37 (1) *(b)* and *(c)* of the 1959 Act setting forth the conditions concerning which the Registrar must be satisfied before registering a trade union or employers' organisation had not been amended. The Committee therefore pointed out once again, in paragraph 98 of its 83rd Report, that the question as to whether the particular requirements laid down are fulfilled is one upon which the Registrar has to form his own judgment, and again drew attention to the fact that the I.L.O. Committee of Experts on the Application of Conventions and Recommendations had observed that, in such cases, " the existence of a procedure of appeal to the courts does not appear to be a sufficient guarantee; in effect this does not alter the nature of the powers conferred on the authorities responsible for effecting registration, and the judges hearing such an appeal ... would only be able to ensure that the legislation had been correctly applied ".[1] In this connection, the Committee concluded, the amending Act appeared in no way to alter the degree of judgment entrusted to the Registrar.

71. With regard to the situation of agricultural workers and domestic servants the Committee recalled in paragraph 103 of its 83rd Report that in 1961 the I.L.O. Committee of Experts, in an observation [2], had regretted to note that the Industrial Conciliation Act, 1959, by virtue of section 4 (2) *(a)* thereof, did not apply to " persons in respect of their employment in farming operations (including forestry) or any domestic persons in private households " and had stated that it would be glad if the Government would indicate the measures which it was proposed to take to guarantee the right of these workers " to associate for all lawful purposes ", as required by the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), which applies to all employed persons. The Committee recalled also that, during the 45th (1961) Session of the International Labour Conference, a representative of the Government of Southern Rhodesia intervening on the request of the representative of the Government of the United Kingdom had stated before the Conference Committee on the Application of Conventions and Recommendations that the question of including agricultural workers and domestic servants within the Industrial Conciliation Act would be further considered in the light of the Committee of Experts' observations.[3]

72. The Committee observed further, in paragraph 109 of its 83rd Report, that the I.L.O. Committee of Experts, in March 1965, had noted with regret that, although the Act had been the subject of extensive amendments, no measures had been taken to extend its scope to persons engaged in farming operations or to domestic servants, and that the Government merely proposed to study this question. The Committee of Experts had stated that it trusted that measures would be taken without further delay to extend the Act to the abovementioned categories of workers and thus bring the territory's legislation into conformity with the said Convention No. 84, which guarantees the right " to associate for all lawful purposes " to all employed persons.[4]

73. Accordingly, the Committee submitted the following recommendations to the Governing Body in paragraph 111 of its 83rd Report:

[1] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 43rd Session, Geneva, 1959 (Geneva, I.L.O., 1959), pp. 107-108.

[2] Ibid., 45th Session, Geneva, 1961 (Geneva, I.L.O., 1961), p. 122.

[3] See *Record of Proceedings*, International Labour Conference, 45th Session, Geneva, 1961 (Geneva, I.L.O., 1962), Appendix VI, p. 765.

[4] See *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part IV), International Labour Conference, 49th Session, Geneva, 1965 (Geneva, I.L.O., 1965), p. 146.

With regard to the case as a whole the Committee recommends the Governing Body—

(a) to decide with regard to the allegations relating to the registration of trade unions under the Industrial Conciliation Act, 1959—

(i) to take note with satisfaction of the fact that the Industrial Conciliation Amendment Act, 1964, now provides for the right of appeal to the Industrial Court in all cases where the registration or proposed changes in the existing registration of a trade union or employers' organisation are refused by the Industrial Registrar;

(ii) to draw the attention of the Government once again, having regard to the observations of the I.L.O. Committee of Experts on the Application of Conventions and Recommendations referred to in paragraph 98 above, to the desirability of defining clearly in the legislation the precise conditions which trade unions must fulfil in order to be entitled to registration and of prescribing specific statutory criteria for the purpose of deciding whether such conditions are fulfilled or not;

(iii) to suggest to the Government that consideration be given to further amending the Industrial Conciliation Act, 1959, so as to give full effect to the principle set forth in the preceding clause, and to request the Government to be good enough to keep the Governing Body informed of any further developments in this connection;

(b) to decide with regard to the allegations relating to the organising rights of agricultural workers and domestic servants—

(i) to draw the attention of the Government once again to the fact that, in undertaking to apply the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), without modification to Southern Rhodesia, it has assumed the obligation under Article 2 of that Convention to guarantee the right of all employed persons " to associate for all lawful purposes ";

(ii) to request the Government again—having regard to the observations made in 1961 and 1965 by the I.L.O. Committee of Experts on the Application of Conventions and Recommendations, as indicated in paragraphs 103 and 109 above, and to the statement of a Government representative to the Conference Committee on the Application of Conventions and Recommendations in 1961 that the question of the inclusion of agricultural workers and domestic servants within the Industrial Conciliation Act, 1959, would be further considered in the light of the observation of the Committee of Experts—to indicate what measures it is proposed to take to give full effect to Article 2 of the said Convention in respect to these categories of workers.

74. These conclusions, having been approved as cited above by the Governing Body at its 162nd Session (May-June 1965), were communicated to the Government of the United Kingdom by a letter dated 2 June 1965.

75. In a letter dated 13 August 1965 the Government of the United Kingdom stated that the Government of Southern Rhodesia had requested it to inform the Committee that the time was not considered opportune for amending the Industrial Conciliation Act as suggested by the Governing Body, that agricultural workers and domestic servants were not denied the right " to associate for all lawful purposes " and that at this stage the protection of the Act was considered unnecessary.

76. The Committee regrets to observe that, having regard to the statement of the representative of the Government of Southern Rhodesia, on the invitation of the representative of the Government of the United Kingdom, to the Conference Committee on the Application of Conventions and Recommendations in 1961, which is referred to in paragraph 71 above, the Government of Southern Rhodesia should have requested the Government of the United Kingdom in August 1965 to convey this intimation to the Committee. However, in view of the political events which have since taken place in Southern Rhodesia, and having regard to the contents of the communication dated 7 February 1966 from the Government of the United Kingdom, the Committee, while reaffirming the considerations set forth in paragraph 111 of its 83rd Report cited in paragraph 73 above, does not consider that any useful purpose would be served by pursuing this aspect of the matter further at the present stage. It nevertheless recommends the Governing Body to request the Government of the United Kingdom to be good enough to keep the Governing Body informed of further developments in the matter.

* * *

77. In all the circumstances the Committee recommends the Governing Body—

(1) with regard to the allegations relating to detentions of trade unionists—

(a) to take note of the communication dated 7 February 1966 from the Government of the United Kingdom and, in particular—

(i) to take note with satisfaction of the Government's assurance that it deplores all infringements of trade union rights and of the representations it made to the authorities in Southern Rhodesia, prior to the unilateral declaration of independence by the authorities in Southern Rhodesia on 11 November 1965, urging those authorities to co-operate with the Committee and furnish information requested by it and to take urgent steps to remedy any infringement of trade union rights that might be found to have occurred;

(ii) to take note of the Government's further assurance that, when fully constitutional authority has been restored in Southern Rhodesia, the complaints presented in this case and the observations already made by the Committee will be brought in due course to the attention of the competent authorities;

(b) to request the Government of the United Kingdom to be good enough to keep the Governing Body informed of further developments in the matter;

(2) to request the Government of the United Kingdom, with regard to the allegations relating to the provisions of the Industrial Conciliation Act, 1959, to be good enough to inform the Governing Body of any further developments.

Case No. 363:

Complaint Presented by the World Federation of Trade Unions against the Government of Colombia

78. The Committee has already examined this case at its 36th Session in February 1964. On that occasion the Committee presented to the Governing Body an interim report containing its final conclusions on the majority of the allegations relating to the case, recommending it at the same time to request the Government to supply additional information on other allegations. These conclusions and recommendations, which are contained in paragraphs 201 to 241 of the 74th Report of the Committee, were adopted by the Governing Body at its 159th Session (Geneva, June-July 1964).

79. The following paragraphs deal only with the allegations which remained in abeyance and which refer to violations of trade union rights committed when a demonstration by strikers at Puerto Boyacá was broken up, one worker being killed and others injured.

80. Colombia has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

81. In its complaint dated 11 October 1963 the World Federation of Trade Unions maintained that on 24 August of that year a meeting of strikers at Puerto Boyacá was attacked by forces of repression, one worker being killed and others wounded. In its reply the Government stated that the meeting had taken place in spite of the prohibition on the holding of public demonstrations, that the demonstrators had attacked the forces of law and order and that with a view to ascertaining responsibility an inquiry had been opened under a criminal investigating magistrate and the Military Judge Advocate's Office.

82. Examining the case at its February 1964 session the Committee observed that in similar cases in which it had been alleged that people had been killed when the police opened fire on strikers the Committee had pointed out that, in cases in which the dispersal of public assemblies, etc., by the police on grounds of public order or similar grounds had involved loss of life, it attached special importance to the circumstances being fully investigated by an immediate and independent special inquiry and to the regular legal procedure being followed to determine the justification and responsibility for the action taken by the police. The

Committee noted that in the present case the Government had denied that the forces of law and order were responsible for the alleged occurrence. In view of the fact that the Government had stated that the necessary judicial inquiries had been started, the Committee recommended the Governing Body to ask the Government to be good enough to inform it of the result of these inquiries.[1]

83. At its sessions in November 1964 and February, May and November 1965 the Committee postponed examination of the case as it was awaiting the information requested from the Government.

84. By a communication dated 11 January 1966 the Government furnished the text of the verdict at the hearing of second instance delivered by the Military High Court on 28 September 1965 in the case opened in order to investigate the occurrence and determine responsibilities.

85. In the part relating to the grounds of the Military High Court's verdict it is stated that the investigation of the facts was originally entrusted to a municipal police inspector of Puerto Boyacá but was taken over " successively " by a criminal examining magistrate and two military penal examining magistrates.

86. The text of the document sent by the Government gives a summary of the conclusions of the inquiry and extracts from the statements of many people who were present at or took part in the incident. In brief, the facts as they emerge from these conclusions originated in a strike declared by the workers of the Texas Company. The activities of the strikers had given rise to fears of breaches of the peace, to avoid which the Military Governor of Puerto Boyacá issued Decree No. 044 of 20 August 1963, which ruled that as from that date and until further notice permission to organise demonstrations of any nature whatsoever within the town limits was entirely suspended. Notwithstanding the prohibition, on 24 August a meeting, organised by Mr. Ítalo Daza, a member of the Chamber of Representatives, was held in the main square of the town. On being informed of this occurrence, the Governor sought the collaboration and help of the military patrols which had been detached to deal with disturbances or difficult situations. When an army captain personally requested Mr. Daza to stop the speech which he had begun, the latter replied that nobody was going to get him down from where he was. The participants in the demonstration protested and one of them, Mr. Adonái Ávila, went so far as to seize and strike the captain. In view of the threatening attitude of the demonstrators another officer and a patrol, under the command of a lance-corporal, intervened, the officer overpowering and arresting Mr. Ávila and the patrol attempting to disperse the demonstrators. At this point, it was alleged, the officers left, taking Mr. Ávila with them, and were stoned by the demonstrators as they went. Mr. Ávila himself confirmed in his statements that the vehicle in which he was taken away was hit by objects which he could not identify. According to the statements of several of its members, the patrol attempted to disperse the demonstrators, first by verbal orders, then with their rifle butts, and then by throwing tear-gas grenades, which were tossed back by the demonstrators before exploding. Then a number of shots, apparently 17, were fired by the patrol. According to the members of the patrol, these shots were fired in the air with the object of intimidating the demonstrators. The evidence showed that Mr. Martiniano Romero was killed, Mr. Siervo Galeano wounded and Mr. Carlos Trejos suffered contusions.

87. On the basis of the investigation, the Military High Court concluded, among other points, that the patrol had acted in accordance with its instructions and the orders governing the conduct of troops sent to maintain public order, in first giving verbal warnings, then using their rifle butts, then throwing tear-gas grenades and finally shooting. With regard to the rifle shots, the Court deduced that they were not fired directly at the demonstrators, because in that case the victims would have been much more numerous and that " owing to circumstances which it is impossible to ascertain, one or two of the shots fired might have been

[1] See 74th Report, paras. 211 and 241 *(g)*.

deflected " as a result of the pressure and contact which the demonstrators were exerting on the members of the patrol. The Court concluded that the soldiers had legitimately made use of their firearms and that their action was justified, and it confirmed the judgment of non-suit, though it applied this to the preliminary proceedings as a ruling on their probatory value and not as a verdict on the members of the patrol, as these had not been indicted in the proceedings.

88. The Committee notes that the inquiry, which was first entrusted to the ordinary police and judicial authorities, was concluded by the military penal authorities, through hearings of first and second instance.

89. The Committee has always applied the principle that allegations relating to the exercise of the right to strike are within its competence, in so far but only in so far as they affect the exercise of trade union rights[1], and on many occasions[2] has recommended the Governing Body to affirm that the right to strike of workers and workers' organisations constitutes an essential means of promoting and defending their occupational interests. The Committee, however, has rejected allegations relating to strikes by reason of their non-occupational character[3], or where they have been designed to coerce a government with respect to a political matter[4], or have been directed against the government's policy and not " in furtherance of a trade dispute ".[5] On the other hand, in many cases laid before it[6], the Committee has emphasised that freedom of meeting is an essential element in trade union rights. In Case No. 62 (Netherlands)[7], however, the Committee affirmed that, although the right of holding trade union meetings is a basic requisite of the free exercise of trade union rights, the organisations concerned must observe the general provisions relating to public meetings, which are applicable to all.

90. The Committee notes the Government's statement that, in the present case, the prohibition on demonstrations constituted a local measure based on grounds of public order and did not relate only to the meeting of members of the trade union which was on strike, and that the meeting to which the complaint relates was not held on trade union premises but in a public square, in spite of that prohibition. Further, it appears to have been called by a Member of Parliament, whose connection with the trade union is not explained.

91. In these circumstances, with regard to the allegations the examination of which had remained in abeyance in this case, the Committee recommends the Governing Body—

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[1] See 28th Report, Case No. 143 (Spain), para. 109, Cases Nos. 141, 153, and 154 (Chile), para. 202, and Case No. 169 (Turkey), para. 297; 47th Report, Case No. 143 (Spain), para. 66; 66th Report, Case No. 298 (United Kingdom-Southern Rhodesia), para. 542.

[2] See Second Report, Case No. 28 (United Kingdom-Jamaica), paras. 65-70, and Case No. 32 (United Kingdom-Uganda), paras. 87-92; Fourth Report, Case No. 5 (India), paras. 18-51; Sixth Report, Case No. 47 (India), paras. 723-726, and Case No. 50 (Turkey), paras. 862-865; 12th Report, Case No. 60 (Japan), paras. 10-83; 25th Report, Case No. 152 (United Kingdom-Northern Rhodesia), paras. 179-248; 26th Report, Case No. 136 (United Kingdom-Cyprus), paras. 112-145; 28th Report, Cases Nos. 141, 153 and 154 (Chile), para. 202; 30th Report, Case No. 177 (Honduras), para. 76, Case No. 181 (Ecuador), para. 94, Case No. 143 (Spain), para. 130, and Case No. 172 (Argentina), para. 178; 36th Report, Case No. 178 (United Kingdom-Aden), para. 56; 47th Report, Case No. 143 (Spain), para. 66; 49th Report, Case No. 229 (Union of South Africa), para. 92, and Case No. 192 (Argentina), para. 168; 66th Report, Case No. 298 (United Kingdom-Southern Rhodesia), para. 542.

[3] See Sixth Report, Case No. 40 (France-Tunisia), para. 541; 49th Report, Case No. 229 (Union of South Africa), para. 92; 66th Report, Case No. 298 (United Kingdom-Southern Rhodesia), para. 542.

[4] See Second Report, Case No. 25 (United Kingdom-Gold Coast), para. 57; 66th Report, Case No. 298 (United Kingdom-Southern Rhodesia), para. 542.

[5] See 36th Report, Case No. 178 (United Kingdom-Aden), para. 56; 49th Report, Case No. 192 (Argentina), para. 168; 66th Report, Case No. 298 (United Kingdom-Southern Rhodesia), para. 542.

[6] See First Report, Case No. 8 (Israel), paras. 63-69; Second Report, Case No. 21 (New Zealand), paras. 11-31, and Case No. 28 (United Kingdom-Jamaica), paras. 65-70; Sixth Report, Case No. 40 (France-Tunisia), paras. 384-564; Seventh Report, Case No. 56 (Uruguay), paras. 32-70; 12th Report, Case No. 16 (France-Morocco), paras. 292-428, and Case No. 61 (France-Tunisia), paras. 447-492; 17th Report, Case No. 104 (Iran), paras. 157-221; 19th Report, Case No. 100 (Pakistan), paras. 50-90, and Case No. 133 (Netherlands-Netherlands Antilles), paras. 108-134; 24th Report, Case No. 121 (Greece), paras. 41-79; 25th Report, Case No. 136 (United Kingdom-Cyprus), paras. 165-167.

[7] See 13th Report, paras. 18-89.

(a) to take note that, in regard to the incidents during which a worker was killed, another was wounded and a third suffered contusions, these happened on the occasion of a public meeting held in connection with a strike and that an inquiry into the incidents mentioned has been carried out by the military penal authorities;

(b) to draw the Government's attention to the importance which it has always attached, in circumstances similar to those of the present case, to a full investigation of the facts through an immediate and independent inquiry, and to the regular legal procedure being followed.

Interim Conclusions in the Cases relating to Thailand (Case No. 202), Cuba (Cases Nos. 283, 329 and 425), United Kingdom (Case No. 292), Ghana (Case No. 303), Dominican Republic (Case No. 360), Congo (Leopoldville) (Case No. 365), Haiti (Case No. 373), Brazil (Case No. 385), Guatemala (Case No. 396), Honduras (Case No. 408), Cameroon (Case No. 418), United Kingdom (Aden) (Case No. 421) and Greece (Case No. 453)

Case No. 202:

Complaint Presented by the International Confederation of Free Trade Unions against the Government of Thailand

92. This case, already considered by the Committee at its 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 33rd and 34th Sessions (February 1960[1], May 1960[2], November 1960[3], February 1961[4], May 1961[5], November 1961[6], February 1962[7], May 1962[8], February 1963[9], and May 1963[10]), was further examined by the Committee at its 40th Session (May 1965), when it submitted a further interim report in paragraphs 74 to 89 of its 83rd Report, which was approved by the Governing Body at its 162nd Session (May-June 1965).

93. Paragraph 89 of the Committee's 83rd Report contains the recommendations of the Committee, as adopted by the Governing Body, and reads as follows:

In all the circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government once again, as it has done on a number of previous occasions, to the fact that the situation of the workers of Thailand, who since the dissolution of all the trade unions in Thailand in October 1958 have been unable to form and join trade union organisations for the protection of their interests, is contrary to generally recognised principles relating to freedom of association;

(b) to express its disappointment that, after stating on 26 April 1961 that a new Labour Act had been finalised and would be submitted to the Legislative Assembly as soon as possible, the Government now states, almost four years later, that a law on trade unions will not be considered until after the promulgation of a new Constitution;

(c) to urge the Government in the meantime to take steps to enable the workers to form trade unions to protect their interests and to request the Government to inform the Governing Body of the measures taken or intended to be taken in this connection;

(d) to request the Government to be good enough to furnish a text of the Announcement of the Ministry of the Interior on the protection of workers and to inform it as to the provisions of the Labour Protection Bill which it states is intended to amend the said announcement;

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[1] See 44th Report, paras. 126-144.
[2] See 47th Report, paras. 124-131.
[3] See 49th Report, paras. 190-196.
[4] See 52nd Report, paras. 156-162.
[5] See 56th Report, paras. 135-140.
[6] See 58th Report, paras. 475-481.
[7] See 60th Report, paras. 183-189.
[8] See 62nd Report, paras. 120-125.
[9] See 68th Report, paras. 81-93.
[10] See 70th Report, paras. 125-133.

(e) to request the Government to state whether the Governing Body is correct in assuming that all the persons named in paragraphs 83 and 85 above are now at liberty;

(f) to reaffirm yet again the importance which the Governing Body has always attached to the principle of prompt and fair trial by an independent and impartial judiciary in all cases, including cases in which trade unionists are charged with political or criminal offences which the Government considers have no relation to their trade union functions; and to draw the attention of the Government to its view that the continued detention of Mr. Sang Phathanothai and the other persons named in paragraph 87 above, against whom, after a long period of previous detention, court proceedings began on 5 October 1962 and are still pending, is incompatible with the said principle;

(g) to request the Government to be good enough to inform the Governing Body, as a matter of urgency, as to when it is anticipated that the pending proceedings against the persons in question will be concluded, and to furnish a copy of the judgment and of the reasons adduced therein.

94. The above requests to furnish further information were brought to the notice of the Government by a letter dated 2 June 1965. Further information was furnished by the Government by a communication dated 18 November 1965.

95. With regard to the question of taking steps to enable the workers to form trade unions to protect their interests, which the Governing Body urged the Government to do when it approved paragraph 89 *(c)* of the Committee's 83rd Report cited above, the Government states that the problems concerning the formation of trade unions have been continually studied and that a Bill on the settlement of labour disputes has been submitted to the legislative organisation and is expected to become law within a year.

96. With regard to the matters referred to in paragraph 89 *(d)* of the Committee's 83rd Report, the Government, while forwarding the texts of the announcements on the protection of workers issued by the Ministry of the Interior, states that the Labour Protection Bill is still in process of being drafted.

97. The first of the announcements referred to by the Government, issued on 31 October 1958, lists a number of diseases considered to be incidental to the nature or conditions of employment or arising from employment. The second and third, issued on 20 December 1958, and amended in certain respects on 23 March 1964, relate to rules and methods of payment and the amount of compensation and to working hours, holidays of employees, conditions of woman and child labour, payment of wages and welfare services. The fourth, issued on 5 January 1959, specifies the work considered to be detrimental to the health of employees and the work considered to be light work. The fifth, dated 23 March 1964, lays down rules regarding the weekly holiday.

98. In paragraph 89 *(e)* of its 83rd Report the Committee recommended the Governing Body to request the Government to confirm that the trade unionists referred to in paragraphs 83 and 85 of that report were now at liberty.

99. In its communication dated 18 November 1965 the Government states that these persons have enjoyed their full freedom since the dates on which they were released.

100. The Government states that the court has acquitted Mr. Sang Phathanothai, former President and later General Secretary of the Thai National Trades Union Congress, and that the order for his release was effected on 9 September 1965.

101. Finally, the Government states that the court proceedings (which began on 5 October 1962) are still pending in the cases of the seven other persons named in paragraph 87 of the Committee's 83rd Report: Mr. Prasert Khamplumchitr, Mr. Thongbai Thongpound, Mr. Vichitr Mahasin, Mr. Chamnong Harith, Mr. Prakob Tolaklam, Mr. Yunfa Sae Lau and Mr. Karuna Kuslasai.

102. In all the circumstances the Committee recommends the Governing Body—

(a) to take note of the texts of announcements issued by the Minister of the Interior but, while appreciating that these announcements constitute a body of protective labour

legislation, to draw the attention of the Government once again to the fact that the situation of the workers in Thailand, who since the dissolution of all the trade unions in Thailand in October 1958 have been unable to form and join trade unions for the protection of their interests, is contrary to generally recognised principles relating to freedom of association;

(b) to request the Government to be good enough to keep the Governing Body informed as to further developments with regard to the proposed Labour Protection Bill and to furnish the text thereof when it has been finalised;

(c) to note the Government's statement that the problems concerning the formation of trade unions have been continually studied, to express the hope that legislative action on this matter will be taken at the earliest possible moment, and to urge the Government once again to take steps in the meantime to enable the workers to form trade unions to protect their interests and to request the Government to be good enough to inform the Governing Body of the measures taken or intended to be taken in this connection;

(d) to note the Government's statement that the persons referred to in paragraphs 83 and 85 of the Committee's 83rd Report have enjoyed their full freedom since the dates on which they were released;

(e) to note the Government's statement that Mr. Sang Phathanothai, former President and later General Secretary of the Thai National Trades Union Congress, has been acquitted by the court and that the order for his release was effected on 9 September 1965;

(f) to reaffirm yet again the importance which the Governing Body has always attached to the principle of prompt and fair trial by an independent and impartial judiciary in all cases, including cases in which trade unionists are charged with political or criminal offences which the Government considers have no relation to their trade union functions;

(g) to draw the attention of the Government once again to its view that the continued detention of the persons named in paragraph 101 above, against whom, after a long period of previous detention, court proceedings began on 5 October 1962 and are still pending, is incompatible with the principle enunciated in the preceding subparagraph;

(h) to request the Government to be good enough to inform the Governing Body, as a matter of urgency, as to when it is anticipated that the pending proceedings against the persons in question will be concluded, and to furnish a copy of the judgments and of the reasons adduced therein.

Cases Nos. 283, 329 and 425:

Complaints Presented by the International Federation of Christian Trade Unions, the Economic Corporation of Cuba (in Exile) and the International Confederation of Free Trade Unions against the Government of Cuba

103. The Committee considered these three cases together at its meeting held in May 1965, when it submitted the interim conclusions contained in paragraphs 125 to 170 of its 83rd Report, which was approved by the Governing Body at its 162nd Session (May-June 1965). In that report the Committee submitted its definitive conclusions and recommendations concerning two series of allegations: *(a)* those relating to the imprisonment of the trade union leader Reinaldo González and *(b)* those relating to the dissolution of employers' organisations. Thus the only allegations consideration of which has remained in suspense are those put forward by I.C.F.T.U. concerning the detention of trade union officials; in this connection the Government was asked to supply detailed information (see paragraph 170 of the aforesaid report).

104. In a communication dated 5 November 1965, transmitted by the Permanent Delegation of Cuba in Geneva on 13 December 1965, the Government answered that request for information.

105. Cuba has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Allegations concerning Which the Committee Has Already Submitted Its Definitive Conclusions to the Governing Body

106. In the same communication dated 5 November 1965 the Government made certain observations on the two aspects of the case concerning which the Committee had already submitted its definitive conclusions and recommendations. In the case of Mr. Reinaldo González the Government emphasised in general terms the guarantees afforded by judicial procedures in Cuba. These observations have no particular reference to the case in point and do not affect the conclusions previously reached by the Committee. With regard to the allegations concerning the dissolution of employers' organisations the Government puts forward further arguments concerning the irreceivability of the complaint and the substances of the allegations made by the Economic Corporation of Cuba (in exile).

107. In so far as the question of receivability of the complaint of the Economic Corporation of Cuba (in exile) is concerned, the Government refers to the enactments by which this organisation and some of its constituent members were dissolved and argues that, by their nature, they were not organisations in the sense of the I.L.O. Constitution or of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

108. The Committee has already stated in paragraph 148 of its 83rd Report the grounds on which it concluded that the complaint was receivable and does not consider that the latest communication from the Government contains any new information of such a nature as to cause it to modify that conclusion.

109. With regard to the substance of the complaint the Government states that it disagrees with the findings contained in paragraph 170 of the Committee's 83rd Report. It presents arguments based on Act No. 647 of 24 November 1959 and Act No. 907 of 1960, the provisions of which were considered by the Committee in paragraphs 151 to 154 of its 83rd Report, and arguments based on the factual situation of the organisations concerned, which add nothing new to the observations analysed in paragraph 150 of that report.

110. For these reasons the Committee does not consider that, in the light of the reply now received from the Government, it is called upon to modify the recommendations made in paragraph 170 (2) of its 83rd Report.

Allegations relating to the Detention of Trade Union Officials

111. The complaint is contained in a communication from I.C.F.T.U. dated 17 December 1964. The complainant stated that a number of trade union officials had been imprisoned for alleged " counter-revolutionary activities " and requested the Governing Body to set up a fact-finding commission with a view to ascertaining the equity of the judicial procedure applied to the officials in question and the way they were treated in prison.[1] The Government furnished its observations on 6 April 1965.

112. When examining the case at its meeting held in May 1965, the Committee, following its invariable practice in such cases, before expressing a view on the complainants' request for a fact-finding commission, recommended the Governing Body to ask the Government to furnish as soon as possible detailed information on the acts for which the persons mentioned in the complaint were convicted and the texts of the judgments handed down in each case, with their grounds.

113. In its communication dated 5 November 1965 the Government supplied the information requested with regard to 12 of the 24 persons whose names and activities were listed in the complaint, with the texts of the judgments given against them in public hearings by various Councils of War (revolutionary courts).

[1] See 83rd Report, paras. 160-162.

114. According to this information, Francisco Javier González Fernández was sentenced to one year's imprisonment for the offence of embezzling public funds; Francisco Aguirre Vidaurreta to nine years' deprivation of freedom for an offence against the unity and stability of the nation; José Lauro Blanco Muñiz to 20 years' rigorous imprisonment for offences against the State; Gabriel Hernández Custodio, Julio Padrón Rodriguez, Ramón del Bosque Chacón and Ángel Hernández Pérez to 12 years' deprivation of freedom for participation in a counter-revolutionary organisation styled " Movement of 30 November " and for offences against the unity and stability of the nation; Basilio Medina Luna to ten years' rigorous imprisonment for the offence of acts against public safety; Henry Martínez López to 20 years' rigorous imprisonment for offences against the unity and stability of the nation, attempted homicide, arson and destruction of property; Diego Herrera Rubio to nine years' imprisonment for offences against the unity and stability of the nation; Carlos Rubiera Feito to 20 years' rigorous imprisonment for the same offence; José Ulises Díaz González to 12 years' rigorous imprisonment for an offence against the authority of the State. Additional penalties imposed on all of the persons tried were suspension of civil rights, subjection to supervision by the public authorities for a period equal to the main prison sentence and, by virtue of Act No. 664 of 1959, confiscation of all their property.

115. The Government states that the provisions regarding the jurisdiction and competence of the judicial institutions which acted in the said cases, the procedural provisions and safeguards and the penal provisions respecting the above-mentioned counter-revolutionary offences, are contained in the constitutional and legal texts communicated to the Committee in connection with the examination of Case No. 283 relating to Mr. Reinaldo González; that in all those cases it had been proved before the competent courts that the persons sentenced had committed the offences of which they were accused and which were punishable under legislation promulgated prior to the offence; and that, finally, the activities in question had nothing in common with genuine trade union activities.

116. When examining Case No. 283 in its 83rd Report, the Committee observed from the documents sent by the Government that Mr. González and other persons accused with him were tried by a revolutionary court under the extraordinary procedure laid down in the 1896 Act governing trials in the Republic of Cuba under arms, as a result of which the offences they had been accused of were regarded as " counter-revolutionary ".[1] The Committee recalled in this connection that in cases where it had established that an exceptional procedure is being followed it had always reasserted the importance it attached to the observance in such circumstances of all the guarantees afforded by due legal process.[2] The Committee observed, on the basis of the information supplied by the Government in the shape of documents relating to the trial and the fact that the accused were able to employ the services of a number of defence counsel during the trial, that the Government appeared to have provided certain safeguards for the defence, despite the exceptional character of the procedure.[3]

117. With regard to the 12 other trade union leaders mentioned in the complaint the Government stated that the data provided by the complainants were insufficient and that it required further information in order to identify the cases. In this connection the Committee observes that the complainants have not sent any additional information within the space of one month granted for that purpose. According to the text of the complaint, as it was communicated to the Government, the 12 trade unionists are Luis Miguel Linsuain, General Secretary of the Gastronomic Federation of Oriente Province, who was sentenced to seven years' imprisonment; Alberto García, General Secretary of the National Medical Federation, sentenced to 30 years' imprisonment; Antonio Dagas, Deputy General Secretary of the Cuban section of the Spanish trade union organisation National Confederation of

[1] See 83rd Report, para. 138.

[2] See Fourth Report, Case No. 5 (India), paras. 18-51, and Case No. 30 (United Kingdom-Malaya) paras. 140-161; Sixth Report, Case No. 47 (India), paras. 704-736; 12th Report, Case No. 87 (India), paras. 223-240, and Case No. 16 (France-Morocco), paras. 292-428; 16th Report, Case No. 112 (Greece), paras. 57-86; 24th Report, Case No. 142 (Honduras), paras. 97-148; 26th Report, Case No. 136 (United Kingdom-Cyprus), para. 138; 27th Report, Case No. 160 (Hungary), para. 486.

[3] See 83rd Report, para. 139.

Labour (C.N.T.), imprisoned in La Cubana fort; Leandro Barreras, member of the Executive Board of the National Federation of Sugar Workers; Norberto Abreu, Secretary of the Federation of Printing and Allied Trades, and Ángel Custodio, officer of the National Medical Federation, sentenced as counter-revolutionaries; Sara Carranza, employee at the headquarters of the Confederation of Cuban Workers (C.T.C.), sentenced to 30 years' imprisonment; Ada González Gallo, delegate of the Telephonists' Section of the Telephone Workers' Trade Union of Havana, and Carmen Méndez Linares, C.T.C. employee, sentenced to 20 years' imprisonment; Juan Manuel Reines, sentenced to ten years' imprisonment for being an officer of the trade union section of the clandestine movement; Arnoldo Muller Carbone, officer of a Havana trade union, and Jorge Blanco Ferrando, C.T.C. employee, sentenced to 20 years' imprisonment.

118. Lastly, with regard to the request made by the complainants to the Governing Body to set up a fact-finding commission, the Government states that it is a firm, invariable principle not to accept any form of intervention in its internal affairs, and not to accept investigations or inspections within the country regarding events and situations occurring there, only the national authorities and institutions being competent to examine such matters.

119. In this connection the Committee recalled that in its First Report [1] it expressed the hope that in future cases the preliminary observations of the governments would not anticipate any request for concurrence in the establishment of a fact-finding commission which the Governing Body might think it appropriate or inappropriate to make after it had had an opportunity of considering the facts of the case and expressing its views.

120. In the present case the Government of Cuba has supplied information as requested by the Governing Body, only with regard to the situation of 12 of the 24 trade unionists named in the complaint, stating that it would need more detailed information in order to identify the others. The Committee observes, however, that the complainants have, as indicated in paragraph 117 above, furnished the full names of these other 12 persons, given particulars as to the long prison sentences imposed on them (indicating in one case the place of detention), and indicated the trade union functions which they assumed. The Committee feels that, if further inquiries are made, it should be possible for the Government to identify these cases on the basis of the specific information already communicated to it.

121. In the circumstances the Committee recommends the Governing Body—

(a) with regard to the 12 trade union officials on whose situation the Government has supplied information, to emphasise to the Government, as it has already done previously, the importance which it attaches to the principle that accused trade unionists, like all other persons, should be entitled to the safeguards of normal judicial procedure;

(b) to invite the Government to co-operate by furnishing, as soon as possible, detailed information concerning the present situation of the trade union officials in question and of those referred to in paragraphs 117 and 120 above, as well as the texts of the judgments handed down in each instance and their grounds; and meanwhile to postpone consideration of the case;

(c) to take note of the present interim report of the Committee, it being understood that the Committee will report further to the Governing Body when the information referred to in subparagraph *(b)* above has been received.

Case No. 292:

Complaints Presented by the British Trades Union Congress and the National Union of Bank Employees against the Government of the United Kingdom

122. The Committee has already submitted interim reports on this case to the Governing Body in paragraphs 136 to 243 of its 67th Report and in paragraphs 222 to 271 of its 76th Report.

[1] See First Report, Case No. 2 (Venezuela), para. 142.

123. Paragraph 271 of the Committee's 76th Report, which was approved by the Governing Body at its 159th Session (June-July 1964), reads as follows:

In these circumstances, the Committee recommends the Governing Body—

(a) to take note that the inquiry arranged by the Government of the United Kingdom on the proposal of the Governing Body and entrusted to a Judge of the Court of Session (the Hon. Lord Cameron, D.S.C., Q.C.) has now been completed and that Lord Cameron's report on his inquiry has been presented to Parliament by the Minister of Labour, published and communicated to the International Labour Organisation;

(b) to note that the scope of the inquiry corresponds with that of the complaint which the Governing Body recommended the Government to submit to such an inquiry;

(c) to take note of Lord Cameron's rejection of the contention that Article 2 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), cannot be construed as applying to individual employers who are not members of employers' organisations;

(d) to note that, in accordance with the hope expressed by the Committee in paragraphs 241 and 242 of its 67th Report, the report of Lord Cameron contains a number of suggestions for both immediate and subsequent action which might lead to a permanent improvement of industrial relations in the banking industry, and to note further the Government's statement that officers of the Ministry of Labour are getting in touch with the organisations concerned to offer their help in following up those suggestions;

(e) to invite the Government to consider possible means of encouraging appropriate arrangements for determining the representative character of workers' organisations where necessary;

(f) to request the Government to inform the Governing Body as to further developments when the circumstances so allow.

124. The conclusions cited above were brought to the notice of the Government of the United Kingdom by a letter dated 18 June 1964.

125. In a letter dated 4 January 1966 the Government states that a working party comprising representatives of the majority of the London clearing banks, the Central Council of Bank Staff Associations and the National Union of Bank Employees was set up in July 1965 to consider the practicability of setting up national negotiating machinery for bank employees. The Government declares that the working party has made progress in its discussions, that the Ministry of Labour is keeping in touch with developments and that further information will be furnished as soon as it becomes available.

126. In these circumstances the Committee recommends the Governing Body—

(a) to take note of the Government's statement that a joint working party has been established for the purpose of considering the practicability of setting up national negotiating machinery for bank employees and that it has made progress in its discussions;

(b) to thank the Government for this information and to request it to be good enough to continue to keep the Governing Body informed of further developments in the matter.

Case No. 303:

Complaint Presented by the International Confederation of Free Trade Unions against the Government of Ghana

127. This case was previously examined by the Committee at its meetings in October 1962[1], November 1963[2] and May 1965.[3] At its meeting in May 1965 the Committee, while submitting its definitive conclusions to the Governing Body on the remaining allegations, presented an interim report with regard to certain allegations relating to the legislation concerning trade unions and industrial relations in Ghana. The latter allegations, based on the provisions of the Industrial Relations Act, 1958, as amended in 1959 and 1960, are considered

[1] See 67th Report, paras. 244-323.

[2] See 72nd Report, paras. 139-144.

[3] See 83rd Report, paras. 171-236.

further in the present report. In this connection the Government has furnished the text of the Industrial Relations Act, 1965, which has repealed and replaced the enactments referred to above.

128. On 13 May 1957 the Government of Ghana, already a member of the United Nations, addressed to the Director-General of the International Labour Office a letter, signed by Mr. Kwame Nkrumah, the Prime Minister, in which Ghana formally accepted the obligations of the Constitution of the I.L.O. and thereby became a Member of the Organisation, by virtue of article 1, paragraph 3, of the Constitution, as from 20 May 1957, the date of receipt of the letter. In the same letter the Government of Ghana stated that it would continue to apply the provisions of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), pending formal ratification by Ghana of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).[1] Ghana has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), but has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Allegations relating to the Legislation concerning Trade Unions and Industrial Relations in Ghana

(a) *Allegations relating to the Monopoly of the Trades Union Congress of Ghana.*

129. These allegations and the Government's observations thereon were examined by the Committee in paragraphs 254 to 265 of its 67th Report and again in paragraphs 176 to 183 of its 83rd Report.

130. In short, they were based on section 3 (1) of the Industrial Relations Act, 1958, which provided that the Trades Union Congress " shall act as the representative of the trade union movement in Ghana ", section 4 (1), providing that the Congress should consist of members of the trade unions listed in the First Schedule to the Act, and section 4 (3), empowering the Minister to add to or delete from that list the name of any trade union.

131. Having considered these provisions at its meeting in October 1962, together with other provisions which required any other existing union either to dissolve or to amalgamate with one of the scheduled unions and prohibited the registration of any new union without the consent of the Minister, the Committee recommended the Governing Body, in paragraph 323 *(a)* of its 67th Report, to draw the attention of the Government to the importance which the Governing Body has always attached to the generally accepted principles that workers should have the right to establish organisations of their own choosing without previous authorisation and that workers' organisations should have the right freely to form federations and confederations. The Committee also recommended the Governing Body to express the view that the legal provisions referred to above were not compatible with the aforesaid principles.

132. At its meeting in May 1965 the Committee, in the light of further information furnished by the Government, recommended the Governing Body, in paragraphs 184 and 236 *(a)* (i) of its 83rd Report, to note that the Government was considering amending the provisions in question.

133. The Government has forwarded the text of the new Industrial Relations Act, assented to on 23 June 1965, which has repealed the Act of 1958, as previously amended.

134. Section 1 (3) of the new Act provides that the Trades Union Congress shall continue to act as the representative of the trade union movement in Ghana " unless and until otherwise decided by the trade unions or any appropriate organisation of workers ". According to section 1 (4) the unions in the subsisting schedule shall continue to be members of the

[1] See *Official Bulletin*, Vol. XL, 1957, No. 8, p. 373.

Congress " without prejudice to the withdrawal therefrom or addition thereto of any trade union upon the decision of such trade union ". According to section 1 (5), upon such withdrawal from or addition to the membership of the Congress, the Minister " shall " by legislative instrument amend the schedule accordingly. The new Act appears to contain no provision restricting the registration of new trade unions in accordance with the Trade Unions Ordinance, 1941, as amended.

135. In these circumstances the Committee recommends the Governing Body—

(a) to note that the Industrial Relations Act, 1958, as amended in 1959 and 1960, has been repealed and replaced by the Industrial Relations Act, 1965;

(b) to note that the new legislation appears to have removed the previous restrictions on the adhesion of trade unions to the Congress and the requirement of the consent of the Minister to the registration of new trade unions.

(b) *Allegations relating to Compulsory Union Membership.*

136. In paragraphs 185 to 194 of its 83rd Report the Committee considered the provisions of sections 16 and 31 (1) *(a)* of the 1958 Act, as amended. Section 16 provided that " No person who belongs to a class of employees specified in a certificate issued under the provisions of Part II of this Act but who is not a member of the trade union covered by the certificate shall be kept in any employment for a period exceeding one month." Section 31 (1) *(a)* provided that an employer who " continues to employ any person who is not a member of a trade union and belongs to a class of employees specified in a certificate under Part II of this Act and who would share in the benefit of a collective agreement in accordance with section 17 of this Act shall be guilty of an unfair labour practice ".

137. The Committee, having recalled in paragraphs 189 to 191 of its 83rd Report its own jurisprudence and the observations of the I.L.O. Committee of Experts on the Application of Conventions and Recommendations with respect to trade union monopolies imposed by legislation, in contrast to union security effected voluntarily by trade unions, recommended the Governing Body, in paragraphs 194 and 236 *(b)* of its 83rd Report, to draw the attention of the Government to its view that sections 16 and 31 (1) *(a)* of the 1958 Act, as amended, appeared to be incompatible with the generally accepted principle that workers should have the right to establish and join organisations of their own choosing and to express the hope that the Government, when making its proposed amendments to the legislation, would consider amending these provisions with a view to giving full effect to the said principle.

138. The Act of 1965 does not appear to contain any provision imposing the requirement of compulsory union membership.

139. In these circumstances the Committee recommends the Governing Body to note that the previously subsisting requirement of compulsory union membership in the case of persons belonging to a category of employees specified in a collective bargaining certificate appears to have been repealed by the new Act.

(c) *Allegations relating to Interference in the Internal Affairs of the Trades Union Congress.*

140. These allegations were examined by the Committee in paragraphs 270 to 285 of its 67th Report and again in paragraphs 195 to 199 of its 83rd Report.

141. The allegations were based on section 5 (1) of the 1958 Act, as amended, which made the power of the Congress to make its rules subject to approval by the Minister of Labour, section 5 (3), which reserved to the competent Minister certain powers in relation to expenditure by the Congress and the auditing of its funds, and section 8 (1), according to which, if it appeared to the Governor-General that the Congress had taken any action which was " not conducive to the public good ", he might by order direct that all the assets of the Congress should be transferred to and vested in a receiver appointed in the order and held by him.

142. At its meeting in May 1965 the Committee recommended the Governing Body, in paragraphs 199 and 236 *(c)* of its 83rd Report, to take note of a statement by the Government that it intended to repeal the provisions in question.

143. These provisions are no longer maintained in the Industrial Relations Act, 1965.

144. The Committee therefore recommends the Governing Body to note that sections 5 (1), 5 (3) and 8 (1) of the Industrial Relations Act, 1958, as amended, have been repealed.

(d) *Allegations relating to the Legal Recognition of Trade Unions.*

145. These allegations were examined by the Committee in paragraphs 286 to 299 of its 67th Report and again in paragraphs 200 to 216 of its 83rd Report.

146. The position may be briefly summarised as follows. Section 10 (1) of the 1958 Act, as amended, provided that the Minister might, on application made according to section 11, issue a certificate appointing a trade union registered under the Trade Unions Ordinance as the appropriate representative to conduct collective bargaining on behalf of a class of employees specified in the certificate, and, according to section 10 (4), such certificate took effect even though some of the employees of the class specified were not members of the union. Section 10 (6) did not permit a certificate to be issued as respects persons in the public service or in the service of a municipal council or a council under the Local Government Ordinance. Section 11 required the application to be made by the Trades Union Congress on behalf of the union concerned; if the Congress made no application within three months the union could apply directly to the Minister. Section 12 empowered the Minister to withdraw a certificate if he thought fit, after consultation with the union concerned and with the appropriate employers' organisation.

147. Paragraph 1 (2) of the Second Schedule to the Act provided that, if the Minister was satisfied that not less than 40 per cent. of the employees of the class described in the application were members of the union and that the class formed a suitable unit for collective bargaining, he might, if he thought fit, issue a certificate. If not so satisfied he could order a vote to be held, in the circumstances defined in paragraph 2 of the Schedule and with the consequences described in paragraph 203 of the Committee's 83rd Report.

148. When it examined these provisions at its meeting in October 1962 the Committee observed that, in a number of cases, it has emphasised the importance that it has always attached [1] to the fact that the right to bargain freely with employers with respect to conditions of work constitutes an essential element in freedom of association and to the principle [2] that trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those whom the trade unions represent, and that the public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. Any such interference, by the same token, said the Committee, would appear to infringe the generally accepted principle, embodied in Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), that workers' and employers' organisations should have the right, without such interference, to organise their activities and to formulate their programmes.

149. The Committee pointed out that, while there is not necessarily incompatibility with Article 3 of the Freedom of Association and Protection of the Right to Organise

[1] See Third Report, Case No. 1 (Peru), para. 20; Sixth Report, Case No. 12 (Argentina), paras. 237-240, and Case No. 55 (Greece), para. 293; 11th Report, Case No. 51 (Saar), para. 55; 13th Report, Case No. 62 (Cuba), para. 83; 27th Report, Case No. 143 (Spain), para. 169; 52nd Report, Case No. 202 (Thailand), para. 158; 65th Report, Case No. 266 (Portugal), para. 65.

[2] See 15th Report, Case No. 102 (Union of South Africa), para. 164; 25th Report, Case No. 151 (Dominican Republic), para. 312; 27th Report, Case No. 143 (Spain), para. 169; 52nd Report, Case No. 202 (Thailand), para. 158; 65th Report, Case No. 266 (Portugal), para. 65.

Convention, 1948 (No. 87), in a provision for the certification of the most representative union in a given unit as the exclusive bargaining agent for that unit, this is the case only if a number of safeguards are provided. In several countries in which the procedure for certifying unions as exclusive bargaining agents has been established, observed the Committee, it has been regarded as essential that such safeguards should include the following: *(a)* certification to be made by an independent body; *(b)* the representative organisation to be chosen by a majority vote of the employees in the unit concerned; *(c)* the right of an organisation other than the certificated organisation to demand a new election after a fixed period, often 12 months, has elapsed since the previous election.

150. The Committee took the view that the 1958 Act, as amended, did not provide such safeguards, certification being made by the competent Minister and not by an independent body, and the representative organisation not necessarily being chosen by a free vote of the employees in the unit concerned. The Committee referred especially to the discretion of judgment accorded to the Minister by sections 10 (1) and 12 (1) and the Second Schedule to the Act.

151. The Committee concluded therefore that the provisions referred to above did not appear to be compatible with the principle enunciated in Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Committee also referred to the fact, noted by the I.L.O. Committee of Experts on the Application of Conventions and Recommendations, that the legal provisions referred to above, bearing in mind that the Act did not lay down any objective criteria governing the issue or withdrawal of a certificate, hardly appeared to be of such a nature as to " encourage and promote the full development and utilisation of machinery for negotiation . . . of collective agreements ", as is provided in Article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Ghana.

152. Accordingly, in paragraph 323 *(b)* of its 67th Report, the Committee recommended the Governing Body to draw the attention of the Government to the principles enunciated in paragraph 148 above and to the incompatibilities referred to in paragraph 151 above and to suggest to the Government that it might care to consider the possibility of amending the legislation in the light of these considerations.

153. At its meeting in May 1965 the Committee had before it a communication from the Government dated 26 April 1965, in which the Government stated that section 10 (1) of the 1958 Act (see paragraph 146 above) would be replaced by the following text:

> Subject to the provisions of this Part of this Act, the Registrar of Trade Unions shall, on the application of the Trades Union Congress, register under the Trade Unions Ordinance and issue a certificate appointing a trade union as the appropriate representative to conduct, on behalf of a class of employees specified in the certificate, collective bargaining with their employers.

In the same letter the Government stated that it was intended also to repeal sections 10 (6), 11 (1) and (2), paragraphs 1 (2) and 2 of the Second Schedule (see paragraphs 146 and 147 above); paragraph 2 of the Schedule, which contained the complex voting rules prior to a certification, would be replaced by a short provision to the effect that " if there is more than one union in any organisation the Trades Union Congress shall decide which union shall represent the interests of the organisation ".

154. The Committee took note of these statements but observed in paragraph 215 of its 83rd Report that, nevertheless, it appeared that the registration of any new union and the issue of a bargaining certificate to any union at all would both be effected by the Registrar " on the application of the Trades Union Congress ", and that the proposed amending legislation did not appear to define the criteria according to which a union would be certificated as a representative bargaining agent. It seemed to the Committee, if it understood the position correctly, that no new union could be registered and no union at all, however representative, could have the certificate entitling it to bargain unless the Congress made application on its behalf, so that the Congress would still have the sole right to determine,

in effect, whether a new union could register and whether any given union would enjoy bargaining rights at all, without even being bound by any criteria as to its degree of representativeness.

155. In these circumstances, while deferring the formulation of its definitive conclusions on this aspect of the case, the Committee recommended the Governing Body, in paragraph 236 *(d)* of its 83rd Report, to take note of the Government's statement that it was considering the repeal of sections 10 (1), 10 (6), 11 (1) and 11 (2) of the Act, and paragraphs 1 (2) and 2 of the Second Schedule to the Act, to draw the attention of the Government to the considerations set forth in the preceding paragraph and to suggest to the Government that it might care to have regard to such considerations when putting into effect its proposals to amend the legislation.

156. The new Act does not appear to have carried into effect the Government's original intention (see paragraph 153) to provide for registration to be effected through the application of the Trades Union Congress. In fact it appears to contain no provisions relating to registration at all, so that trade unions would appear to be entitled to registration if they comply with the provisions of the Trade Unions Ordinance. Section 3 (1) of the 1965 Act provides:

The Congress shall on application by a trade union request the Registrar to issue a certificate appointing that trade union as the appropriate representative to conduct on behalf of a class of employees specified in the certificate collective bargaining with the employers of such employees and, subject to subsection (4), the Registrar shall be bound to comply with such a request.

Section 3 (4) provides:

More than one certificate may be issued under this section in respect of the same trade union but the Registrar shall not appoint a trade union under this section for any class of employees if there is in force a certificate under this section appointing another trade union for that class of employees or any part of that class.

Section 3 (5) provides:

A certificate issued under this section shall have effect notwithstanding that some of the employees of the class specified are not members of the trade union appointed under the certificate.

Section 3 (7) provides:

At any time after the issue of the certificate under this section the Registrar may at the request of either the trade union to which the certificate applies or the appropriate employers' organisation and after consultation with the said trade union and the said organisation withdraw the certificate without prejudice to the right of such a trade union to apply for a fresh certificate under this section.

157. The new Act does not define the manner in which the representativeness of a union shall be determined or lay down rules as to the degree of representativeness which shall entitle a union to the issue of a certificate under section 3 (1). This being so, the Committee has no information before it as to the criteria on the basis of which these matters are decided. Also, in view of the provisions of section 3 (4), the Committee is unable to form a view as to how, in the event of a new union being registered under the Trade Unions Ordinance and organising a larger number of employees of a given class than does a union already having a bargaining certificate in respect of that class, the new union could obtain a bargaining certificate as being more representative.

158. The Committee also observes that, when an application for registration is made under the Trade Unions Ordinance, 1941, as amended, the Registrar shall, according to section 11 (3) thereof, first consider the observations and objections (if any) of the Commissioner of Labour and certain other authorities and any other objections which may have been brought to his notice, and that, according to section 12 (1) *(d)*, he shall not register the union unless he is satisfied, *inter alia*, that the objections (if any) submitted under section 11 (3) are not of sufficient substance to justify a refusal to register. As the ordinance does not define the grounds on which valid objections may be made, the Com-

mittee is unable to form an opinion as to whether, for example, the fact that a trade union already existed which catered for the same class of employees as a new union seeking registration organised or proposed to organise, or the fact that the existing union held a bargaining certificate under the Industrial Relations Act, 1965, in respect of such class of employees, would give rise to objections of sufficient substance to justify the Registrar, in terms of the Trade Unions Ordinance, in refusing to register the new union.

159. In these circumstances the Committee, while fully appreciating the importance of the legislative changes which have been made by the new Act, would be grateful if the Government would be good enough to clarify the situation as regards the registration or certification of new unions in the light of the points mentioned in paragraphs 157 and 158 above.

(e) *Allegations relating to the Regulation of the Right to Strike.*

160. These allegations, examined by the Committee in paragraphs 303 to 311 of its 67th Report and again in paragraphs 217 to 222 of its 83rd Report, were based on the fact that section 28 of the 1958 Act placed temporary restrictions on the right to strike of workers belonging to certificated unions, while section 29 prohibited strikes in any circumstances whatsoever by workers belonging to non-certificated unions, even though the latter could also not participate in the statutory conciliation and arbitration procedures provided for in the Act.

161. At its meeting in May 1965 the Committee had before it a statement by the Government, in its communication dated 26 April 1965, that it intended to repeal section 29 of the 1958 Act, and recommended the Governing Body, in paragraphs 222 and 236 *(e)* of its 83rd Report, to take note of this statement.

162. The position under the 1965 Act is not quite clear. The Act places temporary restrictions on strikers pending recourse to the procedures for settlement of disputes provided for in the Act. These restrictions, contained in section 21 of the Act, appear to be applicable with respect to strikes by employees of a class specified in a bargaining certificate, but no indication appears to be given as to the situation of employees who do not belong to such a class, so far as the exercise of the right to strike is concerned. The Committee therefore requests the Government to be good enough to state what distinctions, if any, still exist between the strike rights of workers of a certificated class and those of other workers.

* * *

163. In all the circumstances the Committee recommends the Governing Body—

(a) to note that the Industrial Relations Act, 1958, as amended in 1959 and 1960, has been repealed and replaced by the Industrial Relations Act, 1965;

(b) to note with regard to the allegations relating to the monopoly of the Trades Union Congress in Ghana that the new legislation appears to have removed the previous restrictions on the adhesion of trade unions to the Congress and the requirement of the consent of the Minister to the registration of new trade unions;

(c) to note that the previously subsisting requirement of compulsory union membership in the case of persons belonging to a category of employees specified in a collective bargaining certificate appears to have been repealed by the new Act;

(d) to note, with regard to the allegations relating to interference in the internal affairs of the Trades Union Congress, that sections 5 (1), 5 (3) and 8 (1) of the Industrial Relations Act, 1958, as amended, have been repealed;

(e) to take note of the present interim report with regard to the allegations relating to the legal recognition of trade unions and to the regulation of the right to strike, it being understood that the Committee will report further thereon to the Governing Body when it has received additional information which it has decided to request the Government to be good enough to furnish.

Case No. 360:

Complaints Presented by the Autonomous Confederation of Christian Trade Unions, the Latin American Confederation of Christian Trade Unionists, the International Federation of Christian Trade Unions, the International Federation of Christian Public Service and Postal Employees' Unions and the National Dominican Confederation of Workers against the Government of the Dominican Republic

164. The Committee examined this case previously at its 38th Session (November 1964), when it submitted an interim report to the Governing Body. This is contained in paragraphs 171 to 196 of the 78th Report of the Committee, which was approved by the Governing Body at its 160th Session (November 1964). The Government of the Dominican Republic was requested to furnish further information on certain aspects of the case, as indicated in paragraph 196 of that report, in which the Committee recommended the Governing Body—

. . . . . .

(b) to call the attention of the Government to the importance that the Committee attaches to the guarantee of due legal process when trade unionists are accused of offences of a political nature or of common law crimes, and to the fact that the granting of his freedom to a trade unionist on condition that he leaves the country is not compatible with the free exercise of trade union rights; and to request the Government as soon as possible to send its observations on the position of Mr. Henry Molina in view of the urgent nature of this part of the case, and also on the legal position of Mr. and Mrs. Monegro and the possibilities they have of returning legally to the country;

(c) to reaffirm the principles set forth in paragraph 183 above and to request the Government to furnish its observations on the allegations concerning the raiding and closure of the premises of the National Dominican Confederation of Workers (FOUPSA-CESITRADO) and in particular on the present *de facto* and *de jure* position of that organisation;

(d) to request the Government, in view of the lack of direct information from it concerning the other allegations referred to in paragraph 193 above, which relate to matters considered as urgent under the procedure in force, to furnish its observations thereon as speedily as possible, and, in particular, in respect of the alleged murder or detention of the trade union leaders named;

(e) to take note of the present interim report, it being understood that the Committee will report further to the Governing Body when it has received the additional information requested.

165. In its report the Committee also requested the Government directly to keep it informed as to the outcome of the legal proceedings then taking place to ascertain the facts relating to the murder of the trade union leader Mr. Benito Acevedo, which occurred on 24 or 25 December 1963, and meanwhile postponed the formulation of its conclusions on that aspect of the case.

166. The Government furnished additional information in two memoranda despatched on 12 March and 22 April 1965. In examining the case at its present session the Committee had taken due account of the fact that there has been in the meantime a change of government in the Dominican Republic. Nevertheless, in order to enable it to formulate conclusions on the different aspects of the case, the Committee considers it necessary to request the new Government to furnish further information on certain points indicated in the present report.

Allegations concerning the Arrest of the Trade Union Leader Henry Molina

167. In the complaints presented by the Christian trade unions referred to above on 15, 19 and 21 November 1963 and 16 April 1964 the Government was accused of having arrested the trade union leader Mr. Henry Molina, who, according to the complainants, was threatened with deportation. Since the Government had furnished no observations on the accusation, the Committee recommended the Governing Body to request the Government to furnish its observations as soon as possible on the situation of Mr. Molina.

168. The Government does not mention Mr. Henry Molina in its communication of 12 March 1965. However, at its 41st Session (November 1965), the Committee examined

another case relating to the Dominican Republic (Case No. 411), which related to the legal proceedings brought against Mr. Molina and other trade union leaders for matters arising after the above-mentioned complaints.

169. In these circumstances the complaint referred to would appear to be superseded by other events, and the Committee therefore considers that it would be purposeless to pursue the examination of this complaint and refers, with regard to Mr. Molina's situation, to its report on Case No. 411.[1] The Committee therefore recommends the Governing Body to decide that this aspect of the case does not call for further examination.

Allegations concerning the Raiding and Closure of the National Dominican Confederation of Workers and the Exile of the Trade Union Leaders Mr. and Mrs. Monegro

170. In a communication dated 20 January 1964, written in exile, the General Secretary of the National Dominican Confederation of Workers (FOUPSA-CESITRADO) declared that its premises had been raided and that various objects belonging to the workers of the Dominican Republic, including documents of the Confederation, had been removed. On 31 March 1964 the Confederation sent a new communication, this time from Santo Domingo, in which it referred to the destruction of its furniture and the closing of its premises. The Autonomous Confederation of Christian Trade Unions (C.A.S.C.), having been invited by the Secretary of State for Labour to make any comments it thought fit concerning this accusation, confirmed that the premises of FOUPSA-CESITRADO had been broken into by the national police and that the Confederation had been expelled from them, but had no information on the fate of the documents and furniture of the Confederation.

171. At its November 1964 session the Committee noted that the position regarding the raiding and closure of the premises of the Confederation was not sufficiently clear from the documents that had been sent to it. The various complaints agreed in respect of the raid on the premises, the destruction of furniture, the disappearance of documents and the closing down of the Confederation. The Committee also noted, however, that it was the Confederation itself that had sent the communication dated 31 March 1964, which had on its letter heading the address of the organisation and included among the signatories of its leaders that of its President, Mr. Miguel Soto. It was thus not clear whether the premises of the Confederation had reopened or what its *de jure* and *de facto* position was. The Government had sent no observations on this aspect of the case.

172. The Committee, while recognising on various occasions that trade unions, like other associations or persons, cannot claim immunity from search of their premises, has emphasised the importance it attaches to the principle that searches should be made only when the judicial authority has issued a warrant after satisfying itself that there are reasonable grounds for supposing that evidence exists on the premises material to a prosecution for offence under the ordinary law and provided that they are restricted to the purposes in respect of which the warrant has been issued.[2] The Committee also noted that the Dominican Republic has ratified Convention No. 87, which provides, among other things, that workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

173. The Committee finally recommended the Governing Body to request the Government to furnish its observations on the complaint relating to the raiding and closure of the premises of the Confederation and, in particular, on the *de facto* and *de jure* position of that organisation.

174. In answer to the request the Government states in its communication of 12 March 1965 that the raid was carried out because there was strong evidence that the leaders of FOUPSA-CESITRADO were engaged in political activities punishable under criminal law, which threatened to cause a serious disturbance of the peace.

[1] See 85th Report, paras. 214-230.

[2] See 58th Report, Case No. 179 (Japan), para. 232; 62nd Report, Case No. 192 (Argentina), para. 57; 71st Report, Case No. 273 (Argentina), para. 76 *(b)*; 74th Report, Case No. 363 (Colombia), para. 217.

175. The Committee understands from the information supplied to it that FOUPSA-CESITRADO is now functioning and that the raid and closure complained of have accordingly been nullified. The Committee also notes with interest that the Government has taken due note of the recommendations relating to these measures " with a view to preventing such occurrences in the future ". In these circumstances the Committee recommends the Governing Body to decide that this aspect of the case does not call for further examination.

176. With regard to the trade union leaders Mr. and Mrs. Monegro, who appear to have been compelled to leave the country in order to keep their freedom, the Committee recommended the Governing Body to request the Government to supply information on the legal situation of these persons.

177. The previous Government furnished no information in this connection, and the Committee therefore recommends the Governing Body to request the Government to be good enough to reply to the allegation that the two trade union leaders Mr. and Mrs. Monegro have been obliged to go into exile in order to preserve their freedom.

Complaints concerning the Murder of the Trade Union Leader Benito Acevedo

178. The complaints dated 20 January and 31 March 1964 submitted by FOUPSA-CESITRADO and the complaint dated 16 April 1964 submitted by C.A.S.C. announced the murder of Mr. Benito Acevedo, a leader of the works union of the Central Romana Corporation, committed on 24 or 25 December 1963. In its first reply the Government sent the texts of the examinations by the authorities of various persons in connection with the death of Mr. Acevedo and stated that it had called on the competent judge to ascertain the facts of the case and report on them. Since the matter was the subject of pending judicial proceedings the Committee requested the Government to keep it informed of the outcome of these proceedings and meanwhile postponed the formulation of its conclusions on this aspect of the case.

179. By its communication dated 12 March 1965 the Government sends copies of the various papers making up the legal file prepared in connection with the proceedings carried out to ascertain the facts relating to the death of Mr. Acevedo. Among the papers are the findings of the public prosecutor, the statements given in evidence and the judgment of non-suit given by the judge who presided over the proceedings.

180. The Committee notes that Mr. Benito Acevedo was found dead in a creek and that, according to the certificate issued by the forensic medical officer, death was due to drowning and the victim had bruises on the body and the face. From the judgment of non-suit it also appears that Mr. Acevedo's brothers claimed that the medical certificate did not mention all the injuries on the body, since it showed signs of wounds from a sharp instrument on both sides of the chest and other injuries and scratches and there had also been bleeding " from the mouth, ears and nose, which indicated that death was not due to an accident ". The same judgment, however, quotes the opinion of the public prosecutor in the following words: " We were also able to conclude in our investigations that almost the entire surroundings of the creek in question are slippery, on account of the mud, so that it is possible that the victim—as we have supposed up to now—slipped, received a knock that left him dazed and fell into the water of the creek as a result of this unfortunate occurrence, and thus died by drowning in the absence of help, since according to the accounts received he was alone."

181. In view of the information at his disposal the judge concluded that it was impossible to determine which person or persons were to be blamed for the death of Mr. Benito Acevedo, and therefore gave a judgment of non-suit and decided to file the case.

182. The statements of both the forensic medical officer and the victim's brothers respecting the way in which Mr. Acevedo may have met his death do not establish whether it was due to a mere accident or not. In these circumstances the Committee recommends

the Governing Body to take note of the information furnished by the Government and at the same time to express its regret that the investigation has not led to a concrete result.

Other Allegations

183. In the complaints submitted by FOUPSA-CESITRADO dated 31 March 1964 and by C.A.S.C. dated 16 April 1964 reference was also made to other events alleged to be in violation of freedom of association in the Dominican Republic. The former complaint referred to the murder of the trade union leaders Héctor Porfirio Quezada, Julio Aníbal García Dickson and Alberto Laracuent in the region of La Romana, a major sugar-producing area of the country. Reference was made in the second complaint to the imprisonment and threatened deportation of the trade union leader Rodolfo Sessman and the imprisonment of the trade union leader Luis Polivio Padilla. Another allegation related to the setting up of a company-dominated trade union by the city council of the national capital. The communication from C.A.S.C. and that from the Monegros declared that the Government supported the CONATRAL Confederation, affiliated to the Inter-American Regional Organisation of Workers of the International Confederation of Free Trade Unions (O.R.I.T.), that its leaders were the only ones to enjoy a certain measure of protection, and that any leader who opposed this body was accused of being a Communist.

184. The Committee recommends the Governing Body, in order to enable it to formulate its conclusions on these accusations, to request the Government to furnish its observations on this matter as soon as possible.

* * *

185. With regard to the case as a whole the Committee recommends the Governing Body—

(a) to decide, for the reasons set forth in paragraphs 169 and 175 above, that the allegations relating to the arrest of the trade union leader Henry Molina and the raiding and closure of the premises of the National Dominican Confederation of Workers (FOUPSA-CESITRADO) do not call for further examination;

(b) to decide, with regard to the allegations concerning the murder of the trade union leader Benito Acevedo, to take note of the information furnished by the Government and at the same time to express its regret that the investigation has not led to a concrete result;

(c) to request the Government to be good enough to reply to the allegation that the two trade union leaders Mr. and Mrs. Monegro have been obliged to go into exile in order to preserve their freedom;

(d) with regard to the other allegations set forth in paragraph 183 above, to request the Government to be good enough to furnish its observations as soon as possible;

(e) to take note of the present interim report, it being understood that the Committee will report further to the Governing Body when it has received the additional information requested in subparagraphs *(c)* and *(d)* above.

Case No. 365:

Complaints Presented by the Union of Congolese Workers and the General Union of Trade Union Federations of Congolese Farmers and Workers against the Government of the Congo (Leopoldville)

186. The Committee already considered this case during its sessions in June 1964 and November 1965. On both occasions the Committee presented interim reports contained respectively in paragraphs 354 to 367 of its 76th Report and 461 to 473 of its 85th Report. Both of these reports were approved by the Governing Body.

187. The case comprises three series of allegations: one concerning the arrest in 1963 at Butembo of Mr. Raymond Beya, National President of the Union of Congolese Workers; another concerning the arrest in 1964 of Mr. Beya as well as of Mr. Oscar Nkole, Provincial Inspector of the General Union of Trade Union Federations of Congolese Farmers and Workers (U.G.C.S.P.T.C.); the third on the murder by the administrator of the territory of Walikale of Mr. Sylvestre Kalunga, Regional Secretary of U.G.C.S.P.T.C.

Allegations relating to the Arrest in 1963 of Mr. Raymond Beya

188. It was alleged that on 15 October 1963, while he was making a tour of inspection of the local sections of the Union of Congolese Workers, Mr. Raymond Beya, National President of that organisation, was arbitrarily arrested and imprisoned. In its comments the Government stated that Mr. Beya had been sentenced as a result of a decision made in accordance with due course of law on 17 October 1963 by the Butembo Police Court, and stated further that Mr. Beya had been released.

189. When it considered this aspect of the case the Committee, in accordance with its usual practice, requested the Government to send a copy of the sentence. The Government complied with this request in a communication dated 18 November 1965.

190. From the text of the sentence furnished by the Government—a sentence passed at a public trial—it is apparent in the first place that the proceedings were not directed at the Union of Congolese Workers as such, but solely at its representatives by reason of their acts. It would appear from the text of the judgment that several trade union leaders, and Mr. Beya in particular, were found, among other things, to have incited the workers, under threat of reprisals, to rebel against the territorial and communal authorities, and threatened the authorities with death.

191. According to this text the persons concerned, Mr. Beya among them, took part in activities calculated to cause a breach of the peace and used methods exceeding the limits admissible in normal trade union action.

192. In these circumstances the Committee recommends the Governing Body to decide that this aspect of the case does not call for further examination.

Allegations respecting the Second Arrest of Mr. Beya and the Arrest of Mr. Nkole

193. It is alleged that Mr. Beya was again arrested in 1964 and that he was kept in prison for several months without being brought to trial. The same allegation was made with respect to Mr. Oscar Nkole, Provincial Inspector of U.G.C.S.P.T.C. In its comments the Government indicated that the proceedings against the persons concerned were taken on the grounds of embezzlement of public funds.

194. With regard to this aspect of the case the Governing Body approved the recommendation made by the Committee at its session in November 1965—

(a) to draw the attention of the Government to the importance which the Governing Body has always attached to ensuring that trade unionists arrested for political offences or for offences under ordinary law should be tried within the shortest possible period by an impartial and independent judicial authority;

(b) to request the Government to inform the Governing Body as a matter of urgency, having regard to the principle enunciated above, as to the present situation with regard to Mr. Beya and Mr. Nkole; [1]

. . . . . .

[1] See 85th Report, para. 473.

195. The Government has not yet replied to the above request communicated to it on 22 November 1965, and the Committee recommends the Governing Body to repeat the request.

Allegations respecting the Murder of Mr. Sylvestre Kalunga

196. In a communication dated 8 August 1965 the Provincial Committee of U.G.C.S.P.T.C. alleged that Mr. Sylvestre Kalunga, Regional Secretary of the organisation for the Walikale territory, had been murdered by the administrator of that territory.

197. After considering this aspect of the case at its session in November 1965 the Committee recommended the Governing Body to ask the Government to furnish its observations on these allegations.

198. The Government has not so far complied with this request. The Committee, while appreciating that the remoteness of the area in which the events are alleged to have taken place may have retarded the Government's inquiries, recommends the Governing Body to request the Government to furnish its observations as urgently as possible.

* * *

199. Regarding the case as a whole the Committee recommends the Governing Body—

(a) to decide that, for the reasons given in paragraphs 188 to 192 above, the allegations respecting the arrest in 1963 of Mr. Raymond Beya do not call for further examination;

(b) as regards the allegations respecting the further arrest of Mr. Beya and the arrest of Mr. Oscar Nkole in 1964—

(i) to draw the attention of the Government once again to the importance which the Governing Body has always attached to ensuring that trade unionists arrested for political offences or for offences under ordinary law should be tried within the shortest possible period by an impartial and independent judicial authority;

(ii) to request the Government once again to inform the Governing Body as a matter of urgency, having regard to the principle enunciated above, as to the present situation with regard to Mr. Beya and Mr. Nkole;

(c) to request the Government again, while appreciating that the remoteness of the area in which the events are alleged to have taken place may have retarded the Government's inquiries, to furnish its observations as urgently as possible on the allegations contained in the communication of 8 August 1965 from the General Union of Trade Union Federations of Congolese Farmers and Workers according to which Mr. Sylvestre Kalunga, Regional Secretary of the complainant organisation, was murdered by the Administrator of Walikale territory;

(d) to take note of the present interim report, it being understood that the Committee will report further to the Governing Body when it has received the information indicated in subparagraphs *(b)* (ii) and *(c)* above.

Case No. 373:

Complaint Presented by the World Federation of Trade Unions against the Government of Haiti

200. This case has already been examined by the Committee at its 38th, 39th and 40th Sessions, held respectively in November 1964, February 1965 and May 1965, on which occasions interim reports were presented to the Governing Body, which approved them.[1] At its May 1965 Session the Committee examined the only allegation remaining outstanding, which related to the arrest of trade union leaders and militants.

[1] See 78th Report, paras. 204-224, 81st Report, paras. 106-114, and 83rd Report, paras. 262-270.

201. The complainants alleged that the Government had arbitrarily arrested a number of trade union leaders and militants. Among the persons arrested, it was stated, were Mr. Ulrick Joly, President of the Inter-Union Federation of Haiti (U.I.H.)—which had been dissolved [1]—Messrs. Claude François and León Gabriel, members of the Executive Committee of the organisation mentioned and presidents of the cement and sugar unions respectively, Messrs. Alcius Cadet and Arnold Maisoneuve, of the Dockers' Union, and the trade union leaders Messrs. Prossoir and Guerrior.

202. At its May 1965 Session the Committee took note of an extract, furnished by the Government, from the minutes of the Registry of the Port-au-Prince Civil Court, which indicated that, as the preliminary inquiry undertaken into the activities of the persons mentioned by name by W.F.T.U. had shown that there were " sufficient charges and evidence against them ", the examining magistrate had decided on 7 January 1965 " to remand the accused to the court of competent jurisdiction ".

203. In these circumstances the Committee recommended the Governing Body to ask the Government to be good enough to communicate to it the text of the judgment concerning the persons concerned, when this had been delivered, and of its grounds.

204. The Governing Body approved this recommendation at its 162nd Session, on 28 May 1965, and the complementary information mentioned in the preceding paragraph was requested from the Government in a letter dated 8 June 1965, to which the Government replied by a communication dated 3 September 1965.

205. In this communication the Government states that no police measures have ever been taken against a workers' organisation or its members when their activities have been limited to genuine trade union action. However, it states that when under cover of trade union activities individuals receiving orders from abroad take it upon themselves to upset the established social order, it is necessary, in the common interest, to take the appropriate legal measures against them.

206. As regards the case of the members of U.I.H., continues the Government, all persons who were found by the inquiry to have had nothing to do with the subversive plots of the Executive Committee of U.I.H. have been released, the only ones detained being " those caught red-handed in collusion and complicity with enemies organising the invasion of the national territory ".

207. The Government goes on to state that no action has as yet been taken under the order (mentioned in paragraph 202 above) made on 7 January 1965 by the examining magistrate " because under the fundamental laws the accused are judged each in turn by the criminal assizes held every year under an order of the senior judge of the civil court ". The Government adds that " if the accused are not discharged as an act of mercy before the court's verdict, the Secretariat of State will have pleasure in sending you, by way of complementary information, a copy of the text of the judgment as soon as it has been pronounced ".

208. In these circumstances the Committee recommends the Governing Body to take note of the information provided by the Government, to request the latter to be good enough to let the Governing Body know whether the persons mentioned by the complainants have or have not been discharged as an act of mercy and, if not, to communicate the text of the judgment or judgments delivered, with the text of the grounds therefor.

Case No. 385:

Complaints Presented by the World Federation of Trade Unions, the Latin American Confederation of Christian Trade Unionists and the International Federation of Christian Trade Unions against the Government of Brazil

209. This case has been the subject of three interim reports by the Committee, contained respectively in paragraphs 133 to 152 of its 81st Report, in paragraphs 271 to 277 of its 83rd Report, and in paragraphs 474 to 491 of its 85th Report.

[1] See 78th Report, paras. 210-220 and 224 *(a)*.

210. The case raised two series of allegations: one relating to the placing of trade union organisations under control, and the other to measures taken against trade union leaders.

Allegations relating to the Placing of Trade Union Organisations Under Control

211. With regard to this aspect of the case, the Committee at its meeting in November 1965 recommended the Governing Body—

to note the Government's statement that the control of trade union organisations in Brazil has terminated and that elections are now taking place, and to request the Government to be good enough to continue to keep the Governing Body informed of further developments with regard to this matter.[1]

212. This recommendation was approved by the Governing Body at its 163rd Session (November 1965) and the text thereof was brought to the notice of the Government by a letter dated 23 November 1965. The Government replied by a communication dated 5 February 1966.

213. In this reply the Government states that, after the total removal of the control which had been exercised over 600 of the country's 4,000 trade union organisations, elections had taken place, by 1 January 1966, in the case of 60 per cent. of the organisations previously subjected to control. The results of these elections, which took place within the prescribed period, the Government continues, have almost all been officially registered by the Ministry of Labour and Social Welfare, and, in the case of the remaining trade union organisations, elections will take place according as the conditions attached thereto by law are complied with.

214. The Committee recommends the Governing Body to note that the procedures for elections in the trade union organisations formerly under control have continued since the approval of the 85th Report of the Committee by the Governing Body and to request the Government to be good enough to continue to keep the Governing Body informed of further developments with regard to this matter.

Allegations relating to Measures Taken against Trade Union Leaders

215. This part of the complaints had two aspects—one relating to arrests and sentencing of trade union leaders, and one relating to the particular case of Mr. Clodsmith Riani.

216. With regard to the case of Mr. Riani the Committee, at its meeting in November 1965, considered it necessary to draw the attention of the Governing Body to the exceptionally serious nature of the circumstances of this case. It recalled that, at the moment of his original arrest, Mr. Riani had been President of the National Confederation of Industrial Workers of Brazil and had been, and still was, a deputy member of the Governing Body of the International Labour Office. Having been imprisoned for the first time on 6 April 1964, he had been freed following *habeas corpus* proceedings on 29 September 1965 and again detained on another charge, after which a second *habeas corpus* application had been denied; when the Committee was examining the case in November 1965 a third *habeas corpus* application was pending. The Committee drew attention to its established jurisprudence, in accordance with which it has always emphasised the importance of ensuring that, where trade unionists are arrested for political offences or common law crimes, they should receive a fair trial at the earliest possible moment by an impartial and independent judicial authority, and pointed out that this principle represented the application to the questions submitted to the Committee of the provisions of articles 9, 10 and 11 of the Universal Declaration of Human Rights, the text of which the Committee cited.[2] Finally, the Committee pointed out that this principle, which it has applied to all complaints of this nature, assumes a quite

[1] See 85th Report, para. 491 *(a)*.

[2] See 85th Report, para. 484.

special importance when the person concerned is a member or deputy member of the Governing Body of the International Labour Office, by reason especially of article 40 of the I.L.O. Constitution, which provides that members of the Governing Body shall enjoy " such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation ".

217. Having observed that Mr. Riani, despite having been freed under *habeas corpus* procedure, had remained in detention for 19 months without being brought to trial, the Committee recommended the Governing Body to draw the attention of the Government of Brazil to the importance of the considerations set forth in the preceding paragraph. The Committee also recommended the Governing Body—

. . . . . .

(ii) to request the Government of Brazil to take the necessary measures to ensure that the case is dealt with on its merits within a very short period;

(iii) to request the Government to forward to the Governing Body the texts of the *habeas corpus* judgments already given or to be given and of the judgments to be given on the merits of the case;

(iv) to request the Government to forward to the Governing Body, not later than 1 February 1966, information as to the position reached in the proceedings and as to the situation of Mr. Riani at that time.[1]

218. The conclusions cited above having been adopted by the Governing Body were brought to the notice of the Government, which replied by a communication dated 5 February 1966, followed by a letter dated 17 February 1966.

219. In this reply the Government states that Mr. Riani was charged with subversion contrary to public order and misappropriation of trade union funds. He was tried on the first charge on 15 December 1965 by the Tribunal for the Fourth Military Region and sentenced to 17 years' rigorous imprisonment. The Government adds that the person concerned has availed himself of his right to lodge an appeal against the judgment with the Military High Court which, as the vacation lasts until 7 March 1966, will give its verdict on the appeal after its sittings have been resumed.

220. Referring to the observations made by the Committee in its 85th Report [2], the Government declares that the Brazilian military courts, consisting of the Military High Court and its lower courts, are an integral part of the Brazilian judicial system, that the Military High Court has functioned without interruption since 1808 and constitutes the oldest judicial body in Brazil, and that its reconstitution has not entailed any change in its structure but merely an increase in the number of its members. The Government affirms that no special courts have been set up, that the military courts referred to in the present case are regular and normal courts and that Mr. Riani, therefore, has been tried by " an impartial and independent judicial authority ".

221. In its observations the Government states that it cannot understand why the Committee should have seen fit to refer to articles 9 to 11 of the Universal Declaration of Human Rights and also to article 40 of the I.L.O. Constitution. The Government argues that the crimes in respect of which Mr. Riani was charged have long been defined as offences in Brazilian legislation and that the sentences imposed on him were prescribed in such cases before he committed the acts which led to their being applied in his own case. The Government declares that the charges brought against Mr. Riani, who is a Brazilian citizen and therefore subject entirely to the national jurisdiction, had no connection with his trade union activities or with his activities as a member of an organ of the I.L.O.

222. After stating that, in view of the principle of the separation of powers enshrined in the Brazilian Constitution, the executive power has no possibility of influencing or changing

[1] See 85th Report, para. 491 *(b)*.

[2] Paras. 483 and 484.

judicial decisions duly rendered, the Government concludes its observations on this aspect of the case in the following terms:

Mr. Riani has therefore been sentenced by a regular, independent and impartial tribunal, normally constituted, in accordance with the law of Brazil, for dealing with crimes therein provided for, and he has fully enjoyed the right to defend himself. It follows therefore that the role of the I.L.O. and of its organs should consist in this case of taking note of the information given above, because it cannot be recognised as competent to pass judgment on the application of legislation by a sovereign State.

223. With regard to this last point the Committee wishes to point out, as it has done in several earlier cases [1] in which governments appeared to maintain that a reply in general terms to the effect that detentions of trade unionists have been due to unlawful or subversive activity and not to their trade union activities should be regarded as adequately substantiated, that the question as to whether the matter in respect of which sentences have been imposed or detentions ordered is to be regarded as a matter relating to a criminal or political offence or a matter relating to the exercise of trade union rights is not one which can be determined unilaterally by the government concerned in such a manner as to prevent the Governing Body from inquiring further into it.

224. The Committee also wishes to point out that in past cases in which the matters raised had been the subject of proceedings before a national judicial authority it has followed the practice, considering that the decisions given might make available information of assistance to it in appreciating whether or not allegations were well founded, of requesting governments to communicate the text of the judgments given and of the grounds adduced therein.[2] It was with this in mind that the Committee had recommended the Governing Body to request the Government to furnish the information indicated in the conclusions cited in paragraph 217 above.

225. In the present case, having regard to the nature of the Government's reply, the Committee recommends the Governing Body—

(a) to take note of the Government's statement that, by a judgment of the Tribunal for the Fourth Military Region dated 15 December 1965, Mr. Riani was found guilty of subversion contrary to public order and sentenced to 17 years' rigorous imprisonment;

(b) to note the Government's statement that Mr. Riani has appealed against this decision to the Military High Court;

(c) to note the Government's statement that the Brazilian military courts, consisting of the Military High Court and its lower courts, are an integral part of the Brazilian judicial system, of which the Military High Court constitutes the oldest organ, and that Mr. Riani, therefore, was tried by an " impartial and independent judicial authority " within the meaning attached to that terminology by the Committee on Freedom of Association;

(d) to observe that the Government has not acceded to the request made to it to furnish detailed information on the case of Mr. Riani and, in particular, the texts of the judgments rendered;

(e) to draw the attention of the Government to the fact that the question as to whether the matter in respect of which sentences have been imposed on trade unionists is to be regarded as a matter relating to a criminal or political offence or a matter relating to the exercise of trade union rights is not one which can be determined unilaterally by the government concerned in such a manner as to prevent the Governing Body from inquiring further into it;

[1] See 27th Report, Case No. 143 (Spain), para. 106; 28th Report, Case No. 147 (Union of South Africa), para. 237; 44th Report, Case No. 200 (Union of South Africa), para. 162; 58th Report, Case No. 253 (Cuba), para. 632; 83rd Report, Case No. 303 (Ghana), para. 230 *(b)*; 85th Report, Cases Nos. 282 and 401 (Burundi), para. 317.

[2] See 17th Report, Case No. 97 (India), para. 137; 26th Report, Case No. 147 (Union of South Africa), para. 111; 31st Report, Case No. 170 (France-Madagascar), para. 52; 34th Report, Case No. 130 (Switzerland), para. 6; 45th Report, Case No. 213 (Federal Republic of Germany), para. 123; 58th Report, Case No. 156 (France-Algeria), para. 175; 67th Report, Case No. 241 (France), para. 22; 81st Report, Case No. 385 (Brazil), para. 149; 83rd Report, Case No. 418 (Cameroon), para. 357.

(f) to draw the attention of the Government to the fact that the question at issue is not the application of the legislation of a sovereign State but the question whether there has been any violation of internationally accepted principles governing the exercise of trade union rights or of the Constitution of the International Labour Organisation;

(g) to reaffirm, in these circumstances, the importance of ensuring that, where trade unionists are accused of political offences or common law crimes, they should receive a fair trial at the earliest possible moment by an impartial and independent judicial authority, a principle which represents the application to the questions submitted to the Committee on Freedom of Association of the provisions of articles 9, 10 and 11 of the Universal Declaration of Human Rights and which, having been applied by the Committee in respect of all complaints of a nature similar to those before it in the present case, assumes a quite special importance when the person concerned is a member or deputy member of the Governing Body of the International Labour Office, by reason especially of article 40 of the Constitution of the International Labour Organisation, which provides that members of the Governing Body shall enjoy " such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation "; and to draw the attention of the Government to the importance attached by the Governing Body and the Conference to the discharge of those obligations;

(h) to urge the Government once again to furnish the text of the judgment by which Mr. Riani was sentenced to 17 years' rigorous imprisonment and of the reasons adduced therein;

(i) to request the Government to inform the Governing Body as to the result of the appeal lodged by Mr. Riani and to furnish the text of the judgment and of the reasons adduced therein and, generally, to keep the Governing Body informed of any further developments in connection with the case of Mr. Riani.

226. With regard to the cases of the trade union leaders other than Mr. Riani referred to by W.F.T.U., the Committee took note, at its meeting in November 1965, of information furnished by the Government to the effect that, of the 47 trade union leaders named by W.F.T.U., 11 were at liberty with no charges pending against them, 15 were at liberty while their cases were being investigated, nine were abroad, four had fled and three were detained pending trial.

227. The Committee therefore recommended the Governing Body to take note of the information furnished by the Government and to request the Government to be good enough to keep it informed of further developments regarding the persons concerned and, in particular, to furnish the texts of any judgments handed down and of the reasons adduced therein.

228. In its communication dated 5 February 1966 the Government states that, like Mr. Riani, " all the trade union leaders who have been or are being prosecuted by the Brazilian military or criminal judicial authorities have been or are being proceeded against pursuant to national laws and before the ordinary courts ".

229. In these circumstances, in accordance with the principles referred to in paragraphs 223 and 224 above, the Committee recommends the Governing Body, as it did at its preceding session, to request the Government to be good enough to furnish the texts of the judgments handed down or to be handed down and of the reasons adduced therein.

230. At its meeting in November 1965 the Committee observed that the Government had not at that time furnished observations on the communication dated 4 October 1965 from the Latin American Confederation of Christian Trade Unionists, which had been transmitted to it on 21 October 1965. It was alleged in this communication that four trade union leaders had been sentenced to long terms of imprisonment (18, 15 and 10 years). The Committee had requested the Government to furnish its observations on these allegations.

231. In its communication dated 5 February 1966 the Government makes the following comments on this aspect of the case: " The military tribunal of Belo Horizonte has tried, also for crimes against national security, four trade union leaders of the State of Minas Gerais, Messrs. Antonio Faria Lopes, Fausto Drumond, José Boggione and Alberto José dos Santos [1], and sentenced them to various terms of imprisonment. The accused having appealed, their appeals have been submitted to the Military High Court; it has appointed Minister Romeiro Neto as reporter and the case will be heard very shortly. The prosecution and judging of these trade union leaders, for crimes of subversion, have been in accordance with legal standards in force in Brazil." The Government adds that the considerations set forth with regard to the case of Mr. Riani are equally relevant in the case of these four persons also.

232. In this case also, and again pursuant to the principles referred to in paragraphs 223 and 224 above, the Committee recommends the Governing Body to request the Government to be good enough to furnish the texts of the judgments given by the courts of first instance and, when they are handed down, of the judgments of the appellate court, together, in both cases, with the reasons adduced therein.

* * *

233. With regard to the case as a whole the Committee recommends the Governing Body—

(a) to note, with regard to the allegations relating to the placing of trade union organisations under control, that the procedures for elections in the organisations formerly under control have continued since the approval of the 85th Report of the Committee by the Governing Body and to request the Government to be good enough to continue to keep the Governing Body informed of further developments with regard to this matter;

(b) with regard to the particular case of Mr. Riani—

(i) to take note of the Government's statement that, by a judgment of the Tribunal for the Fourth Military Region dated 15 December 1965, Mr. Riani was found guilty of subversion contrary to public order and sentenced to 17 years' rigorous imprisonment;

(ii) to note the Government's statement that Mr. Riani has appealed against this decision to the Military High Court;

(iii) to note the Government's statement that the Brazilian military courts, consisting of the Military High Court and its lower courts, are an integral part of the Brazilian judicial system, of which the Military High Court constitutes the oldest organ, and that Mr. Riani, therefore, was tried by an " impartial and independent judicial authority " within the meaning attached to that terminology by the Committee on Freedom of Association;

(iv) to observe that the Government has not acceded to the request made to it to furnish detailed information on the case of Mr. Riani and, in particular, the texts of the judgments rendered;

(v) to draw the attention of the Government to the fact that the question as to whether the matter in respect of which sentences have been imposed on trade unionists is to be regarded as a matter relating to a criminal or political offence or a matter relating to the exercise of trade union rights is not one which can be determined unilaterally by the government concerned in such a manner as to prevent the Governing Body from inquiring further into it;

(vi) to draw the attention of the Government to the fact that the question at issue is not the application of the legislation of a sovereign State but the question whether there has been any violation of internationally accepted principles governing the exercise of trade union rights or of the Constitution of the International Labour Organisation;

[1] These were the four trade unionists named by the complaining organisation.

(vii) to reaffirm, in these circumstances, the importance of ensuring that, where trade unionists are accused of political offences or common law crimes, they should receive a fair trial at the earliest possible moment by an impartial and independent judicial authority, a principle which represents the application to the questions submitted to the Committee on Freedom of Association of the provisions of articles 9, 10 and 11 of the Universal Declaration of Human Rights and which, having been applied by the Committee in respect of all complaints of a nature similar to those before it in the present case, assumes a quite special importance when the person concerned is a member or deputy member of the Governing Body of the International Labour Office, by reason especially of article 40 of the Constitution of the International Labour Organisation, which provides that members of the Governing Body shall enjoy " such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation "; and to draw the attention of the Government to the importance attached by the Governing Body and the Conference to the discharge of those obligations;

(viii) to urge the Government once again to furnish the text of the judgment by which Mr. Riani was sentenced to 17 years' rigorous imprisonment and of the reasons adduced therein;

(ix) to request the Government to inform the Governing Body as to the result of the appeal lodged by Mr. Riani and to furnish the text of the judgment and of the reasons adduced therein and, generally, to keep the Governing Body informed of any further developments in connection with the case of Mr. Riani;

(c) to request the Government once again to furnish the texts of the judgments handed down or to be handed down in the cases of the other trade union leaders named by the World Federation of Trade Unions and referred to in paragraphs 227 and 228 above, together with the reasons adduced therein;

(d) to request the Government to furnish the texts of the judgments given by the courts of first instance and, when they are handed down, of the judgments of the appellate court, together, in both cases, with the reasons adduced therein, in respect of the persons named by the Latin American Confederation of Christian Trade Unionists and referred to in paragraphs 230 and 231 above;

(e) to take note of the present interim report of the Committee, it being understood that the Committee will report further to the Governing Body when the information indicated in subparagraphs *(a)*, *(b)*, *(c)* and *(d)* above has been received.

Case No. 396:

Complaint Presented by the Latin American Confederation of Christian Trade Unionists against the Government of Guatemala

234. This case has already been before the Committee at its 39th Session (February 1965), when the Committee submitted to the Governing Body an interim report in paragraphs 169 to 175 of the Committee's 81st Report. At its 40th Session (May 1965) the Committee decided to postpone examination of the case as it had still not received the text of the judgment pronounced in the case against Mr. Eustaquio Paz Muralles, which had been requested from the Government.

235. By a communication dated 7 December 1965 the Government supplied information as to the stage reached in these proceedings.

236. Guatemala has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

237. In its complaint, dated 1 October 1964, the Latin American Confederation of Christian Trade Unionists (C.L.A.S.C.) alleged that Mr. Paz Muralles, leader of the Guate-

malan Social Federation of Christian Peasants, had been subjected to unjust and prolonged imprisonment.

238. In its reply the Government stated that, according to a statement made by the General Secretary of the Guatemalan Social Federation of Christian Peasants, Mr. Paz Muralles had resigned his post as Disputes Secretary of the Federation in April 1964 to take up office in a political party, and that he was now on trial for the murder of two persons. The Government maintained that this fact had nothing whatsoever to do with freedom of association.

239. In accordance with the practice followed by the Committee in similar cases in which pending proceedings might make available information of assistance to it in appreciating whether or not allegations were well founded, the Committee recommended the Governing Body in paragraph 175 of its 81st Report to decide to request the Government to supply a copy of the judgment pronounced in the case against Mr. Eustaquio Paz Muralles and the grounds on which it was based, and meanwhile to postpone examination of the case.

240. These conclusions, approved by the Governing Body at its 161st Session (March 1965), were transmitted to the Government by a communication dated 10 March 1965. At its 41st Session (November 1965) the Committee took note of a communication from the Government to the effect that the information requested would be sent as soon as it was available.

241. By a communication dated 7 December 1965 the Government supplies a copy of a report submitted by the Court Martial Judge at the Military Base of Puerto Barrios to the Chairman of the Judiciary on 19 August 1965 which refers to the case of Mr. Paz Muralles. In the report it is stated that on 6 April 1964 Messrs. José Nery and Federico Guillermo Padilla García were assaulted, murdered and robbed in the town of Los Arrates, it being alleged that the perpetrators of this deed were one of the bands of rebels who roam around pillaging the mountain regions in that area, and who, according to evidence given before the examining magistrate, were acting on the advice of and in close collaboration with the trade unionist Paz Muralles and 17 local peasants, for which reason the latter have been taken into custody and brought to trial before the Military Tribunal at Puerto Barrios. The report adds that during the trial none of the accused has been able to disprove the evidence which justified their being held in provisional custody on charges of murder and robbery in an isolated spot, and that the trial is still in progress, having reached its final phase, on the conclusion of which sentence will be passed.

242. In these circumstances the Committee recommends the Governing Body to take note of the Government's statement to the effect that the trial is still in progress and to request the Government once again to be good enough to forward the text of the judgment and the grounds on which it is based as soon as it is available, and meanwhile to postpone examination of the case.

Case No. 408:

Complaint Presented by the Authentic Trade Union Federation of Honduras against the Government of Honduras

243. This case was examined by the Committee at its meeting in November 1964, when it submitted an interim report in paragraphs 172 to 184 of its 79th Report, which was approved by the Governing Body at its 161st Session (March 1965).

244. Honduras has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

245. The complaining organisation, representing 10,000 workers and peasants, alleges that the Head of the Government has infringed freedom of association by refusing to grant

it legal personality, although the necessary legal requirements have been complied with and the Ministry of Labour and Social Welfare has given its approval.

246. At its meeting in November 1964 the Committee had before it a communication from the Government dated 31 August 1964, in which the Government stated that legal personality had not been accorded to the organisation because of errors and omissions appearing in the documents submitted with its application for registration and recognition and that the organisation had been granted two months in which to make good such errors and omissions and thus comply with the requirements of the Labour Code.

247. The Government listed ten requirements with which the organisation had been called upon to comply. The Committee took the view [1] that seven of these requirements, listed in detail in paragraph 176 of its 79th Report, were formal requirements which a government could properly lay down without this implying a violation of the principles of freedom of association.

248. The other three items with respect to which the complaining organisation was called upon to take remedial action were—*(a)* infringement of the provisions of section 495 of the Labour Code in connection with the special majority votes prescribed for the adoption of certain resolutions; *(b)* prior verification by the General Inspectorate of Labour of observance by the constituent unions of the complaining federation of the legal quorums referred to in section 495 of the Labour Code; *(c)* elimination or replacement by other means of the boycott tactics referred to in its by-laws, such a procedure being an illegal act under the Penal Code.

249. With regard to the last of the three points referred to above, the Committee decided to request the Government to be good enough to inform it of the specific penal provisions in force in Honduras under which the boycott is considered to be an illegal act.

250. In a communication dated 13 September 1965 the Government states that the boycott is not specified under general penal law, but that it must be regarded, in the light of the system underlying the legislation of Honduras, as an unlawful act. The Government states that by a boycott it means " any act or procedure contrary to free competition in production, industry, commerce or a public service " and therefore harmful to the public economy. In the light of this definition it considers that a boycott is at variance with article 252 of the Constitution whereby the State recognises and guarantees freedom of consumption, saving, investment, occupation, initiative, commercial, enterprise and other freedoms which may tend to strengthen the system of free trade and competition within the national territory. The Government adds that if these freedoms are guaranteed it is logical to suppose that any act which offended them would call for sanction and, specifically, that in civil law their infringement would justify applying for an injunction in relief.

251. Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by Honduras, guarantees the right of workers' organisations to draw up their constitutions and rules without any interference by the public authorities which would restrict this right or impede the lawful exercise thereof, while Article 8 of the Convention provides that, while such organisations shall respect legality in exercising their rights, 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 the Convention. The question at issue with regard to boycotts turns not so much on Article 3 as on Article 8 of the Convention because, although there is some doubt as to precisely which legal provisions render them unlawful, the Government maintains that boycotts—a particular aspect of strike action—are prohibited by the law of the land. If such prohibition does not constitute a violation of Article 8 of the Convention, clearly an organisation cannot claim the right, under Article 3, to provide for something in its rules which contravenes that prohibition.

[1] See 79th Report, para. 177.

252. The Committee has always applied the principle that allegations relating to the right to strike are not outside its competence in so far as they affect the exercise of trade union rights.[1] It has also pointed out that the right of workers and their organisations to strike as a legitimate means of defending their occupational interests is generally recognised.[2]

253. The evidence before the Committee relates to the legal prohibition of only one particular aspect of strike action—the boycott. The complainants themselves have made no direct reference to it at all. The Committee observes, however, that the question of boycotts, whether primary or secondary, has led to considerable divergency in the legislation of several countries in which, as in Honduras, strike action in the general sense of a stoppage of work is not as such illegal. The boycott, in other words, is a very special form of action which in some cases may involve a trade union whose members continue their work and are not directly involved in the dispute with the employer against whom the boycott is imposed. In such circumstances the prohibition of boycotts would not appear necessarily to involve an interference with trade union rights. In the absence of any evidence from the complainants in the present case as to the nature of the boycotts objected to by the Government as being illegal, the Committee considers that the complainants have furnished no proof that their legal prohibition involves an infringement of Article 8 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or, consequently, that any infringement of Article 3 of the Convention results from the refusal of the registering authorities to accept the provisions on this matter written into its constitution by the complaining organisation.

254. The two other reasons for which the constitution and rules of the complaining organisation have not been accepted by the competent authorities involve questions of greater substance. The question at issue, as the Committee observed at its meeting in November 1964, is whether the fact that the requirements of section 495 of the Labour Code with respect to special majority votes and quorums for the adoption of specific resolutions must be complied with in the constitution and rules of a trade union in order for it to be granted legal personality are compatible with the said Convention No. 87. Article 7 of the Convention provides that the acquisition of legal personality by an organisation shall not be made subject to conditions of such a character as to restrict the application, among other things, of the provision in Article 3 of the Convention according to which workers' organisations shall have the right to draw up their constitutions and rules without interference by the public authority.

255. Section 495 of the Labour Code requires that, for the approval of union rules and amendments thereto, the fixing of contributions, and decisions regarding expulsion of members, the majority vote shall be two-thirds of the members present at the general meeting; decisions regarding amalgamation, federation and dissolution need a majority vote of two-thirds of the total membership; the majority vote required for calling a strike shall be two-thirds of the total membership of the union or branch concerned.

256. In Case No. 179 relating to Japan the Committee observed [3] that the law and practice of a number of countries require absolute majorities of a union's membership —at least on a first ballot—for certain matters which affect the basic existence of a union

[1] See 28th Report, Case No. 143 (Spain), para. 109, Cases Nos. 141, 153 and 154 (Chile), para. 202, and Case No. 169 (Turkey), para. 297; 47th Report, Case No. 143 (Spain), para. 66; 58th Report, Case No. 221 (United Kingdom-Aden), para. 109; 65th Report, Case No. 266 (Portugal), para. 77; 66th Report, Case No. 294 (Spain), para. 481; 71st Report, Case No. 173 (Argentina), para. 67; 72nd Report, Case No. 211 (Canada), para. 27; 78th Report, Case No. 364 (Ecuador), para. 79.

[2] See Fourth Report, Case No. 5 (India), paras. 18-51; 12th Report, Case No. 60 (Japan), paras. 10-83; 28th Report, Cases Nos. 141, 153 and 154 (Chile), para. 202; 30th Report, Case No. 167 (Honduras, para. 76, Case No. 181 (Ecuador), para. 94, Case No. 143 (Spain), para. 130, and Case No. 172 (Argentina), para. 778; 58th Report, Case No. 192 (Argentina), para. 447; 65th Report, Case No. 266 (Portugal), para. 77; 68th Report, Case No. 294 (Spain), para. 137; 78th Report, Case No. 364 (Ecuador), para. 79.

[3] See 58th Report, para. 386.

(changes of constitution and rules, dissolution, etc.), but that it is not the normal practice to require such majorities in the case of matters relating to the ordinary functioning of a trade union, such as elections. In cases of the latter kind it is the normally accepted principle that, provided all the members in good standing are enabled freely to exercise their right to vote, a simple majority of the votes cast shall, subject to any contrary rule voluntarily adopted by the union itself, be sufficient; any departure from this principle would mean that, in the absence of a system of compulsory voting, a union's activities would be paralysed unless an exceptionally high vote were cast on every occasion in order for a decision to be taken, a situation in which the law of the land would be such as to impair the rights accorded to organisations under Article 3 of Convention No. 87.

257. It was in accordance with these considerations that the Committee, when examining the present case at its meeting in November 1964, concluded, with respect to the majority votes required by section 495 of the Labour Code for certain matters other than strike action (see paragraph 255 above), that the requirements laid down did not imply interference by the authorities contrary to the Convention.[1]

258. With regard to the requirement of a two-thirds majority vote of the total membership for strike action, however, non-compliance with which might even entail the penalty of dissolution of a union by administrative authority, the Committee recalled [2] the conclusions of the I.L.O. Committee of Experts on the Application of Conventions and Recommendations concerning the application of Convention No. 87 by the Government of Honduras to the effect that the legal provisions involved constitute " an intervention by the public authorities in the activities of trade unions which is of a nature to restrict the rights of such organisations, contrary to Article 3 of the Convention ".[3]

259. Since the Committee formulated that conclusion, further comments on the matter have been made by the Government in its communication dated 13 September 1965.

260. In its communication dated 13 September 1965 the Government contends that the requirements as to special majorities do not imply " previous authorisation " for the formation of an organisation or interfere with its right to draw up its constitution and rules.

261. In the same communication the Government refers to the provision in section 571 of the Labour Code to the effect that a union concerned in an unlawful stoppage of work may be " ordered to be dissolved if the authority or official issuing the declaration " that the stoppage is unlawful " so decides ". The Government states that this does not mean that a union can be dissolved by administrative decision, because, under section 500, it lies with the Minister of Labour and Social Welfare to decide whether resort shall be had to the provisions of section 500 (2) *(d)*, according to which " application may be made to the labour court to cancel the union's legal personality and to dissolve and liquidate the union itself "; the competence of the labour court in this respect is also set forth in section 665. However, states the Government, there is some discrepancy between section 500 (2) *(c)* of the Code, which permits the suspension of an organisation's legal personality by administrative action, and Article 4 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), according to which workers' organisations shall not be liable to be dissolved or suspended by administrative authority. But, the Government explains, as the decree approving the ratification of the Convention was promulgated prior to the Code of 1959 and has not been repealed, the provisions of the Convention are applicable and there has been no case in which the Ministry has, in fact, suspended the legal personality of any trade union.

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[1] See 79th Report, para. 181.

[2] Ibid., para. 182.

[3] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 45th Session, Geneva, 1961 (Geneva, I.L.O., 1961), p. 70.

262. In this connection the Committee recalls that the I.L.O. Committee of Experts on the Application of Conventions and Recommendations, when examining these provisions in the legislation of Honduras, observed [1] that section 500 (2) *(c)* of the Code was incompatible with Article 4 of the Convention.

263. In all the circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government to the importance which the Governing Body attaches to the principles enunciated in Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by Honduras, according to which workers' organisations shall have the right to draw up their constitutions and rules and to organise their activities and the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof; in Article 4, according to which workers' organisations shall not be liable to be dissolved or suspended by administrative authority; in Article 7, according to which the acquisition of legal personality shall not be made subject to conditions of such a character as to restrict the application of the provisions contained in the foregoing Articles; and in Article 8, according to which 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 the Convention;

(b) to draw attention to the view expressed by the I.L.O. Committee of Experts on the Application of Conventions and Recommendations that the requirement of a two-thirds majority vote of the total membership of the union or branch concerned before a lawful strike can be declared is not compatible with Article 3 of the said Convention, and that section 500 (2) *(c)* of the Labour Code, according to which the Ministry of Labour and Social Welfare may suspend the legal personality of a trade union guilty of a contravention of the Code, is not compatible with Article 4 of the Convention;

(c) to request the Government to be good enough to inform the Governing Body as to the steps it intends to take to bring its legislation in these respects into harmony with the provisions of the Convention;

(d) to express the hope that the Government will now further review the case of the application for legal personality by the complaining organisation in the light of the foregoing considerations.

Case No. 418:

Complaints Presented by the African Trade Union Confederation and the International Confederation of Free Trade Unions against the Government of Cameroon

264. This case has already come before the Committee at its 40th Session in May 1965. On that occasion the Committee submitted an interim report which may be found in paragraphs 324 to 359 of its 83rd Report. The Committee's 83rd Report was approved by the Governing Body at its 162nd Session, during the sitting held on 28 May 1965. The case involved two sets of allegations, one concerning the circumstances surrounding the holding of a congress by the Cameroon Trade Union Federation (F.S.C.) in October 1964, and the other relating to the arrest of certain former leaders of that organisation. The Committee having reached its final conclusions concerning the first set of allegations [2], the paragraphs which follow deal only with the allegations relating to the arrests.

265. The complainants alleged that the following trade union leaders had been arrested by the federal police in Douala: Pierre Mandeng, Isaac Tchuisseu, Samuel Moudourou, Adolphe Mouandjo Dicka, Simon Nbock Mabenga and Raphaël Ngamby. Several of these persons were subsequently transferred without trial from their prison to the political detention camp at Tchollire, where they were detained arbitrarily and denied any contact with the outside world. The complainants pointed out, furthermore, that one of the men concerned, Mr. Raphaël Ngamby, was a Workers' substitute member of the I.L.O. Governing Body.

[1] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 45th Session, Geneva, 1961 (Geneva, I.L.O., 1961), p. 70.

[2] See 83rd Report, paras. 326-329, 333-342, 345-348 and 359 *(a)*.

266. In its observations the Government declared that the arrest of the persons mentioned by the complainants had been motivated by the discovery at Mr. Ngamby's home of subversive documents likely to endanger the internal security of the State, and was consequently totally unconnected with the trade union membership or activities of those concerned.

267. On this aspect of the case the Committee made to the Governing Body the following recommendation, in paragraph 359 of its 83rd Report, which the Governing Body approved:

... the Committee recommends the Governing Body—

. . . . . .

(b) to decide, with regard to the allegations respecting the arrest and detention of trade union leaders—

(i) to request the Government to furnish more detailed additional information as to the exact reasons for the arrest of the persons concerned and, in particular, as to the precise nature of the documents the possession of which by those persons has, in the Government's view, justified the measures taken against them;

(ii) to emphasise the dangers that measures for the detention of trade unionists might entail for freedom of association if such measures are not accompanied by proper judicial safeguards, and the fact that every government should make it a rule to ensure respect for human rights and, in particular, the right of every detained person to receive a fair trial at the earliest possible moment by an impartial and independent judicial authority;

(iii) to request the Government to be good enough to indicate whether the trade unionists mentioned in the complaint have been or are going to be tried with all the safeguards of regular judicial procedure and, if so, to communicate the text of the judgments given and the grounds therefor;

(iv) ... to express the hope that Mr. Ngamby's status as member of the Governing Body will receive due consideration in the light of the Government's obligations under article 40 of the I.L.O. Constitution, according to which members of the Governing Body should, as such, enjoy " such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation ", and of the importance attached by the Governing Body and the Conference to the discharge of these obligations.

. . . . . .

268. These conclusions were brought to the attention of the Government by a letter dated 3 June 1965, to which the Government replied by a communication dated 2 November 1965.

269. In its reply the Government declares that " while remaining convinced of the vital importance of respecting the rights of man and safeguarding the privileges and immunities necessary to enable members of the Governing Body of the I.L.O. to fulfil their functions ... it has an equally pressing duty to punish, with means which it legally possesses under its own Constitution, any individuals guilty of an attempt on the life, safety, welfare or prosperity of the inhabitants of this country, whatever their posts or functions ". The Government also declares that " after a detailed examination of the records of this case, the Government of Cameroon solemnly confirms that Raphaël Ngamby and his associates were dealt with according to current national legislation against citizens convicted of subversive activities ..., affirms that their trade union membership and activities were in no way responsible for these measures and believes that it has furnished the Committee with every explanation in this matter which is compatible with the dignity of an independent State ".

270. The Committee deeply regrets that the Government should have thought fit to adopt this attitude. In paragraphs 353 to 357 of its 83rd Report the Committee has already stated the reasons why, in circumstances such as these, it requests the government concerned for additional information as to the nature of offences alleged to have been committed by arrested trade union leaders and as to the outcome of any legal proceedings which may be brought. Regarding this latter point in particular, the Committee wishes to point out that it has been its constant practice to request governments to furnish particulars of legal proceedings brought and their outcome, and that in many cases governments have been

asked specifically to supply the texts of judgments pronounced.[1] Moreover, where governments have refused to furnish information requested on the ground that the matter was entirely unconnected with the trade union activities of the persons involved, the Committee has pointed out that the Governing Body, on the recommendation of the Committee, has always rejected such arguments, declaring that the question as to whether the grounds for a conviction or a prison sentence relate to a criminal or political offence or to the exercise of trade union rights is not one which can be determined unilaterally by the government concerned in such a way as to make it impossible for the Governing Body to continue with its examination of the case.[2]

271. The Committee would therefore like to stress that the requesting of additional information concerning offences of which arrested trade unionists are alleged to be guilty, and concerning the outcome of legal proceedings, is nothing out of the ordinary but a practice constantly followed by the Committee in order to be in a position to assess to the full the facts at issue in each case. In this connection the Committee would also like to point out that in practically all the cases which have come before it the governments concerned have not failed to co-operate in establishing the facts by furnishing the observations and information requested by the Committee or by the Governing Body.

272. In these circumstances the Committee recommends the Governing Body to draw the attention of the Government of Cameroon to the resolution concerning freedom of association and protection of the right to organise adopted by the First African Regional Conference of the International Labour Organisation (Lagos, December 1960), which, in paragraph 7, "Requests the Governing Body of the International Labour Office to invite governments in respect of whose countries complaints may be made to the Governing Body Committee on Freedom of Association to give their wholehearted co-operation to that Committee, in particular by replying to requests for observations made to them and by taking the fullest possible account of any recommendations which may be made to them by the Governing Body following examination of such complaints ", and, in paragraph 8, " Requests the Governing Body to accelerate as far as possible the procedure of its Committee on Freedom of Association and to give greater publicity to the conclusions of that Committee ", and to request the Government to be good enough to review the situation in the light of this resolution.

273. In a communication dated 5 November 1965 the International Confederation of Free Trade Unions, after appealing for the speeding up of action to bring about the release of the trade unionists mentioned in paragraph 265 above, supplies the following details with regard to their fate. According to the complainants these persons are denied the right to be visited by their families, they are refused medical supplies and they have to make their own arrangements to have food brought in to them; even then their guards deliberately delay the distribution of parcels sent to the prisoners by post.

274. The text of this communication was transmitted to the Government by a letter dated 15 November 1965, but the Government has not yet furnished its observations thereon.

275. In these circumstances the Committee recommends the Governing Body to urge the Government to be good enough to furnish its observations respecting the communication from I.C.F.T.U. to which reference is made in paragraph 273 above.

276. As regards the case as a whole the Committee recommends the Governing Body—

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[1] See 17th Report, Case No. 97 (India), para. 137; 26th Report, Case No. 147 (Union of South Africa), para. 111; 27th Report, Case No. 104 (Iran), paras. 43-44; 31st Report, Case No. 170 (France-Madagascar), para. 52; 34th Report, Case No. 130 (Switzerland), para. 6; 45th Report, Case No. 213 (Federal Republic of Germany), para. 123; 58th Report, Case No. 156 (France-Algeria), para. 175; 67th Report, Case No. 241 (France), para. 22.

[2] See 27th Report, Case No. 143 (Spain), para. 106; 28th Report, Case No. 147 (Union of South Africa), para. 237; 44th Report, Case No. 200 (Union of South Africa), para. 162; 58th Report, Case No. 253 (Cuba), para. 632; 67th Report, Case No. 303 (Ghana), para. 318.

(a) to draw the attention of the Government of Cameroon to the resolution concerning freedom of association and protection of the right to organise adopted by the First African Regional Conference of the International Labour Organisation (Lagos, December 1960), which, in paragraph 7, " Requests the Governing Body of the International Labour Office to invite governments in respect of whose countries complaints may be made to the Governing Body Committee on Freedom of Association to give their whole-hearted co-operation to that Committee, in particular by replying to requests for observations made to them and by taking the fullest possible account of any recommendations which may be made to them by the Governing Body following examination of such complaints ", and, in paragraph 8, " Requests the Governing Body to accelerate as far as possible the procedure of its Committee on Freedom of Association and to give greater publicity to the conclusions of that Committee ", and to request the Government to be good enough to review the situation in the light of this resolution;

(b) to urge the Government once again, bearing in mind the resolution cited in the preceding subparagraph and for the reasons stated in paragraphs 270 and 271 above, to be good enough, firstly, to furnish more detailed additional information as to the exact reasons for the arrest of the persons mentioned in the complaint and, in particular, as to the precise nature of the documents the possession of which by those persons has, in the Government's view, justified the measures taken against them, and, secondly, to indicate whether the trade unionists mentioned in the complaint have been or are going to be tried with all the safeguards of regular judicial procedure and, if so, to communicate the text of the judgments given and the grounds therefor;

(c) to express the hope once again that Mr. Ngamby's status as member of the Governing Body will receive due consideration in the light of the Government's obligations under article 40 of the Constitution of the International Labour Organisation, according to which members of the Governing Body shall, as such, enjoy " such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation ", and of the importance attached by the Governing Body and the Conference to the discharge of these obligations;

(d) to request the Government to be good enough to furnish its observations in respect of the matters raised in the communication from the International Confederation of Free Trade Unions dated 5 November 1965;

(e) to note the present interim report, on the understanding that the Committee will report further when it has received the information specified in subparagraphs *(b)* and *(d)* above.

Case No. 421:

Complaint Presented by the Arab Federation of Petroleum Workers (Cairo) against the Government of the United Kingdom in respect of Aden

277. The Committee has already submitted interim reports on this case in paragraphs 194 to 203 of its 81st Report and paragraphs 516 to 524 of its 85th Report.

278. The United Kingdom has ratified the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and has declared them to be applicable without modification to Aden.

279. It was alleged originally, in the complaint dated 23 November 1964, that nine executive members of the Aden Petroleum Workers' Union had been arrested. At its meeting in November 1965 the Committee had before it a communication from the Government dated 13 August 1965, in which the Government stated that five of the persons concerned had been released, the four still in detention being Messrs. Faruq Mohamed Abdul Rahiman Makkawi (referred to by the complainants as Farouk Mekkawi), Ali Ahman Ali Hamami (named by the complainants as Ali Ahmed Hammami), Ahmed Haidra (named by the

complainants as Ahmed Hiedra) and Taha Ahmad Ghanim (named by the complainants as Taha Ghanem). The authorities stated that these four persons could not then be brought to trial, that they were detained under Emergency Regulations and that their release date could not be anticipated, as their presence at large at that time would be prejudicial to public order and security. The Government repeated its earlier statement that the detention of the persons in question arose solely from the need to combat subversion and terrorism and was in no way connected with trade union activities.

280. In these circumstances the Committee submitted to the Governing Body the recommendations contained in paragraph 524 of its 85th Report, which reads as follows:

In these circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government once again to the importance which it attaches to the observance of the right of all detained persons to receive a fair trial at the earliest possible moment;

(b) to draw attention to the fact that the four trade unionists still in detention have now been held for over 12 months without trial;

(c) to express the hope that, in accordance with the principle enunciated in subparagraph *(a)* above, these persons will be either released or brought to trial at the earliest possible moment;

(d) to request the Government to inform the Governing Body as a matter of urgency as to what steps it is intended to take in this connection;

(e) to take note of the present interim report, it being understood that the Committee will report further on the matter to the Governing Body when the information referred to in subparagraph *(d)* above has been received.

281. The 85th Report of the Committee was approved by the Governing Body at its 163rd Session (November 1965) and the conclusions cited above were brought to the notice of the Government by a letter dated 29 November 1965.

282. In a communication dated 21 January 1966 the Government states that a Review Tribunal was set up and became operative in October 1965. The Tribunal consists of Mr. E. Light, Chief Magistrate, Aden State (Chairman), Mr. S. N. Iyer, Chairman of the Aden Council of Legal Practitioners, and Mr. A. M. Said Asnag. By 31 December 82 cases had been reviewed and there remained in detention only three persons whose cases had not been reviewed. The Tribunal's recommendations in respect of 40 detainees had still to be submitted to the High Commissioner. Since 1 October 1965 four persons had been released unconditionally and five released from detention and placed under restricted residence, as a result of administrative review.

283. The Committee observes that in this communication the Government makes no specific reference to the four trade unionists named in paragraph 279 above.

284. In these circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government once again to the importance which it attaches to the observance of the right of all detained persons to receive a fair trial at the earliest possible moment;

(b) to draw attention to the fact that the four trade unionists referred to in paragraph 279 above had already been held for over 12 months without trial when the case was further reported on to the Governing Body in November 1965;

(c) to take note of the Government's statement that a Review Tribunal has been examining cases of detainees since October 1965 and that a number of detainees have been released;

(d) to express its regret, however, that the Government's latest observations give no indication of the situation of the four trade unionists in question;

(e) to express the hope that, in accordance with the principle enunciated in subparagraph *(a)* above, these four trade unionists, if still in detention, will either be released or brought to trial at the earliest possible moment;

(f) to request the Government to inform the Governing Body as a matter of urgency as to the present situation of the four trade unionists and, if they are still detained, as to what steps it is intended to take in this connection;

(g) to take note of the present interim report, it being understood that the Committee will report further on the matter to the Governing Body when the information referred to in subparagraph *(f)* above has been received.

Case No. 453:

Complaints Presented by the Pan-Hellenic Federation of Workers in Electricity and Public Utility Undertakings, the Greek Federation of Press Employees and the Pan-Hellenic Federation of Accountants against the Government of Greece

285. The original complaints, in order of receipt, are contained in two telegrams dated 26 and 27 August 1965 addressed directly to the I.L.O. and sent respectively by the Pan-Hellenic Federation of Workers in Electricity and Public Utility Undertakings and the Greek Federation of Press Employees, and in a communication dated 25 September 1965, also sent directly to the I.L.O., by the Pan-Hellenic Federation of Accountants. In two communications, dated respectively 23 September and 20 October 1965, the first two complainants furnished supplementary information in support of their complaints. All of these communications were forwarded to the Government, which furnished its observations in two communications dated 11 October and 17 November 1965.

286. Greece has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), as well as the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

287. Essentially, the complainants allege that, on the occasion of a meeting followed by a procession on 19 August 1965 at Athens, four leaders of the Greek Federation of Press Employees were arrested. They were Messrs. Nicolas Katlas, President, Anasthase Dimou, General Secretary, Jean Papayianneas, Administrative Secretary, and Antoine Gerolymatos, member of the Executive Council.

288. More precisely, the complainants state that the Greek Federation of Press Employees had organised a meeting for the purpose of claiming freedom of the press and campaigning against unconstitutional activities; following this meeting, which was attended by a large number of participants, a peaceful procession took place. According to the complainants, the authorities used the pretext of two motor cars being set on fire by unidentified persons two hours after the dispersal of the demonstration organised by the Greek Federation of Press Employees, to arrest the above four leaders and keep them under preventive detention. The complainants maintain that the acts of which these leaders were accused were in reality the work of *agents provocateurs.*

289. In its comments the Government states the following: " During the night of 20 August 1965, certain events were provoked in Athens which led to disturbance of law and order and to acts of violence resulting in injuries to members of the police; these events were provoked by persons who participated in the demonstrations organised by the Greek Federation of Press Employees for purely political reasons."

290. The Government goes on to state that " penal proceedings have been instituted by the Court of Summary Jurisdiction of Athens against nine members of the Executive of the Federation of Press Employees for acts of incitement to resistance and breach of the peace ". The Court decided that four of these persons—those mentioned by the complainants—should be placed under preventive arrest. Two of them, Messrs. Katlas and Gerolymatos, have been released on bail. According to the Government, an inquiry is being held to establish the liability of the four persons concerned.

291. The Committee considers it difficult to establish the extent to which the demonstrations concerned may be regarded as trade union activities, or whether they were purely political in character. The fact that, according to the complainants themselves, they were intended among other things to " campaign against unconstitutional activities " gives the impression that political elements were not absent from the proceedings. The Committee also notes that the demonstrations in question seem to have been marked by acts of violence; though the views of the complainants and the Government do not coincide as regards who should be considered responsible for those acts, both parties agree that the acts were committed.

292. Having made these observations, the Committee is also obliged to note that the four persons mentioned in the complaints—all of them trade union leaders—were placed under preventive arrest, although two of them were later released on bail. The Committee reiterates the opinion expressed in preceding cases [1] to the effect that, in all cases in which trade union leaders are preventively detained, these measures may involve a serious interference with the exercise of trade union rights; in such cases it has always insisted on the importance of ensuring that all detained persons receive a fair trial at the earliest possible moment by an impartial and independent judicial authority.

293. In view of the considerations stated in the preceding paragraph and of the Government's reply stating that judicial proceedings have been initiated to establish liability in this case, the Committee recommends the Governing Body to request the Government to be good enough to inform it of the results of these proceedings and of the present situation with regard to the four trade union leaders named in the complaints.

Geneva, 21 February 1966.

(Signed) Roberto AGO,
Chairman.

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[1] See Fourth Report, Case No. 5 (India), paras. 18-51, Case No. 10 (Chile), paras. 52-88, and Case No. 30 (United Kingdom-Malaya), paras. 140-161; Sixth Report, Case No. 47 (India), paras. 704-736, and Case No. 49 (Pakistan), paras. 770-813; 12th Report, Case No. 87 (India), paras. 233-240, Case No. 63 (Union of South Africa), paras. 259-276, and Case No. 16 (France-Morocco), paras. 292-428; 13th Report, Case No. 62 (Netherlands), paras. 18-89; 16th Report, Case No. 112 (Greece), paras. 57-86; 17th Report, Case No. 104 (Iran), paras. 157-221; 24th Report, Case No. 142 (Honduras), paras. 97-148; 25th Report, Case No. 136 (United Kingdom-Cyprus), para. 154; 27th Report, Case No. 143 (Spain), para. 186; 83rd Report, Case No. 303 (Ghana), para. 225, and Case No. 418 (Cameroon), para. 358.

Eighty-eighth Report

Introduction

1. The Committee on Freedom of Association set up by the Governing Body at its 117th Session (November 1951) met at the International Labour Office, Geneva, on 14 February 1966, under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body.

2. In accordance with the existing procedure [2] the Committee recommends the Governing Body to examine the present report at its 164th Session.[3]

3. The Committee examined the cases relating to Burundi (Cases Nos. 282 and 401), with respect to which it submits in the present report, for the approval of the Governing Body, the conclusions which it has now reached.

Cases Nos. 282 and 401:

Complaints Presented by the International Federation of Christian Trade Unions and the Pan African Workers' Congress against the Government of Burundi

4. In a cable dated 2 November 1965 the Secretary-General of the International Federation of Christian Trade Unions (I.F.C.T.U.) stated that Mr. Niyirikana, President of the Burundi Christian Trade Union, and Mr. Mayondo, counsellor of that organisation, had been executed on 25 October 1965 at Bujumbura, without trial, and that other trade union leaders had been placed on a list of persons to be executed. His Federation asked the Director-General to intervene urgently on behalf of other leaders who, it contended, were also to be executed.

5. Immediately upon receipt of this cable, on 3 November 1965, the Director-General despatched a cable to the Prime Minister of Burundi in which, after indicating the contents of the cable received from I.F.C.T.U., he stated that, in accordance with the existing procedure, the complaint would be brought to the notice of the Committee on Freedom of Association set up by the Governing Body for the purpose of examining such complaints in accordance with the procedure established at the request of the United Nations. The Director-General informed the Prime Minister that the Committee would meet on 8 November, but said that he felt obliged to bring the matter to the personal attention of the Prime Minister without delay, and that he would keenly appreciate receiving information on the matter.

6. Having noted, at its meeting in November 1965, that no reply to the Director-General's cable had been received, the Committee recommended the Governing Body, in paragraph 324 of its 85th Report—

(a) to draw the attention of the Government of Burundi to the importance which it has always attached to the right of all detained persons to receive a fair trial by an impartial and independent judicial authority at the earliest possible moment;

(b) to express its grave concern in view of the allegations it has before it concerning executions and threatened executions of trade union leaders in Burundi without trial;

(c) to urge the Government to furnish to the Governing Body, as a matter of special urgency, its observations on the matters raised in the cable from I.F.C.T.U. dated 2 November 1965 which

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[1] See footnote 2, p. 1.

[2] See 29th Report, para. 12, amended by 43rd Report, para. 5.

[3] See footnote 1, p. 2.

the Director-General brought to the personal attention of the Prime Minister of Burundi in a cable dated 3 November 1965.

The Governing Body approved these recommendations on 18 November 1965.

7. The allegations made by I.F.C.T.U. on 2 November 1965 followed earlier allegations made on 13 May, 10 July and 23 October 1964. The essence of these earlier allegations was that leading and active members of the Burundi Christian Trade Union were in prison in Burundi and, subsequently, that they were about to be executed.

8. In November 1965 the Commitee observed that, after having failed to reply to six separate requests to furnish its observations thereon, the Government, in a communication dated 8 September 1965, had declared simply that " the persons concerned in the complaint have been dealt with not as trade unionists but as individual persons ". The Committee, following its constant practice in cases in which a government replies that criminal proceedings have no relationship to the exercise of trade union rights, therefore recommended the Governing Body, in paragraph 319 of its 85th Report—

(a) to draw the attention of the Government to the fact that the question as to whether the matter in respect of which sentences have been imposed on trade unionists or detentions ordered is to be regarded as a matter relating to a criminal offence or a matter relating to the exercise of trade union rights is not one which can be determined unilaterally by the government concerned, in such a manner as to prevent the Governing Body from inquiring further into it;

(b) to request the Government to be good enough to furnish, as a matter of urgency, information as to the exact reasons for the detentions of the persons referred to in the complaints dated 10 July and 23 October 1964 and as to their present situation, and to state whether legal proceedings have been instituted against any of the persons concerned and, if so, to furnish copies of the judgments given and of the reasons adduced therein;

. . . . . .

The Governing Body approved these recommendations on 18 November 1965.

9. A still earlier series of allegations that on 15 January 1962 four trade unionists, Messrs. Nduwabike, Ndinzurwaha, Ntaymerijakiri and Baravura, had been assassinated at Usumbura at the instigation of the authorities, has been under review by the Committee since 1962. The Government has been requested no less than 15 times to furnish its observations on these allegations, without any reply to these requests ever having been received. In these circumstances the Committee, in November 1965, recommended the Governing Body to draw the attention of the Government to the resolution concerning freedom of association and protection of the right to organise adopted unanimously by the First African Regional Conference of the International Labour Organisation (Lagos, December 1960) and, more particularly, to paragraphs 7 and 8 thereof, which read as follows:

> 7. [The Conference] Requests the Governing Body of the International Labour Office to invite governments in respect of whose countries complaints may be made to the Governing Body Committee on Freedom of Association to give their wholehearted co-operation to that Committee, in particular by replying to requests for observations made to them and by taking the fullest possible account of any recommendations which may be made to them by the Governing Body following examination of such complaints;
>
> 8. Requests the Governing Body to accelerate as far as possible the procedure of its Committee on Freedom of Association and to give greater publicity to the conclusions of that Committee, particularly when certain governments refuse to co-operate loyally in the consideration of complaints submitted against them.

The Governing Body likewise approved this recommendation on 18 November 1965.

10. These conclusions were brought to the notice of the Government, in accordance with the normal procedure, by a letter dated 23 November 1965. The Director-General drew these conclusions to the personal attention of the Prime Minister of Burundi by a telegram of the same date. In accordance with the wishes expressed during the discussion of the matter by the Governing Body on 18 November 1965, he informed him of the anxiety manifested by the Governing Body with regard to the matter and pointed out to him that,

at the request of the Governing Body, the Committee's conclusions had been brought to the notice of the Secretary-General of the United Nations. No reply has been received to these various communications, despite a letter of reminder having been sent to the Government on 10 January 1966.

11. The Secretary of State for Justice of Burundi was received at the International Labour Office at his own request, on 19 November 1965, by a representative of the Director-General. During the interview which took place explanations were given to him concerning the circumstances in which the complaints against his country had been received, the general procedure established jointly with the United Nations in accordance with which complaints are examined and the steps taken in the case relating to Burundi up to the discussion in the Governing Body and the taking of its decisions. It was emphasised to him how important it was that his Government should furnish observations on the questions raised in the case, especially as regards the circumstances in which the trade unionists referred to in the complaints had been executed. After having stated that the trade unionists concerned had been executed in accordance with judgments rendered in due and regular form, the representative of the Government of Burundi gave an assurance that the texts of the judgments would be transmitted to the I.L.O. in the course of the month of December 1965. So far, no information of this kind has been received by the Director-General.

12. The Committee deplores the fact that, in spite of the assurances which have been given, all requests addressed to the Government to furnish its observations on the matters raised in the complaints have elicited no reply.

13. In these exceptional circumstances the Committee, having received no co-operation from the Government in respect of a matter of the utmost gravity, has decided to request the complainants to furnish any information that they may have concerning recent developments in Burundi. It has also taken into account the fact that further executions are widely reported to have taken place in Burundi since its conclusions on the case were adopted by the Governing Body in November 1965. In particular, the Committee has had before it a statement issued by the International Commission of Jurists—a non-governmental organisation seeking to foster respect for the rule of law whose members include the present or former Chief Justices or Justices of Australia, Burma, Canada, Ceylon, Chile, India, Nigeria, Norway, Senegal and Sudan—on the basis of information furnished by its observer, Professor Philippe Graven, of Swiss nationality and a Doctor of Laws of the University of Geneva, who arrived in Burundi on 14 December 1965.

14. According to this statement some 86 persons have been sentenced to death by military tribunals and executed since 19 October 1965, including the President and the First and Second Vice-Presidents of the House of Representatives, the President and both Vice-Presidents of the Senate, the Minister of Economic Affairs, the President of the People's Party and the President of the Christian Trade Union.

15. Even after the arrival of the observer of the Commission in Burundi, the statement continues, 22 persons, including the President of the Senate, were executed. The statement also mentions that something between 500 and 1,200 persons are detained.

16. The statement concludes:

> No responsible body could pass over in silence the executions of all the officers of both houses of parliament of a country and of many of the principal leaders of a racial group without some evidence that justice and legality had not been violated. That these events should have occurred with little or no publicity is in itself a disquieting factor.

17. The responsibility of the International Labour Organisation in the matter is limited to the protection of trade union rights, in respect of which it has responsibility under the I.L.O. Constitution and has accepted responsibility in agreement with the United Nations. It is evident that the tragic events in Burundi extend far beyond the scope of violation of trade union rights and concern directly the fundamental human rights of a considerable

sector of the population of Burundi, and that, in these circumstances, the responsibility of the International Labour Organisation for the protection of trade union rights cannot be exercised effectively without parallel action by the United Nations to protect the fundamental human rights of the Burundi population as a whole. In the United Nations responsibility for matters relating to human rights rests with the Commission on Human Rights of the Economic and Social Council, the Economic and Social Council itself and the General Assembly. The Committee therefore recommends the Governing Body to ask the Director-General to request the Secretary-General of the United Nations to bring to the attention of the Commission on Human Rights of the Economic and Social Council at its forthcoming session as a matter of urgency the question of the violation of human rights in Burundi.

18. In all the circumstances the Committee recommends the Governing Body—

(a) to express its grave concern with regard to the very serious allegations of arrests and executions of trade union leaders contained in the complaints, and its profound regret that the Government of Burundi has refused to lend its co-operation in the examination thereof;

(b) to reaffirm the importance which it has always attached to the right of all detained persons to receive a fair trial by an impartial and independent judicial authority at the earliest possible moment;

(c) to repeat its request to the Government to be good enough to furnish, as a matter of urgency, information with regard to the matters referred to in paragraphs 4, 7 and 9 above;

(d) to note that the Committee has decided to request the complainants to furnish any information that they may have concerning recent developments in Burundi;

(e) to ask the Director-General to request the Secretary-General of the United Nations to bring to the attention of the Commission on Human Rights of the Economic and Social Council at its forthcoming session as a matter of urgency the question of the violation of human rights in Burundi.

Geneva, 21 February 1966.

(Signed) Roberto AGO,
Chairman.

INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

SUPPLEMENT II

Vol. XLIX, No. 3 *July 1966*

Reports of the Governing Body Committee on Freedom of Association (89th, 90th, 91st, 92nd)

EIGHTY-NINTH REPORT

NINETY-FIRST REPORT

INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

SUPPLEMENT II

Vol. XLIX, No. 3 *July 1966*

Reports of the Governing Body Committee on Freedom of Association

Eighty-ninth Report [1]

INTRODUCTION

1. The Committee on Freedom of Association set up by the Governing Body at its 117th Session (November 1951) met at the International Labour Office, Geneva, on 14 February 1966, under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body. The member of the Committee of Indian nationality was not present during its examination of the case relating to India (Case No. 436).

[1] For the First, Second and Third Reports of the Committee on Freedom of Association, see International Labour Organisation: *Sixth Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1952), Appendix V; for the Fourth, Fifth and Sixth Reports, see idem: *Seventh Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1953), Appendix V; for the Seventh, Eighth, Ninth, Tenth, 11th and 12th Reports, see idem: *Eighth Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1954), Appendix II; for the 13th and 14th Reports, see *Official Bulletin*, Vol. XXXVII, 1954, No. 4; for the 15th and 16th Reports, see ibid., Vol. XXXVIII, 1955, No. 1; for the 17th and 18th Reports, see ibid., Vol. XXXIX, 1956, No. 1; for the 19th, 20th, 21st, 22nd, 23rd and 24th Reports, see ibid., Vol. XXXIX, 1956, No. 4; for the 25th and 26th Reports, see ibid., Vol. XL, 1957, No. 2; for the 27th and 28th Reports, see ibid., Vol. XLI, 1958, No. 3; for the 29th to 45th Reports, and communications relating to the 23rd and 27th Reports, see ibid., Vol. XLIII, 1960, No. 3; for the 46th to 57th Reports, see ibid., Vol. XLIV, 1961, No. 3; for the 58th Report, see ibid., Vol. XLV, No. 1, Jan. 1962, Supplement; for the 59th and 60th Reports, see ibid., Vol. XLV, No. 2, Apr. 1962, Supplement I; for the 61st to 65th Reports, see ibid., Vol. XLV, No. 3, July 1962, Supplement II; for the 66th Report, see ibid., Vol. XLVI, No. 1, Jan. 1963, Supplement; for the 67th and 68th Reports, see ibid., Vol. XLVI, No. 2, Apr. 1963, Supplement I; for the 69th, 70th and 71st Reports, see ibid., Vol. XLVI, No. 3, July 1963, Supplement II; for the 72nd Report, see ibid., Vol. XLVII, No. 1, Jan. 1964, Supplement; for the 73rd to 77th Reports, see ibid., Vol. XLVII, No. 3, July 1964, Supplement II; for the 78th Report, see ibid., Vol. XLVIII, No. 1, Jan. 1965, Supplement; for the 79th to 81st Reports, see ibid., Vol. XLVIII, No. 2, Apr. 1965, Supplement; for the 82nd to 84th Reports, see ibid., Vol. XLVIII, No. 3, July 1965, Supplement II; for the 85th Report, see ibid., Vol. XLIX, No. 1, Jan. 1966, Supplement; and for the 86th to 88th Reports, see ibid., Vol. XLIX, No. 2, Apr. 1966, Supplement.

2. In accordance with the procedure laid down in paragraph 12 of its 29th Report, as amended by paragraph 5 of its 43rd Report, the Committee recommends the Governing Body to examine the present report at its 165th Session.[1]

3. The Committee considered—*(a)* 19 cases in which the complaints had been communicated to the governments concerned for their observations, namely the cases relating to Belgium (case No. 376), Japan (Case No. 398), Pakistan (Case No. 407), Bolivia (Case No. 409), India (Case No. 436), Congo (Leopoldville) (Case No. 437), Paraguay (Case No. 439), Costa Rica (Case No. 444), Morocco (Case No. 445), Panama (Case No. 446), Uganda (Case No. 448), United Kingdom (St. Christopher-Nevis-Anguilla) (Case No. 449), Colombia (Case No. 452), Honduras (Case No. 454), Ireland (Case No. 455), Mexico (Case No. 460), Spain (Case No. 461), Congo (Leopoldville) (Case No. 463) and Greece (Case No. 464); and *(b)* two complaints relating to Mexico (Case No. 457) and Uruguay (Case No. 459), which were submitted to the Committee for opinion prior to being communicated to the governments concerned.

Cases the Examination of Which the Committee Has Adjourned

4. The Committee adjourned until its next session its examination of the case relating to Bolivia (Case No. 409), with respect to which it is still awaiting further information previously requested from the government concerned.

5. The Committee adjourned until its next session its examination of the cases relating to Paraguay (Case No. 439), Panama (Case No. 446), Uganda (Case No. 448), Ireland (Case No. 455), Mexico (Case No. 460), Spain (Case No. 461) and Greece (Case No. 464), in which it has not yet received the observations of the governments concerned. With regard to the cases relating to Panama (Case No. 446), Uganda (Case No. 448) and Ireland (Case No. 455), the Committee took note of communications from the governments concerned indicating that the matter was receiving attention.

6. The Committee also adjourned until its next session its examination of the cases relating to Belgium (Case No. 376), Japan (Case No. 398) and Honduras (Case No. 454).

Cases in Which the Committee Submits Its Conclusions to the Governing Body

7. In the present report the Committee submits for the approval of the Governing Body the conclusions which it has now reached concerning the remaining cases before it, namely the cases relating to Pakistan (Case No. 407), India (Case No. 436), Congo (Leopoldville) (Case No. 437), Costa Rica (Case No. 444), Morocco (Case No. 445), United Kingdom (St. Christopher-Nevis-Anguilla) (Case No. 449), Colombia (Case No. 452) and Congo (Leopoldville) (Case No. 463), and the complaints relating to Mexico (Case No. 457) and Uruguay (Case No. 459), which were submitted to the Committee for opinion. These conclusions may be briefly summarised as follows:

(a) the Committee recommends that the complaints relating to Mexico (Case No. 457) and Uruguay (Case No. 459), which were submitted to it for opinion, should, for the reasons indicated in paragraphs 8 to 20 of this report, be dismissed without being communicated to the governments concerned;

(b) the Committee recommends that, for the reasons indicated in paragraphs 21 to 81 of this report, and subject to the observations contained in those paragraphs, the cases relating to Pakistan (Case No. 407), India (Case No. 436), Morocco (Case No. 445), United Kingdom (St. Christopher-Nevis-Anguilla) (Case No. 449) and Congo (Leopoldville) (Case No. 463) should be dismissed as not calling for further examination;

(c) with regard to the cases relating to Congo (Leopoldville) (Case No. 437), Costa Rica (Case No. 444) and Colombia (Case No. 452), the Committee, for the reasons indicated

[1] The 89th, 90th and 91st Reports of the Committee on Freedom of Association were examined and approved by the Governing Body at its 165th Session (May 1966).

in paragraphs 82 to 116 of this report, has presented an interim report stating certain conclusions to which it wishes to draw the attention of the Governing Body.

Complaints Which the Committee Recommends Should Be Dismissed without Being Communicated to the Governments Concerned

Case No. 457:

Complaint Presented by the Federation of Workers' Revolutionary Organisations against the Government of Mexico (Mexico)

8. In a communication dated 14 October 1965, addressed directly to the I.L.O., the Federation of Workers' Revolutionary Organisations (F.O.R.O.), of Mexico, asked for examination by the Committee on Freedom of Association of the complaints " on account of infringements of their trade union rights " presented by ten Mexican petroleum workers (the complaints being annexed to the communication). The main object of these complaints is to get the I.L.O. to approach the Government of Mexico with a view to the latter's satisfying certain individual claims made by the said workers against the state undertaking, Petróleos Mexicanos. These claims related to alleged non-implementation by the undertaking of clauses of collective agreements and provisions of labour legislation with respect to such questions as payment of bonuses, recognition of seniority for the purpose of appointments to permanent posts, etc. The judicial authorities are also accused of having rendered decisions unfavourable to the workers on various occasions. However, the documents also contain allegations, couched in general terms, relating to alleged intervention by the public authorities and the existing trade union in the undertaking with the object of supporting the repressive measures which the undertaking is alleged to take against the workers, who are thereby prevented from exercising their trade union rights.

9. Before transmitting the complaint to the Mexican Government the Director-General, on 3 November 1965, notified the Federation of Workers' Revolutionary Organisations that any further information it might wish to submit in support of its complaint must be sent before 5 December 1965.

10. Up to the present no additional communication has been received from the Organisation in question, but on the other hand a communication dated 30 November 1965 has been received, signed by 15 workers—including the ten whose complaints had originally been transmitted by F.O.R.O.—containing further information relating to claims on labour matters put forward by the signatories against the undertakings, general statements on economic and political questions relating to the petroleum industry and charges against the public authorities, Petróleos Mexicanos and the trade union which functions in the undertaking. The said workers accuse the parties in question of violating trade union freedom and democracy but do not explicitly mention concrete acts relating specifically to trade union rights the exercise of which is claimed have been infringed or impeded.

11. Subsequently, a further communication, dated 11 January 1966, was received, signed by eight other Mexican petroleum workers; this communication refers specifically to the complaint of F.O.R.O. and also complains of the non-recognition of the right of the persons concerned to permanent employment on the basis of seniority and of the alleged dismissal of seven workers following decisions of the Supreme Court of Justice. The communication also alleges that 18,924 temporary employees in the Mexican petroleum industry are in an unstable situation with regard to their employment and are prohibited from joining the Petroleum Workers' Union of Mexico, which is a party to the collective agreement, or any other union that might be established. It is alleged that these temporary workers are thus deprived of all means of furthering their rights with regard to seniority, social security and other advantages accorded to workers having permanent contracts.

12. Finally, by a telegram addressed to the I.L.O. Field Office in Mexico and transmitted to the Director-General on 28 January 1966, Mr. Juan Montalvo Rosas declares that Petróleos Mexicanos and the Mexican Government are taking reprisals against

Mr. Moisés Madrid Orozco, who submitted complaints to the I.L.O., by depriving him of rights acquired by him by virtue of his 32 years' service with the company. Both Mr. Juan Montalvo Rosas and Mr. Moisés Madrid Orozco were among the workers mentioned in the complaint of F.O.R.O. referred to in paragraph 8 above.

13. The Director-General decided to submit the complaint in question and the other communications referred to above to the Committee for its opinion, according to the provision in the procedure under which, if he has difficulty in deciding whether a specific complaint should be considered as sufficiently substantiated, he may consult the Committee before transmitting the complaint to the government concerned.[1]

14. Under the procedure in force for the examination of complaints of infringement of trade union rights, complaints are receivable when they are presented by a national organisation directly concerned in the matter, and from this point of view the communication from F.O.R.O. dated 14 October 1965 should be considered as formally receivable, to the extent that it contains allegations of violations of trade union freedom. Nevertheless, while that communication and its annexes refer in general terms to infringements of trade union rights, they do not indicate precisely the nature of the specifically trade union rights which it is claimed have been infringed, or the circumstances in which such infringements are alleged to have taken place.

15. As regards the other communications mentioned above, the one referred to in paragraph 11 contains fairly precise allegations relating to denial of the right to join or form a trade union, and the one referred to in paragraph 12 mentions reprisals by the Government and by an undertaking against a worker on account of activities which might be connected with the exercise of trade union rights; however, the Committee observes that these allegations are not formulated in the original communication from the complaining organisation, which has neither signed nor endorsed them, but are presented in the first case by 15 workers, in the second case by eight workers, and in the third case by one worker. A question therefore arises as to their receivability. According to the procedure in force communications emanating from groups of persons having no established entity or from persons in their individual capacity are not receivable.

16. In these circumstances, having regard to the fact that the accusations made by the Federation of Workers' Revolutionary Organisations refer essentially to questions which are not within the competence of the Committee, that the allegations of infringements of freedom of association contained therein are couched in terms so vague as not to permit examination of the question on its merits, that the complainant organisation has not made use of the possibility given to it of submitting further information in support of such allegations, and that the other communications mentioned are not receivable under the procedure in force, the Committee recommends the Governing Body to decide that the complaint in question should be dismissed without being communicated to the government concerned.

Case No. 459:

Complaint Presented by the American Confederation of Bank Employees against the Government of Uruguay

17. The complaint is contained in a communication addressed directly to the I.L.O., on 18 October 1965, by Mr. Aníbal Collazo, in the name of the American Confederation of Bank Employees. The complainant protests against the alleged brutal repression of workers in Uruguay, without giving any further details, and asks for immediate intervention by the I.L.O.

18. Before transmitting the complaint to the Government of Uruguay the Director-General wrote to the organisation in question on 29 October 1965, informing it that any further information which it might wish to furnish in substantiation of the complaint should be forwarded to him within one month. No communication containing additional information has so far been received from the American Confederation of Bank Employees.

[1] See Ninth Report, para. 23 *(d)*.

19. In accordance with the procedure in force [1] the Director-General decided to submit the complaint to the Committee for its opinion as to whether it can be regarded as sufficiently substantiated to justify its being communicated to the government concerned for observations.

20. As the organisation in whose name the complaint was presented has not availed itself of the opportunity offered to it to furnish further information in substantiation of the complaint, which is in such vague terms as to preclude any examination of the case on its merits, the Committee recommends the Governing Body to decide that the complaint should be dismissed without being communicated to the government concerned.

Cases Which the Committee Considers Do Not Call for Further Examination

Case No. 407:

Complaint Presented by the Employees' Union of the West Pakistan Industrial Development Corporation against the Government of Pakistan

21. The complaint by the Employees' Union of the West Pakistan Industrial Development Corporation was submitted in a communication dated 7 July 1964. The Government furnished its observations thereon in a letter dated 12 September 1964.

22. Pakistan has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

23. In their communication the complainants stated that their organisation had about 500 members. They alleged that the management of the West Pakistan Industrial Development Corporation, the employees of which had formed the union in question, engaged in unfair practices, infringed labour legislation and adopted a hostile attitude towards the union. They claimed that a number of workers had suffered because of the Corporation's actions.

24. In its reply dated 12 September 1964 the Government stated that in its view the Corporation had acted in accordance with the law. The workers referred to by the complainants were suspended by the management and the question of whether or not they should be dismissed was pending before the Industrial Court. The Government also supplied a number of details regarding the events referred to in the complaint.

25. Section 5 of the Industrial Disputes Ordinance, 1959 [2], states that in the case of any industrial establishment in which 50 or more workmen are employed the employer must constitute a works committee consisting of representatives of the management and workmen. The regulations issued under this ordinance lay down the procedure for selecting the workers' representatives. Section 40 of these regulations requires the employer to ask the registered trade union for details of the total number of workers belonging to it and a breakdown of this figure for each section or department within his undertaking. In accordance with this regulation the management of the Corporation requested the necessary information from the employees' union in order to appoint the works committee.

26. At that time the union had made an application to the Industrial Court for the formation of a joint advisory board in the Corporation. In its view, the works committee could not be constituted without the permission of the Industrial Court, in view of the workers' demand still pending before the latter. The management did not accept this argument and went ahead with the formation of the works committee in accordance with the provisions of the Industrial Disputes Ordinance and proceeded to select the workers' representatives.

27. As a result the employees' union distributed copies of a circular protesting against the management's action. This circular showed that the union urged the workers not to volunteer to sit on the management committee. In fact, however, 15 or 16 individuals

[1] See Ninth Report, para. 23 *(d)*.

[2] Ordinance No. LVI dated 19 October 1959 (I.L.O. : *Legislative Series*, 1959—Pak. 1).

put forward their names, but the management excluded all those who were connected with the union in any way and selected five persons to sit on the committee. The circular added that in this way the management had formed a works committee consisting entirely of its own nominees. The workers would have nothing to do with the committee and its decisions would not be binding on the union. The circular asked the workers to continue to submit their grievances through the union, which would take such action as was necessary. The management had decided to disregard the law, justice and principles at every stage. The union, for its part, had decided to make the management see the right course with the assistance of law and the Government and the co-operation of the workers themselves. After giving the names of the individuals who had joined the "illegal" works committee, the circular said that they would henceforth be excluded from the protection of the union, adding that if by a certain date they dissociated themselves from the committee the union would give them protection once more.

28. The Government stated in its reply that as this circular contained malicious and harmful allegations the management conducted an inquiry and decided as a result that seven of the 11 union officials involved were guilty of undermining discipline and it thereupon decided to suspend them. It also applied to the Industrial Court to be allowed to dismiss them. In doing so, it acted in accordance with section 30 of the Industrial Disputes Ordinance, which states that a union official may not during the pendency of any proceedings be dismissed for misconduct not connected with the industrial dispute except with the previous permission of the Industrial Court; he may, however, be placed under suspension pending the disposal of the application to the Court for such permission. The Government adds that, should the Industrial Court decide that the management's action was justified, it could allow the workers in question to be dismissed; should it decide otherwise, however, they would be reinstated in their jobs.

29. When it had the case before it at its meeting in November 1964 the Committee noted that the union officials referred to in the complaint were suspended following the publication of the circular on the ground that they were guilty of undermining discipline by making malicious and harmful allegations in the said circular. In other words, the suspension was ordered as a result of certain actions carried out by a number of workers in the undertaking in their capacity as union officials.

30. The Committee recalled that, in a number of previous cases [1], it had emphasised that one of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment—such as dismissal, transfer or other prejudicial matters—and that this protection is particularly desirable in the case of trade union officials because, in order to be able to perform their trade union duties in full independence, they must have the guarantee that they will not be prejudiced on account of the mandate which they hold from their trade unions.[2] The Committee has stated that one way of ensuring such protection is to provide that these officials may not be dismissed either during their term of office or for a certain time thereafter, except, of course, for serious misconduct.[3] The Committee has also considered that the guarantee of such protection in the case of trade union officials is also necessary in order to ensure that effect is given to the fundamental principle that workers' organisations should have the right to elect their representatives in full freedom.[3]

31. The Committee noted that Ordinance No. XIV of 1960 [4] establishes certain safeguards for trade unions and their officials in that certain unfair practices of employers are punishable by fines. It is an unfair practice on the part of an employer—

[1] See 14th Report, Case No. 105 (Greece), paras. 117-145; 19th Report, Case No. 97 (India), paras. 39-49; 58th Report, Case No. 234 (Greece), para. 578; 61st Report, Case No. 256 (Greece), para. 40; 72nd Report, Case No. 309 (Greece), para. 155.

[2] See 19th Report, Case No. 97 (India), para. 48; 58th Report, Case No. 234 (Greece), para. 578; 61st Report, Case No. 256 (Greece), para. 40; 72nd Report, Case No. 309 (Greece), para. 155.

[3] See 14th Report, Case No. 105 (Greece), para. 134; 58th Report, Case No. 234 (Greece), para. 578; 61st Report, Case No. 256 (Greece), para. 40; 72nd Report, Case No. 309 (Greece), para. 155.

[4] Ordinance No. XIV dated 24 April 1960, to amend the Trade Unions Act, 1926 (I.L.O.: *Legislative Series*, 1960—Pak. 3).

28 I. . . . . .

(a) to interfere with, restrain, or coerce his workmen in the exercise of their rights to organise, form, join or assist a trade union of their choice and to engage in concerted activities for the purpose of mutual aid or protection;

(b) to interfere with the formation or administration of any trade union or to contribute financial or other support to it;

(c) to discharge, or otherwise discriminate against, any officer of a recognised trade union because of his being such an officer;

(d) to discharge, or otherwise discriminate against, any workman because he has made allegations or given evidence in an inquiry or proceeding relating to any matter such as is referred to in subsection (1) of section 28 D.

It is also an unfair practice on the part of an employer to refuse to allow a union to post up notices in any of the places where its members work. An employer must provide a union with all reasonable facilities for this purpose.

32. In view of the protection which the law gives to trade unions, union officials and workers, and bearing in mind the principles stated in paragraph 30 above, the Committee considered that in the present case the question at issue was whether the behaviour of the workers in this undertaking in their capacity as union officials in fact constituted misconduct and whether it was serious enough to warrant disciplinary action against them by the management without entailing a breach of the standards and principles governing freedom of association.

33. The Committee noted that the ordinance also forbids certain actions by trade unions or their executives, by stating that it is an unfair practice on the part of a recognised trade union if—

28 H. . . . . .

(a) the trade union takes part in an irregular or illegal strike;

(b) the executive or the members of the trade union advise or actively support or instigate an irregular or illegal strike;

(c) the executive fails to take necessary action against such of the members of the trade union as go on an illegal strike;

(d) an officer of the trade union submits any return required by or under this Act containing a false statement; or

(e) the executive or members of the trade union coerce a workman to join the trade union against his free will.

34. The Committee likewise considered that the statutory provisions concerning works committees and their relationship with the trade unions were of interest from the standpoint of its examination of this case. According to Ordinance No. LVI of 1959 (mentioned earlier) and the regulations issued thereunder, the workers' representatives of a works committee are appointed by the employer in consultation with the trade union. In other words the latter's approval is not necessary for the appointments. In the case in question the union had refused to co-operate with the management in appointing the committee on the ground that it was engaged in a dispute with the management.

35. The ordinance in question defines the function of a works committee as being to secure and preserve amity and good relations between the employer and workmen and to that end to comment upon matters of their common interest or concern and to endeavour to compose any material difference of opinion in respect of such matters. It did not appear from these provisions that works committees can take decisions which are binding upon a trade union or that workers are bound to submit their grievances to the committees. Their purpose would appear to be conciliation, i.e. the achievement and maintenance of good relations between employer and workers. The law does not appear to define the relationship between a union and a works committee once the latter has been appointed, so as to make it clear what the conduct of union officials towards the committees should be.

36. The Committee also noted in its examination of the case the statements made by the union in its circular regarding the action of the management in setting up the works committee, the " illegal " character of that action, the steps taken by the union against the workers who agreed to join the works committee and the attitude urged upon the remaining workers in the undertaking towards the committee.

37. In addition, the Committee noted that the measures taken against the union officials were not final and that the case was before the Industrial Court which would decide whether or not the dismissal was allowable by law and, if not, would order the workers to be reinstated in their jobs.

38. In previous cases, the Committee recalled, it has followed the practice of not proceeding to examine matters which were the subject of pending judicial proceedings where the pending judicial proceedings might make available information of assistance to the Committee in appreciating whether or not allegations were well-founded.[1]

39. Accordingly, the Committee decided to request the Government to be good enough to inform it of the outcome of the proceedings against the union officials in question in the Industrial Court and in particular to furnish a copy of the judgment, together with the reasons therefor, and pending the receipt of this information adjourned its examination of the case.

40. In a communication dated 28 October 1965 the Government states that it has been informed that the dispute has been amicably settled and that the office-bearers of the union, against whom there had been charges of defamatory publication, have since been reinstated.

41. The Committee therefore recommends the Governing Body to take note of the information furnished by the Government to the effect that the dispute which formed the basis of the complaint has been amicably settled and that, in particular, the office-bearers of the complaining organisation, whose employment had been suspended pending an application to the Industrial Court to sanction their dismissal, have since been reinstated, and to decide that, in these circumstances, no useful purpose would be served by pursuing further its examination of the case.

Case No. 436:

Complaint Presented by the General Workers' Union of Gladstone, Lyall and Co. Ltd. (Calcutta) against the Government of India

42. The complaint is contained in two communications addressed directly to the I.L.O. by the General Workers' Union of Gladstone, Lyall and Co. Ltd. (Calcutta) on 23 March and 8 May 1965 respectively. In a communication dated 5 July 1965 the Government stated that it could not then comment on the merits of the complaint, as the matters raised were *sub judice*, the president of the complaining organisation having instituted criminal proceedings against the Assistant Labour Commissioner of West Bengal. On 5 January 1966 the Government forwarded the judgment of the Calcutta Magistrates' Court before which those proceedings had been brought.

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[1] See Sixth Report, Case No. 22 (Philippines), paras. 352-383; 11th Report, Case No. 51 (Saar), paras. 27-56; 12th Report, Case No. 69 (France), para. 446, and Case No. 61 (France-Tunisia), paras. 447-492; 17th Report, Case No. 97 (India), paras. 120-156; 19th Report, Case No. 92 (Peru), paras. 16-38; 26th Report, Case No. 147 (Union of South Africa), paras. 107-111; 28th Report, Case No. 170 (France-Madagascar), para. 143; 34th Report, Case No. 130 (Switzerland), para. 6; 41st Report, Case No. 172 (Argentina), para. 122; 49th Report, Case No. 213 (Federal Republic of Germany), para. 73; 53rd Report, Case No. 232 (Morocco), paras. 66-67; 58th Report, Case No. 234 (Greece), para. 558, and Case No. 262 (Cameroon), para. 657; 60th Report, Case No. 262 (Cameroon), para. 206; 70th Report, Case No. 294 (Spain), para. 305; 72nd Report, Case No. 352 (Guatemala), para. 188; 75th Report, Case No. 341 (Greece), paras. 70-71; 76th Report, Case No. 260 (Iraq), para. 100.

43. India has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

44. Part of this complaint is devoted to matters which do not appear to raise issues directly affecting the exercise of trade union rights. It is alleged that the conditions of the workers are tantamount to forced labour, that hours are excessively long and overtime work obligatory, that economic conditions and the lack of minimum wage legislation force the workers to accept unduly low wages and that protective legislation is inadequate. No allegation is made that these matters involve specific breaches of legislation or of any collective agreement. The Committee, therefore, does not consider it within its competence to pursue this aspect of the matter further.

45. Other parts of the complaint relate to the attitude of the competent authorities when the union seeks to obtain better conditions for the workers. In August 1964 the complaining union laid a demand for the payment of certain bonuses before the Labour Commissioner of West Bengal and in December it submitted demands relating to 17 different matters. The Assistant Labour Commissioner, Mr. B. K. Roy, began conciliation but later discontinued it because, it is alleged, the employers refused to meet with the union. An appointment was made for officers of the union to meet the Deputy Labour Commissioner. When they arrived he was occupied with the conciliation of another case and the union officers were referred again to the Assistant Labour Commissioner, Mr. Roy. It appears that Mr. Roy insisted that the Labour Commissioner's Office could do no more in the matter and advised them to take up the case with the Industrial Tribunal, while the complainants tried to persuade him that he should take action. It is alleged that Mr. Roy was abusing his office to favour the employers and protect them from trouble. The complaining union alleges that the union president accused Mr. Roy of trying to avoid his legal obligations as a Conciliation Officer and that Mr. Roy then insulted and attempted to assault the president and threatened to forbid him to enter the Labour Commissioner's Office in future. In general terms the complainants accuse Mr. Roy of anti-union activity, imply that he and other officials receive money from employers and allege that he is doing everything in his power to assist the employers concerned in the present case to crush the union and to deprive its members of their rights to leave, regular wage payment, fixed hours, overtime pay, allowances, etc. It is alleged also that various police officers are subsidised by the employers in question and, in return, do not interfere when hired thugs loot the union's offices and records.

46. The president of the union instituted criminal proceedings against Mr. Roy in the Calcutta Magistrates' Court in respect of what was alleged to have occurred at the interview referred to in the preceding paragraph.

47. The remaining part of the complaint refers in very general terms to alleged infringements of trade union rights. It is alleged that the Government has failed to prevent unfair labour practices, that officers or active members of the union have been dismissed, transferred or passed over for promotion or subjected to pressure to force them to join a company union, and have been discriminated against in respect of compassionate leave, pay, bonuses, allowances, etc. No specific examples are given.

48. The Government has furnished no observations on the substance of the case but has forwarded the judgment of the Calcutta Magistrates' Court in the prosecution of Mr. Roy, the Assistant Labour Commissioner, instituted by the president of the complaining organisation. According to the judgment the magistrate found that the president and his witnesses were not telling the truth, that in the course of the interview with Mr. Roy they put forward illegal demands and that the prosecutor was not insulted or treated as alleged. Mr. Roy was found not guilty.

49. The Committee observes that the one alleged infringement of trade union rights formulated in specific detail—the treatment of union officers at an interview in the Labour Commissioner's Office—has been held to be unfounded by the competent magistrates' court, after a hearing which appears to have been conducted according to normal judicial pro-

cedure. In so far as the rest of the complaint relates to alleged infringements of trade union rights it consists of generalities unsupported by specific evidence of particular cases. In this connection, therefore, the Committee does not consider that the complainants have furnished sufficient evidence to permit of these allegations being examined on their merits or even to justify its asking the Government to furnish detailed observations thereon. In so far as the rest of the complaint is concerned—i.e. the allegations relating to working conditions and to the conduct of certain public officials and police officers—there is no specific evidence before the Committee to link it with any infringement of trade union rights.

50. In the circumstances, therefore, the Committee recommends the Governing Body to decide that the case does not call for further examination.

Case No. 445:

Complaint Presented by the Moroccan General Confederation of Labour against the Government of Morocco

51. The complaint by the Moroccan General Confederation of Labour (Youssoufia) is contained in a telegram dated 6 July 1965 addressed directly to the I.L.O. On being informed of their right to submit additional information in support of their allegations, the complainants did not do so. The complaint was communicated to the Government for its observations and a reply was forwarded on 24 November 1965.

52. Morocco has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

53. The complainants allege that the Chemaïa District Officer expelled from his office a delegation of the Moroccan General Confederation of Labour (U.G.T.M.) led by the chief delegate for the southern region, and refused to listen to the complaints the delegation had come to make. In the complainants' view this is a breach of freedom of association.

54. In its observations the Government gives the following version. The complainants, belonging to the local branch of U.G.T.M., were received at their own request at the Chemaïa District Office on 5 July 1965 at 6 p.m. to discuss complaints concerning the workers in the Ighoud mines. In the course of the hearing the general secretary of the local branch of U.G.T.M. insulted the District Officer; " in view of the extremely arrogant attitude of this trade union representative, and after trying unsuccessfully to calm him by persuasion, the official in question was obliged to ask his visitor to leave, after telling him in front of witnesses that he would receive him again when he could behave properly ".

55. In view of the Government's explanations and the fact that the complainants did not furnish additional information in support of their complaint when given the opportunity, the Committee considers that they have not furnished proof that any infringement of trade union rights took place in this instance and, consequently, recommends the Governing Body to decide that the case does not call for further examination.

Case No. 449:

Complaint Presented by the St. Kitts Employers' Consultative Federation against the Government of the United Kingdom in respect of St. Christopher-Nevis-Anguilla

56. The complaint of the St. Kitts Employers' Consultative Federation is contained in a communication addressed to the I.L.O. on 22 May 1965. On 13 December 1965 the Government of the United Kingdom forwarded observations on the matter prepared by the Government of St. Christopher-Nevis-Anguilla.

57. The Government of the United Kingdom has ratified the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and has declared the

provisions of these Conventions to be applicable without modification to St. Christopher-Nevis-Anguilla (otherwise known as St. Kitts-Nevis-Anguilla), of which the island of St. Kitts is an integral part.

58. The complainants state that there are annual negotiations between the St. Christopher Sugar Producers' Association (an employers' trade union belonging to the complaining federation) and the St. Kitts-Nevis Trades and Labour Union, generally scheduled by the union to take place shortly before harvest time.

59. Early in 1965 negotiations were still unfinished after several weeks because the union was demanding a general wage increase in the sugar industry which the Association considered it could not give. The union refused to start reaping the crop, on which the economy of the island depends. The Association's attitude was that reaping should begin while the dispute went to arbitration, but the union refused. The union, it is alleged, proposed that the Price Stabilisation Fund should be used to pay a special 3 per cent. bonus to the sugar workers at the end of 1965; the Association refused on the ground that this was not justified and would be an improper use of the Fund.

60. On 13 March 1965, without first consulting or even notifying the Association, it is alleged, " the Chief Minister (who is also the Vice-President of the St. Kitts-Nevis Trades and Labour Union) introduced into the Legislative Council a Bill designed to achieve exactly what the union had failed to gain by negotiation ", and the Bill was enacted on the same day.

61. The complainants explain that the system of payments by the industry which produced the Price Stabilisation Fund originated in voluntary agreement but was regularised by statute in 1947, since when annual contributions based on the number of tons of sugar produced have been paid by the producers to the Fund. The Fund represents a portion of the price of sugar reserved for the purpose of cushioning the industry in the event of a serious drop in prices in the sugar market. In the normal way, according to contract, the Fund would have been divided in such circumstances so as to give 65 1/8 per cent. to the estates, 22 1/2 per cent. to the factories and 12 3/8 per cent. as a bonus to the estate workers. The new ordinance, it is alleged, diverts the entire contribution to the Fund by the employers in 1965 and 1966 for the purpose of paying a 3 per cent. bonus to the sugar workers.

62. In the view of the complainants these events constitute a violation of the Conventions applicable to St. Christopher-Nevis-Anguilla and, in particular, of Articles 3 and 4 of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), and of Article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

63. The complainants state that they are deeply perturbed by " a situation in which any terms or conditions of employment which are demanded by a trade union, however unreasonable, can be forced upon the employers by resort to legislation—a situation which is always imminent when the Ministers of the Government are leading officials of the trade union ". They fear, from pronouncements made by Ministers, that the use of legislation in this way will become a pattern for the future, collective bargaining being replaced by process of law, contrary to the said Convention No. 98. In support of this argument, the complainants allege that the President of the union—also a Minister of the Government—has declared that in future the union will not risk exposing its demands to inspection by a Board of Arbitration.

64. The Government of St. Christopher-Nevis-Anguilla states that the annual negotiations in the sugar industry in 1965 followed the usual pattern, agreement being reached on most points, until the last item on the list of proposals—a wage increase—was reached. There was a deadlock on the issue of a bonus for factory workers, and intervention by the Labour Commissioner and the Minister of Agriculture and Labour proved unsuccessful. At the same time discussions took place before the Labour Commissioner on the union's demand for a general wage increase in the sugar industry. According to the Government the union then agreed to limit its proposal for a wage increase to estate workers only, but the Association maintained that it was financially impossible.

65. After several weeks of deadlock the Chief Minister proposed to both sides that the Stabilisation Fund should be used to pay a 3 per cent. bonus to sugar estate workers only and said that, if both sides agreed to this, he would approach the Secretary of State for the necessary authority to use the Fund for this purpose. The union agreed, but the Association said that this would be an improper use of the Fund. At this point the Administrator proposed that, if this course were taken, an equal amount might be drawn from the Fund by the employers, but the Association refused.

66. After the deadlock had further continued until the situation was regarded as desperate the Government took the legislative action criticised by the complainants. It considers that, as the use of the Fund was defined in legislation, it was entitled if need be to amend that legislation to meet the prevailing circumstances.

67. The Government states that the proposal to use the Fund came from the Chief Minister in that capacity and was something which neither side had contemplated, and that the suggestion in the complaint that the proposal emanated from the union (see paragraph 59 above) was subsequently admitted by the complainants to be untrue. In this connection the Government has furnished the text of a letter dated 5 July 1965 from the complainants to the Chief Minister containing this admission but maintaining that the source of this inspiration was nevertheless evident.

68. In conclusion the Government states that since the enactment of the law complained of, in 1965, various collective agreements have been concluded, representatives of employers and workers were consulted prior to the establishment of minimum rates for shop assistants, and consultation is in progress on a Bill to restrict the employment of children. Hence, the Government considers, it is implementing the provisions of Article 3 of Convention No. 84 and Article 4 of Convention No. 98.

69. This case raises two issues which, though they have been related to each other, nevertheless involve different questions of principle. One issue relates to the enactment of legislation on a matter which has been the subject of collective bargaining by a government which has ratified I.L.O. Conventions containing undertakings to promote voluntary negotiation. The second issue is a much narrower one and relates to the propriety or otherwise of enacting such legislation when leading officials of the union concerned in such collective bargaining are at the same time government Ministers.

70. The complainants refer especially to Article 3 of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), which provides that " all practicable measures shall be taken to assure to trade unions which are representative of the workers concerned the right to conclude collective agreements with employers or employers' organisations ", and Article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which provides that " measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements ".

71. It is not clear why allusion should have been made to Article 3 of Convention No. 84, which is designed to ensure the bargaining rights only of workers' organisations. This Article does not appear to be relevant to the matters alleged.

72. With regard to the question of Article 4 of Convention No. 98 it is alleged that, because on one occasion when lengthy negotiations had reached a deadlock the Government gave effect to the claims of the union by an enactment, Article 4 has been infringed. If such an argument were valid it would, if carried to its logical conclusion, mean that in nearly every country which prescribed a minimum national wage by law because the workers were not sufficiently strongly organised to enforce a demand for such a standard through negotiation Article 4 of Convention No. 98 would be infringed. Such an argument would clearly

be untenable. It is true that the complainants have expressed fears that this will set a pattern for the future. If that fear should in the future be justified by the Government adopting a systematic policy of giving by law what the unions cannot obtain by negotiation, the situation might call for reappraisal. But at this stage it is a supposition only and the Committee cannot regard the one case which has arisen as demonstrating a breach of Article 4 of Convention No. 98.

73. It is also argued by the complainants that money rightfully belonging to the employers under a former enactment has been diverted to paying a bonus to the workers under the new enactment. On the propriety of the course taken in this connection the Committee is not called upon to pronounce.

74. A serious issue is raised by the allegation that the union whose Vice-President is also the Chief Minister proposed that a 3 per cent. bonus should be paid to the workers and that, on this being refused, the Chief Minister, in his parliamentary capacity, initiated legislation to give them the bonus. In the subsequent correspondence between the Chief Minister and the complaining organisation, however, it is admitted by the latter that this was not correct and that the proposal first emerged from the Chief Minister, in that capacity.

75. The Committee considers that it is highly desirable that, where any person who is an official of a workers' or employers' organisation is at the same time a Minister of the Government, he should take the greatest care to avoid giving even an impression that in his ministerial capacity he is not acting with the strictest neutrality. It would seem particularly desirable that he should avoid acting in his trade union capacity in any matter in which he may be called upon to act in his ministerial capacity. Having regard, however, to the admission made by the complainants as to the origin of the proposal that a bonus be paid the Committee is unable to conclude that these principles of conduct were infringed in this case.

76. In these circumstances, for the reasons indicated in paragraphs 71 to 75 above, and subject to the reservations expressed in paragraphs 72 and 75 above, the Committee recommends the Governing Body to decide that the complaint does not call for further examination.

Case No. 463:

Complaint Presented by the Union of African Workers against the Government of Congo (Leopoldville)

77. The complaint of the Union of African Workers (U.S.T.A.) is contained in a communication dated 18 December 1965, supplemented by a further communication dated 13 January 1966. The texts of these communications were transmitted to the Government for its observations, and the Government replied by a letter dated 26 January 1966.

78. Congo (Leopoldville) has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

79. The essence of the allegations is that, following action in support of demands initiated by U.S.T.A. with a view to obtaining payment of arrears of wages to certain categories of workers (teachers, etc.), Mr. Dibala-Banayi, the National President of the complaining organisation, which is affiliated to the Congo General Federation of Labour (F.G.T.K.), was arrested by order of the Luluabourg authorities. From the additional information furnished by the complainants, and signed by Mr. Dibala-Banayi himself, it appears that he was kept in custody for 72 hours.

80. In its observations the Government states that, following an intervention by F.G.T.K., the person concerned was released shortly after his arrest. The Government adds that since these events took place the situation of the teachers, nurses and other public employees has been considerably improved. The Government declares further that the

General Secretary of F.G.T.K., of which U.S.T.A. is an affiliate, has stated that his organisation regards the matter as closed. In conclusion, the Government states that it has drawn the attention of the Luluabourg provincial government to the importance of respecting and protecting freedom of association.

81. In these circumstances, in view of the information given above, the Committee considers that it would be purposeless to pursue the matter further and recommends the Governing Body to decide that the case does not call for further examination.

Interim Conclusions in the Cases relating to Congo (Leopoldville) (Case No. 437), Costa Rica (Case No. 444) and Colombia (Case No. 452)

Case No. 437:

Complaint Presented by the General Confederation of Labour of the Congo against the Government of Congo (Leopoldville)

82. The complaint of the General Confederation of Labour of the Congo (C.G.T.C.) is contained in two communications, dated respectively 9 March and 10 April 1965 and addressed directly to the I.L.O. They were sent to the Government for its observations. The Government replied by a letter dated 8 October 1965.

83. Congo (Leopoldville) has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

84. The complainants state that the security services of the central Government place restrictions on C.G.T.C. by refusing the exit permits for which it asks: officers of C.G.T.C. wishing to go on mission abroad are, it is alleged, not permitted to leave the country although leaders of other trade union organisations are free from such restrictions. In support of their allegation the complainants quote the cases of six C.G.T.C. representatives to whom, they state, the necessary exit permits were not issued; the names of these persons and the meetings which they wished to attend are specified.

85. In its observations the Government states that the allegations contained in the two communications from the complainants, to the effect that trade union rights have been infringed, are " entirely without foundation ". It refers to an inquiry by the Ministry of Labour which showed that the reason why the representatives of C.G.T.C. who wished to leave the country to attend international meetings were unable to do so was that they did not meet the requirements of the immigration department. The Government closes by stating that " these are the only observations [it has] to make on the text of the two communications referred to ".

86. In a number of cases in which situations similar to that summarised above have arisen [1] the Committee and, on its recommendation, the Governing Body, have emphasised that the right of national workers' organisations to send representatives to international trade union congresses is the natural corollary of their right to be affiliated to international organisations of workers.

87. When the authorities of Congo decided to refuse exit permits to the persons concerned, they may have been guided by the desire not directly to infringe trade union rights, but to ensure compliance with the formalities required of all citizens. However, the Committee considers that, unless imposed on objective grounds, restrictions such as those which the complainants allege, were applied to their own officers but not to representatives of other

[1] See Sixth Report, Case No. 40 (France-Tunisia), paras. 515-523 and 562 (ii); 12th Report, Case No. 64 (Italy), paras. 94-101, Case No. 65 (Cuba), paras. 119-120, Case No. 74 (Burma), paras. 178-183, and Case No. 77 (various French territories in Africa), paras. 184-199; 60th Report, Case No. 274 (Libya), paras. 261-262; 79th Report, Case No. 389 (Cameroon), para. 120.

organisations, may involve the risk of infringing the principle reasserted in the previous paragraph.

88. The Committee wishes to point out further that in similar circumstances [1], when it recommended the Governing Body to decide that a case should not be pursued, it did so after having had before it information provided by the Government which indicated without possible doubt that the trade union delegates then in question had been prevented from leaving the country for reasons unrelated to the exercise of freedom of association.

89. In the present case the Committee considers that the Government's reply is of too summary a character to enable it to judge whether an infringement of trade union rights has been committed or not in the present case. Consequently, the Committee recommends the Governing Body to request the Government to be good enough to state the precise reasons for which the persons mentioned in the complaint were not authorised to leave the country, and meanwhile to adjourn consideration of the case.

Case No. 444:

Complaint Presented by the Costa Rica Banana Company Workers' Union against the Government of Costa Rica

90. The complaint is contained in a communication dated 27 May 1965 from the General Secretary of the Costa Rica Banana Company Workers' Union (SITRACOBA). The complaining organisation supplied additional information by a second communication dated 10 July 1965. Both these communications were transmitted to the Government, which replied by two communications dated 24 September and 25 October 1965.

91. Costa Rica has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Allegations relating to Intervention by the Authorities and by Representatives of the Employers in Union Meetings

92. In their communication of 27 May 1965 the complainants assert that on 19 March of that year a conversation which the SITRACOBA leaders Salustiano Méndez Picado and Eclímaco Sandí Solano were having with a group of workers from Estate 60, District of Coto, Canton of Osa, Province of Puntarenas, was broken up by members of the Customs Police. According to the complainants the representatives of the authorities arrived on the scene and, after drinking beer in the company of Mr. Enrique Gil, an official of the Costa Rica Banana Company, made their way, accompanied by Mr. Gil and another official of the same company, Mr. Arturo Portela, to the place where the workers mentioned were talking and proceeded to make a record of the documents carried by Messrs. Salustiano Méndez and Arturo Pérez Ramírez. The representatives of the authorities then asked the aforementioned company officials what they should do with the trade union leaders there present, at which the latter protested that they would not tolerate the giving of instructions to the authorities by company officials. The members of the Customs Police then ordered the workers to leave. Later the SITRACOBA leaders called on the Chief of the Customs Police for the District of Corredores at his office to request an explanation concerning the attitude of his subordinates; he answered that the instructions issued by the President of the Republic banning trade union meetings on the Banana Company's estates were still in force. In their communication of 10 July 1965 the complainants allege that, at the workers' request, the Central Committee of SITRACOBA called union meetings for 7 and 8 July 1965 on Estates Nos. 60, 61, 62 and 63, to enable the workers to state their problems and

[1] See 82nd Report, Case No. 416 (Pakistan), paras. 47-56.

explain to them the aims and purposes of the union. These meetings were broken up by the Customs Police, who arrived on the scene accompanied by Messrs. Miguel Barrantes Castro and Arturo Portela, officials of the Company. The reason given by the authorities was the same as that instanced above, namely the President's order that no trade union meeting could be held without the Company's permission.

93. In its communication dated 24 September 1965 the Government transcribes a report received from the Inspector-General of Finance concerning the facts alleged in the complainants' first communication. This report states that the meeting held on Estate No. 60 on 19 March 1965 was indeed broken up by the authorities of the District of Corredores, acting on instructions then in force, but that disciplinary measures have been taken to punish the subordinate officials who behaved improperly in the performance of their duties. One of the members of the detachment has been transferred and the others have been severely reprimanded.

94. With regard to the facts alleged in the complainants' second communication the Government states that according to the report received from the Inspector-General of Finance the meetings called for 7 and 8 July were likewise broken up because they took place inside the property of the Banana Company, which has forbidden such activities for several years, and that the authorities acted at the express request of the representatives of the Company. The Government declares that, even though it disapproves of the Company's ban on trade union meetings on its property, it cannot directly intervene in order to impose its will against the will of the owners. The Government adds that if it were to do this it would be breaking the law, which, among other interests, protects the right of property ownership. The Government asserts in consequence that the Banana Company " is solely responsible for the unjustified limitation of trade union rights of which it has been accused ".

95. With regard to these allegations the Committee recalls that when examining earlier cases relating to Costa Rica (Nos. 239 and 379) it reached certain conclusions with regard to similar allegations made by a number of Costa Rican workers' organisations.[1] When dealing with Case No. 379 in its 81st Report [2] the Committee noted that the situation seemed to be that as far as the plantations of the Costa Rica Banana Company were concerned trade union meetings of all kinds, whether public or held in private dwellings, were prohibited unless the authorisation of the Company to hold them had been obtained. In that report the Committee expressed the view that it would be extremely useful for the high judicial authorities of the country to have the opportunity to state their views on the scope of the right of assembly granted by the Constitution of Costa Rica in situations such as those which had arisen in that particular case. The Committee recalls, in particular, that as the outcome of its examination of Case No. 239, the Governing Body drew the attention of the Government [3] to the importance which it attached to the right of plantation workers to hold trade union meetings and suggested that it might be appropriate to adopt clear provisions as to the meaning to be attached to the terms " public meeting " and " private meeting ", and also drew the Government's attention, having regard to the particular situation of plantation workers, to the importance which it attached to the principle enunciated by the Committee on Work on Plantations of the I.L.O. at its First Session (Bandung, December 1950) that employers of plantation workers should provide their unions with facilities for the conduct of their normal activities, including freedom of entry.

96. The Committee observes that, judging by the evidence furnished in the present case, the situation does not seem to have changed.

97. In these circumstances the Committee recommends the Governing Body to draw the attention of the Government, as it has already done in a number of earlier cases relating

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[1] See 49th Report, paras. 307-334; 52nd Report, paras. 163-201; 66th Report, paras. 96-161; 76th Report, paras. 368-380; 78th Report, paras 225-247; 81st Report, paras. 115-132.

[2] Paras. 121-122.

[3] See 66th Report, Case No. 239 (Costa Rica), para. 161 *(b)* and *(c)*.

to Costa Rica, to the importance which it attaches to the right of plantation workers to hold trade union meetings on the estates; to express its concern that the recommendations previously made to the Government in connection with similar cases do not appear to have led to the adoption of specific measures to give effect to the right in question, and to request the Government to be good enough to keep it informed as to the provisions it adopts or plans to adopt to this effect.

Allegations relating to the Dismissal of Trade Union Leaders and Members and to Interference by the Employers in the Internal Affairs of the Union

98. In their communication of 10 July 1965 the complainants further allege that in February 1965 SITRACOBA asked for unpaid leave to be granted to Messrs. Luis Pérez Madrigal, Víctor Barrantes Gamboa and Juan Rafael Montes Cárdenas to enable them to attend a workers' education instructors' course in Puerto Rico from 1 to 8 March 1965. According to the complainants the Company refused this application, whereupon the union decided to send the members in question on the course, to attend which they had been awarded a scholarship, and continued to press the Company to give them leave, but it still refused and dismissed the three workers in question without any misconduct on their part. SITRACOBA adds that the Company has continued to dismiss members of the union. On 9 July 1965 the Company dismissed Mr. Orlando Quesada González, Treasurer of the Central Committee of SITRACOBA, with the intention of disrupting that body; pressure was brought to bear on Mr. Belforth Quesada Rojas to make him give up his post as Committee and Correspondence Secretary, and 30 union representatives and 300 members were dismissed in an attempt to destroy the union; the latter included 20 trade unionists who took part in the first seminar for union officials to be held in the banana-growing district by the Central American Institute of Trade Union Studies.

99. The Government answers these allegations in its communication of 25 October 1965, stating that matters of leave in general and scholarships in particular basically depend on the stipulations or practices followed under the contract of employment. Hence if the employers did not consent to grant leave for this purpose, the Government would not be able to intervene legally and require such permission. The Government adds that the employer-employee relationship is a private one and therefore, so long as the minimum guarantees stipulated in the Labour Code and supplementary Acts are respected, the Government must abstain and does abstain from any intervention. The Government goes on to state that the labour legislation of Costa Rica has no provision preventing the dismissal of workers who are members of trade unions, not even in cases where they may be leaders of the trade union in question, but a Bill is now under study concerning this matter. Finally, the Government declares that, so long as the undertaking pays the compensation for dismissal prescribed by law, it may dismiss any worker, whether or not he is a member of a trade union, without the Ministry of Labour and Social Welfare being able to prevent it from doing so. Section 82 of the Labour Code stipulates that an unlawfully dismissed worker is entitled, in addition to the wages due in lieu of notice and to severance pay, to damages which have been fixed at one month's pay. The Government affirms that this provision restricts the practice of deliberate or under-cover dismissals of trade union leaders.

100. Paragraph 1 of Article 1 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Costa Rica, lays down that " Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment ", while paragraph 2 states that " Such protection shall apply more particularly in respect of acts calculated to—*(a)* make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership; *(b)* cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours ".

101. With respect to the alleged dismissal of Messrs. Luis Pérez Madrigal, Víctor Barrantes Gamboa and Juan Rafael Montes Cárdenas, who, on the complainants' own admission, had absented themselves from their work without their employers' permission to attend a workers' education course, the Committee, with due regard to the provisions of paragraph 2 *(b)* of Article 1 of Convention No. 98, quoted above, and, while recognising in general the desirability of facilities being accorded to workers to attend such courses, considers that their dismissal in such circumstances does not appear in itself to constitute an infringement of freedom of association and therefore recommends the Governing Body to decide that this aspect of the case does not call for further examination.

102. As regards the allegations respecting the dismissal by the undertaking of Mr. Orlando Quesada González, Treasurer of the Central Committee of SITRACOBA, 30 union representatives and 300 members—measures which are alleged by the complainants to be acts of anti-union discrimination—the Committee observes that in its reply the Government neither confirms nor denies that such dismissals took place. Nevertheless, the Committee infers from the Government's observations that under present legislation no provision is made for the protection of workers against dismissal by reason of union membership or because of participation in union activities, apart from the compensation generally payable under section 82 of the Labour Code in cases of unlawful dismissal, although a Bill concerning this matter is now under study.

103. For the reasons indicated in paragraph 102 above, the Committee recommends the Governing Body to draw the Government's attention to the importance which should be attached to the provisions of Article 1 of Convention No. 98, ratified by Costa Rica; to take note of the Government's statement to the effect that a Bill concerning this matter is now under study, and to express the hope that appropriate measures will be brought into force as soon as possible to protect workers against any act of anti-union discrimination in respect of their employment; and to bring these conclusions to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

104. With respect to the complainants' allegation that pressure was brought to bear on Mr. Belforth Quesada Rojas to make him give up his post as Committee and Correspondence Secretary of the union, the Committee observes that the Government makes no allusion to this allegation in its reply. In these circumstances the Committee recommends the Governing Body to request the Government to be good enough to furnish its observations on this particular point as soon as possible.

* * *

105. With respect to the case as a whole the Committee recommends the Governing Body—

(a) with regard to the allegations relating to intervention by the authorities and by representatives of the employers in union meetings, to draw the attention of the Government, as it has already done in a number of earlier cases relating to Costa Rica, to the importance which it attaches to the right of plantation workers to hold trade union meetings on the estates; to express its concern that the recommendations previously made do not appear to have led to the adoption of specific measures to ensure that all plantation workers can exercise the right in question, and to request the Government to be good enough to keep it informed as to the provisions it adopts or plans to adopt to this effect;

(b) with regard to the allegation relating to the dismissal of Messrs. Luis Pérez Madrigal, Víctor Barrantes Gamboa and Juan Rafael Montes Cárdenas, to decide, for the reasons indicated in paragraph 101 above, that this aspect of the case does not call for further examination;

(c) with regard to the allegations relating to the dismissal of trade union leaders and members, to draw the Government's attention to the importance which should be attached to the provisions of Article 1 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which has been ratified by Costa Rica; to take note of the Govern-

ment's statement to the effect that a Bill concerning this matter is now under study, and to express the hope that appropriate measures will be brought into force as soon as possible to protect workers against any act of anti-union discrimination in respect of their employment; and to bring these conclusions to the attention of the Committee of Experts on the Application of Conventions and Recommendations;

(d) with regard to the allegation that pressure was brought to bear on Mr. Belforth Quesada Rojas to make him give up his post with the union, to request the Government to be good enough to furnish its observations on this particular point as soon as possible;

(e) to take note of the present interim report, on the understanding that the Committee will report further to the Governing Body when it has received the observations to be requested from the Government under subparagraph *(d)* above.

Case No. 452:

Complaint Presented by the International Federation of Christian Trade Unions against the Government of Colombia

106. By a communication dated 11 August 1965 the International Federation of Christian Trade Unions (I.F.C.T.U.) presented a complaint against the Government of Colombia alleging infringement of freedom of association. Following transmission of this communication to the Government, the latter furnished its observations by a communication dated 31 August 1965. In a further communication, dated 14 September 1965, the complainant organisation submitted additional information in support of its complaint. At its 41st Session (November 1965) the Committee decided to adjourn examination of the case, since it had not received the Government's observations on the new information supplied by the complainants.

107. Colombia has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Allegations concerning the Detention of Trade Union Leaders in Trade Union Premises

108. In its original complaint, dated 11 August 1965, I.F.C.T.U. stated that the premises of the Antioquía Trade Union Organisation (A.S.A.), at Medellín, had been besieged, and that a certain number of Christian trade union leaders had been detained there. The urgent intervention of the I.L.O. was requested in order to ensure that freedom of association would be respected and the trade unionists thus detained might be released. In its subsequent communication, dated 14 September 1965, the complainant organisation explained that, during a meeting at the A.S.A. premises, a police officer accompanied by four policemen, one of whom was carrying a sub-machine gun, had broken into the premises. I.F.C.T.U. further stated that the first reaction of the persons present was to try to force the police to leave and that once calm was restored the A.S.A. leaders asked the members of the public to return home; a quarter-of-an-hour later, when there were still 37 persons present on the premises, the police returned, this time heavily armed. According to the complainants' account, the persons present shut the main door, whereupon the police threw a cordon round the premises from 11 p.m. on 9 August 1965 until the afternoon of 10 August. I.F.C.T.U. appended to this communication a list of the 37 persons referred to, in which the functions of 11 persons are stated as trade union leaders, the rest including representatives of various liberal professions, journalists, student leaders, students and others.

109. In reply to the original complaint the Government states that the detention of persons at the Medellín premises of A.S.A. was carried out on the grounds that, although the country was in a state of emergency and under martial law, it was planned to hold a political and not a trade union meeting at the said premises, with irrefutable intent to promote public agitation. The Government adds that the authorities therefore found themselves obliged, in fulfilment of their legal mandate, to dissolve the meeting and take action against its organisers.

110. In a considerable number of cases [1] the Committee has pointed out that the right of trade unions to meet freely on their own premises, without need for prior authorisation and without supervision by the public authorities, constitutes a fundamental element in freedom of association.

111. In the present case the Committee observes that neither in the original complaint nor in the communication in which the complainants submitted additional information is it clearly established that the meeting in question was of a trade union character. The additional information states that, although 11 of the 37 persons detained on the premises were trade union leaders, the others included representatives of various liberal professions, as well as journalists, student leaders, students and other persons engaged in various activities whose connection with the trade union is not explained in the complaint. The complainants do not clarify the reasons for holding the meeting or the subjects discussed there, and the Government asserts that the meeting was of a political and not a trade union character.

112. While noting the Government's statements, the Committee recalls that in numerous cases where complaints have been submitted alleging violation of freedom of association under a state of emergency or under legislation concerning national security, the Committee, while pointing out that it is not competent to state its views on the necessity and desirability of such legislation—a matter coming entirely within the political sphere—has always maintained the view that it should examine the possible repercussions of such legislation on trade union rights.[2]

113. Nevertheless, in view of the fact that it is difficult to conclude on the basis of the information supplied that the meeting to which the complaint refers was a trade union meeting, having specifically trade union purposes, the Committee recommends the Governing Body to decide that this aspect of the case does not call for further examination.

Allegations concerning Intervention by the Authorities in Trade Union Meetings

114. In its communication of 14 September 1965 I.F.C.T.U. also alleges that the events to which it refers are only one element among the police measures adopted by the Government in its aim of preventing the free development of the trade union movement and that there are very few trade union meetings in Colombia that can be held without the presence of government secret agents.

115. Since the Government's observations on this allegation are still awaited, the Committee recommends the Governing Body to request the Government to furnish its observations as soon as possible and in the meantime to adjourn further examination of this aspect of the case.

* * *

[1] See First Report, Case No. 8 (Israel), paras. 63-69; Second Report, Case No. 21 (New Zealand), paras. 11-31, and Case No. 28 (United Kingdom-Jamaica), paras. 65-70; Sixth Report, Case No. 40 (France-Tunisia), paras. 374-574; Seventh Report, Case No. 56 (Uruguay), paras. 32-70; 12th Report, Case No. 16 (France-Morocco), paras. 292-428, and Case No. 61 (France-Tunisia), paras. 447-492; 17th Report, Case No. 104 (Iran), paras. 157-221; 19th Report, Case No. 110 (Pakistan), paras. 50-90, and Case No. 133 (Netherlands-Netherlands Antilles), paras. 108-134; 24th Report, Case No. 121 (Greece), paras. 41-79; 25th Report, Case No. 152 (United Kingdom-Northern Rhodesia), paras. 179-248; 27th Report, Case No. 159 (Cuba), para. 373.

[2] See First Report, Case No. 24 (United Kingdom-Cyprus), paras. 84-85; Second Report, Case No. 21 (New Zealand), para. 24; Third Report, Case No. 17 (France-Tunisia), para. 57; Fourth Report, Case No. 5 (India), para. 44, Case No. 30 (United Kingdom-Malaya), para. 145, and Case No. 38 (United Kingdom-Cyprus), para. 179; Sixth Report, Case No. 40 (France-Tunisia), paras. 466 and 561 (ii), Case No. 46 (United States), paras. 657-703, Case No. 49 (Pakistan), para. 800, and Case No. 2 (Venezuela), para. 1012 (3); Seventh Report, Case No. 56 (Uruguay), para. 68; 13th Report, Case No. 62 (Netherlands), paras. 70-81; 27th Report, Case No. 157 (Greece), para. 325.

116. With regard to the case as a whole the Committee recommends the Governing Body—

(a) with regard to the allegations relating to the detention of trade union leaders on trade union premises, to decide, for the reasons stated under paragraph 113 above, that this aspect of the case does not call for further examination;

(b) with regard to the allegation concerning intervention by the authorities on trade union meetings referred to in paragraph 114 to request the Government to be good enough to furnish its observations on this aspect of the case as soon as possible;

(c) to take note of the present interim report, it being understood that the Committee will submit a further report following receipt of the observations to be requested from the Government under subparagraph *(b)* above.

Geneva, 21 February 1966. *(Signed)* Roberto AGO,
Chairman.

Ninetieth Report [1]

Introduction

1. The Committee on Freedom of Association set up by the Governing Body at its 117th Session (November 1951) met at the International Labour Office, Geneva, on 23 May 1966, under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body. The members of the Committee of Argentinian and Brazilian nationality were not present during its examination of the cases relating to Argentina (Case No. 399) and Brazil (Case No. 385) respectively.

2. In accordance with the procedure laid down in paragraph 12 of its 29th Report, as amended by paragraph 5 of its 43rd Report, the Committee recommends the Governing Body to examine the present report at its 165th Session.[2]

3. The Committee considered—*(a)* 49 cases in which the complaints had been communicated to the governments concerned for their observations, namely the cases relating to Singapore (Case No. 194), Thailand (Case No. 202), Portugal (Case No. 266), Libya (Case No. 274), Belgium (Case No. 281), Burundi (Cases Nos. 282 and 401), Cuba (Cases Nos. 283, 329 and 425), United Kingdom (Aden) (Case No. 291), United Kingdom (Case No. 292), Spain (Cases Nos. 294, 383, 397 and 400), Ghana (Case No. 303), Greece (Case No. 309), Peru (Case No. 335), Panama (Case No. 349), Dominican Republic (Case No. 350), Greece (Case No. 353), Mexico (Case No. 358), Dominican Republic (Case No. 360), Congo (Leopoldville) (Case No. 365), Haiti (Case No. 373), Honduras (Case No. 381), Brazil (Case No. 385), Guatemala (Case No. 396), Argentina (Case No. 399), Upper Volta (Case No. 403), Honduras (Case No. 408), Cameroon (Case No. 418), Congo (Brazzaville) (Case No. 419), India (Case No. 420), United Kingdom (Aden) (Case No. 421), Ecuador (Case No. 422), Honduras (Case No. 423), Portugal (Case No. 432), Ecuador (Case No. 433), Guatemala (Case No. 442), Bolivia (Case No. 451), Colombia (Case No. 452), Greece (Case No. 543), Bolivia (Case No. 456), Greece (Case No. 464), Dominican Republic (Case No. 467), Greece (Case No. 470), and Ecuador (Case No. 477); and *(b)* one complaint relating to the Dominican Republic (Case No. 467) and two complaints relating to Nicaragua (Case No. 479) and a further complaint relating to Brazil (Case No. 385), which were submitted to the Committee for opinion prior to being communicated to the governments concerned.

Cases the Examination of Which the Committee Has Adjourned

(a) *Case Which the Committee Considers to Be Urgent.*

4. The Committee adjourned until its next session its examination of the case relating to the Congo (Brazzaville) (Case No. 419), in which it is still awaiting further information previously requested from the government concerned, as well as observations on further allegations. The Committee requests the government concerned to furnish the information and observations in question as a matter of urgency.

(b) *Other Cases.*

5. The Committee adjourned until its next session the cases relating to Thailand (Case No. 202), Portugal (Case No. 266), Libya (Case No. 274), Cuba (Cases Nos. 283, 329 and 425), United Kingdom (Case No. 292), Ghana (Case No. 303), Panama (Case No. 349), Dominican Republic (Case No. 350), Greece (Case No. 353), Dominican Republic (Case

[1] See above, footnote 1, p. 1.

[2] See above, footnote 1, p. 2.

No. 360), Congo (Leopoldville) (Case No. 365), Guatemala (Case No. 396), Upper Volta (Case No. 403), Guatemala (Case No. 442) and Greece (Case No. 453), in which it is still awaiting information previously requested from the governments concerned, the case relating to Bolivia (Case No. 451), in which part of the information previously requested from the government concerned has been received, the case relating to Honduras (Case No. 408), in which information previously requested from the government concerned was received too late to permit of its being examined by the Committee at its present session. With regard to the case relating to Guatemala (Case No. 396), the Committee took note of a communication from the government concerned stating that the matter was receiving attention.

6. The Committee adjourned until its next session the case relating to Mexico (Case No. 358), in which it has decided to ask the Director-General to obtain further information from the government concerned, and the case relating to Ecuador (Case No. 433), in which it has decided to ask the Director-General to obtain further information from the complainants concerned, before it submits its recommendations in these cases to the Governing Body.

7. The Committee adjourned until its next session the cases relating to Bolivia (Case No. 456), Greece (Case No. 464), Dominican Republic (Case No. 467), Greece (Case No. 470) and Ecuador (Case No. 477), in which it has not yet received the observations of the governments concerned.

8. The Committee also adjourned until its next session the case relating to Belgium (Case No. 281).

Cases in Which the Committee Submits Its Conclusions to the Governing Body

9. In the present report the Committee submits for the approval of the Governing Body the conclusions which it has now reached concerning the remaining cases before it, namely the cases relating to Singapore (Case No. 194), Burundi (Cases Nos. 282 and 401), United Kingdom (Aden) (Case No. 291), Spain (Cases Nos. 294, 383, 397 and 400), Greece (Case No. 309), Peru (Case No. 335), Haiti (Case No. 373), Honduras (Case No. 381), Brazil (Case No. 385), Argentina (Case No. 399), Cameroon (Case No. 418), India (Case No. 420), United Kingdom (Aden) (Case No. 421), Ecuador (Case No. 422), Honduras (Case No. 423), Portugal (Case No. 432), and Colombia (Case No. 452), and the complaints relating to the Dominican Republic (Case No. 467) and Nicaragua (Case No. 479), and the further complaint relating to Brazil (Case No. 385), which were submitted to the Committee for opinion. These conclusions may be briefly summarised as follows:

(a) the Committee recommends that the complaints relating to the Dominican Republic (Case No. 467) and Nicaragua (Case No. 479) and the further complaint relating to Brazil (Case No. 385), which were submitted to it for opinion, should, for the reasons indicated in paragraphs 10 to 13 of this report, be dismissed as irreceivable under the procedure in force, without being communicated to the governments concerned;

(b) the Committee recommends that, for the reasons indicated in paragraphs 14 to 48 of this report, the cases relating to Greece (Case No. 309), Haiti (Case No. 373), Portugal (Case No. 432) and Colombia (Case No. 452) should be dismissed as not calling for further examination;

(c) with regard to the cases relating to Burundi (Cases Nos. 282 and 401) and Cameroon (Case No. 418), the Committee, for the reasons indicated in paragraphs 49 to 124 of this report, has reached certain conclusions to which it wishes to draw the attention of the Governing Body;

(d) with regard to the cases relating to Singapore (Case No. 194), United Kingdom (Aden) (Case No. 291), Spain (Cases Nos. 294, 383, 397 and 400), Peru (Case No. 335), Honduras (Case No. 381), Brazil (Case No. 385), Argentina (Case No. 399), India (Case

No. 420), United Kingdom (Aden) (Case No. 421), Ecuador (Case No. 422) and Honduras (Case No. 423), the Committee, for the reasons indicated in paragraphs 125 to 281 of this report, has presented an interim report stating certain conclusions to which it wishes to draw the attention of the Governing Body.

Complaints Which the Committee Recommends Should Be Dismissed as Irreceivable under the Procedure in Force

10. The Director-General has received four communications containing allegations of infringements of trade union rights which are not receivable under the provisions of the existing procedure.

11. They consist of a communication dated 23 February 1966 from the American Federation of Labor and Congress of Industrial Organizations containing allegations of infringements of trade union rights in the Dominican Republic (Case No. 467), a communication dated 20 April 1966 from the U.T.E. Staff Association (Uruguay) containing allegations of infringements of trade union rights in Brazil (Case No. 385), a communication dated 9 May 1966 from the Cuban Revolutionary Transport Organisation (in exile) and a communication dated 11 May 1966 from the Peruvian Christian Trade Union Movement, both containing allegations of infringements of trade union rights in Nicaragua (Case No. 479).

12. These four complaints are irreceivable because they emanate from national organisations of workers in countries other than those to which the complaints relate and having no direct interest in the matters raised in the allegations.[1]

13. In these circumstances the Committee recommends the Governing Body to decide that the complaints referred to above are not receivable under the procedure in force.

Cases Which the Committee Considers Do Not Call for Further Examination

Case No. 309:

Complaint Presented Jointly by the Piraeus Bus Drivers' and Conductors' Associations against the Government of Greece

14. The present case has already been examined by the Committee three times (at its 33rd, 35th and 38th Sessions, which were held in February 1963, November 1963 and November 1964 respectively). On these occasions three interim reports by the Committee, contained in paragraphs 110 to 124 of its 69th Report, 145 to 157 of its 72nd Report and 140 to 158 of its 78th Report, were submitted to the Governing Body, which approved them. At the various stages of its examination the Committee reached final conclusions on most aspects of the case; at its latest examination, carried out during the November 1964 session, only one particular point remained pending. This point alone will be dealt with in the following paragraphs.

15. Greece has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

16. The essentials of the case should be recalled briefly. The complainants alleged that on 1 September 1962 the management of K.T.E.L. (Joint Bus Receipts Fund)—a public body

[1] See 29th Report, para. 9.

to which both bus employers and bus employees engaged in urban transport belong—induced the recruitment committee responsible for hiring, retaining in their posts and dismissing bus conductors and drivers in accordance with section 17 of Legislative Decree No. 3990 of 1959 to dismiss a number of conductors (mostly officers or leading members of the Piraeus Bus Conductors' Association) on the ground of " anti-national activity " and in pursuance of Act No. 516 of 1948.

17. Having noted that five of the persons involved had appealed to the Council of State for reversal of the decision not to reclassify them, the Committee, following its invariable practice in such cases, recommended the Governing Body to request the Government to be good enough to communicate to it the result of the proceedings that had been initiated.

18. This recommendation having been approved by the Governing Body, the request for information was sent to the Government by a letter dated 24 November 1964, to which the Government replied in a letter dated 10 February 1966.

19. In this letter the Government states that the appeal made by the persons concerned was allowed by the Council of State since the decision not to reclassify them had been taken by the recruitment committee of K.T.E.L., whereas under the law the case of these persons should have been considered by the special committees provided for by Act No. 516 of 1948. The Government goes on to say that this procedural defect has since been put right, the case having been brought before the appropriate special committee, which has decided that these persons were not " loyal ", and that the decision not to reclassify them has thereby been confirmed.

20. With regard to the special committees set up under Act No. 516 of 1948 with a view to granting or refusing the " certificates of legality " required of certain workers in public utility undertakings if they are to be engaged or retained in service, the Committee on Freedom of Association thinks it appropriate to recall and repeat the observation it was led to make in examining an earlier case, when it pointed out the desirability of ensuring that restrictions imposed by the special committees in question should in no case give rise to anti-union discrimination.[1]

21. In its letter of 10 February 1966, the Government then states that the persons in question, by not refusing the compensation paid to them for the termination of their contract of employment, have implicitly accepted the decision taken in respect of them. Moreover, adds the Government, they have not adopted the legal procedures of appeal open to them against this decision.

22. In the past, when the Committee has had to consider a situation of this kind [2], it has held that in view of the nature of its responsibilities it cannot consider itself bound by any rule, such as that applying to international claims tribunals, that national procedures of redress must be exhausted. It has, however, also held in examining the merits of a case, that when national procedures of redress have not been made full use of, it must take this fact into account.

23. In the present case, not only have the persons involved, by refraining from using the appeal procedures open to them, failed to make a real effort to obtain redress for the wrong that they originally thought they had suffered, but also, by accepting the compensation to which they were entitled by law for the termination of their contract of employment, they appear to have no intention of challenging the decision taken in respect of them.

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[1] *See 24th Report, Case No. 121 (Greece), paras. 67-69.*

[2] See Fourth Report, Case No. 29 (United Kingdom-Kenya), paras. 127-139; 14th Report, Case No. 88 (France-Sudan), para. 30; 27th Report, Case No. 163 (Burma), para. 51; 30th Report, Case No. 171 (Canada), para. 42, and Case No. 174 (Greece), para. 226; 33rd Report, Case No. 189 (Honduras), para. 37; 60th Report, Case No. 234 (Greece), paras. 89-90; 77th Report, Case No. 382(Greece), paras. 46-47.

24. In these circumstances the Committee recommends the Governing Body to decide that the case does not call for further examination.

Case No. 373:

Complaint Presented by the World Federation of Trade Unions against the Government of Haiti

25. This case has already been examined by the Committee at its 38th, 39th, 40th and 42nd Sessions, held respectively in November 1964, February 1965, May 1965 and February 1966, on which occasions interim reports were presented to the Governing Body, which approved them.[1] At its February 1966 session the Committee examined the only allegation remaining outstanding, which related to the arrest of trade union leaders and militants.

26. The complainants alleged that the Government had arbitrarily arrested a number of trade union leaders and militants. Among the persons arrested, it was stated, were Messrs. Ulrick Joly, President of the Inter-Union Federation of Haiti—which had been dissolved [2]—Claude François and Léon Gabriel, members of the Executive Committee of the organisation mentioned and presidents of the cement and sugar unions respectively, Messrs. Alcius Cadet and Arnold Maisoneuve, of the Dockers' Union, and the trade union leaders Messrs. Prossoir and Guerrior.

27. At its February 1966 session the Committee took note of a statement by the Government to the effect that if the persons concerned were not discharged as an act of mercy before the verdict of the court by which they were to be tried, a copy of the text of the judgment pronounced by the court should be communicated to the Committee. The Committee accordingly recommended that the Governing Body request the Government to be good enough to let the Governing Body know whether the persons mentioned by the complainants had or had not been discharged as an act of mercy and, if they had not, to communicate the text of the judgment or judgments delivered, with the text of the grounds therefor.

28. In a communication dated 14 February 1966 the Government states that the persons concerned, who had been imprisoned for subversive activities, had, before the court pronounced judgment, been discharged in consequence of a general act of mercy on the part of the President of the Republic and that they had all been released.

29. In these circumstances the Committee, considering that it would be purposeless to pursue the matter further, recommends the Governing Body to decide that the case does not call for further examination.

Case No. 432:

Complaint Presented by the World Federation of Trade Unions against the Government of Portugal

30. The complaint of the World Federation of Trade Unions is contained in a communication addressed directly to the I.L.O. on 23 February 1965. It was transmitted to the Government of Portugal for its observations, and the Government replied by a communication dated 30 June 1965.

31. Portugal has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

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[1] See 78th Report, paras. 204-224; 81st Report, paras. 106-114; 83rd Report, paras. 262-270; 87th Report, paras. 200-208.

[2] See 78th Report, paras. 210-220 and 224 *(a)*.

32. The complainant organisation alleged first, in general terms, that the campaigns for better living and employment conditions waged in recent years by workers in the cork, textile, fishing and other industries had been met by repression, mass arrests of workers and sentences to long terms of imprisonment, reinforced by-called " security measures ".

33. The complainant organisation cited in particular the case of Mr. José Rodrigues Vitoriano, a former worker in the cork industry and Past President of the Silves Cork Workers' Union.

34. The complainants alleged that, after having earned general respect among the workers for his activities as a union leader, he was arrested in 1948 and tried on a false charge of having used his official position to enable him to take part in the activities of the underground workers' movement. He was sentenced to two-and-a-half years' imprisonment, after which he was detained for a further six months. In 1953 he was charged with offences against the security of the State and, after having been refused by the courts any opportunity to defend himself against the charges, was sentenced to four years' imprisonment. In 1957, when his term of imprisonment was nearing its end, he was accused of " engaging in subversive activities inside the fortress of Caxias ", where he was imprisoned, " with a view to overthrowing the Government by force "—a charge, according to the complainants, based solely on his adherence to the Caxias Fortress Solidarity Movement. The complainants alleged that abundant evidence was produced at his trial to show that such solidarity movements among political prisoners had always existed in Portugal and that they were humanitarian movements of no political significance. He was, however, sentenced to five years' imprisonment, subject to prolongation under the " security measures " for from one to three years, and 15 years' suspension of political rights.

35. In its communication dated 30 June 1965 the Government, after denying that there was or had been any kind of repression of workers who sought to exercise trade union rights, stated that Mr. José Rodrigues Vitoriano had been sentenced to two-and-a-half years' imprisonment, on 30 June 1948, for having engaged, as a member of a subversive secret organisation, in criminal activity aimed at overthrowing the Portuguese Constitution and changing the form of government by violent means. After being released on 6 May 1951, the Government stated, he was sentenced on 22 January 1952 to four years' imprisonment on further charges. While serving his sentence, the Government explained, he committed further criminal acts, for which he was sentenced to six-and-a-half years' imprisonment plus detention for not more than three years. Concluding, the Government stated that his sentence had not yet been completely served.

36. The case came before the Committee at its 41st Session, held in November 1965; the Committee recalled that, on many occasions in the past [1] on which allegations that trade union leaders or workers had been detained for trade union activities had been met by governments with statements that the detentions had in fact been made for subversive activities, reasons of internal security or common law crimes, the Committee had consistently followed the rule that the governments concerned should be requested to submit further and as precise information as possible concerning the detentions and the exact reasons therefor. The Committee also recalled that, in cases in which it had concluded that allegations relating to the arrest or detention of trade union militants did not call for further examination, it had done so only after it had received information from the governments showing sufficiently

[1] See Sixth Report, Case No. 18 (Greece), paras. 323-326, Case No. 44 (Colombia), paras. 593-595, and Case No. 49 (Pakistan), paras. 807-811; 11th Report, Case No. 72 (Venezuela), para. 6 *(c)*; 12th Report, Case No. 65 (Cuba), paras. 102-105, Case No. 66 (Greece), paras. 140-146, and Case No. 68 (Colombia), paras. 167-169; 15th Report, Case No. 110 (Pakistan), para. 241; 22nd Report, Case No. 58 (Poland), para. 106 *(d)*; 25th Report, Case No. 136 (United Kingdom-Cyprus), paras. 93-178, Case No. 158 (Hungary), para. 332; 27th Report, Case No. 156 (France-Algeria), para. 273, and Case No. 159 (Cuba), para. 370; 52nd Report, Case No. 143 (Spain), para. 48; 62nd Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 152; 74th Report, Case No. 294 (Spain) para. 191; 76th Report, Case No. 364 (Ecuador), para. 342; 81st Report, Case No. 385 (Brazil), para. 148; 83rd Report, Case No. 370 (Portugal), para. 246; 84th Report, Case No. 423 (Honduras), para. 75.

precisely and with sufficient detail that the arrests or detentions had in no way been occasioned by trade union activities but solely by activities outside the trade union sphere, which were either prejudicial to public order or of a political nature.[1] Lastly, it recalled that where cases had been the subject of judicial proceedings in national courts and it had taken the view that such proceedings might make available information of assistance to it in appreciating whether or not the allegations made were well-founded, it had always requested the governments concerned to communicate to it the text of the judgments given and of the reasons adduced therein.[2]

37. The Committee noted that in the present case the Government had replied in general terms to the effect that Mr. José Rodrigues Vitoriano had been sentenced originally, on 30 June 1948, on charges of having engaged in criminal activity aimed at overthrowing the Portuguese Constitution and changing the form of government by violent means, and that on two subsequent occasions he had been sentenced to terms of imprisonment of four years and six-and-a-half years for having committed criminal acts the nature of which the Government did not specify.

38. The Committee accordingly asked the Director-General to request the Government, on its behalf, to be good enough to furnish copies of the three judgments given in the case of Mr. José Rodrigues Vitoriano and of the reasons adduced therein.

39. The request was communicated to the Government by a letter dated 22 November 1965, and the Government replied by a communication dated 25 January 1966.

40. It appears from the copies of the judgments furnished by the Government that Mr. José Rodrigues Vitoriano was convicted by the Lisbon courts of offences under section 173, paragraph 1, first part of the Penal Code. The most recent judgment delivered by the Lisbon Criminal Court states that he had admitted of his own accord to being a member of the Portuguese Communist Party and had, as an " official " of that Party—" a subversive secret organisation which aims at abolishing the present form of government by unconstitutional means—engaged in Party activities; he was found guilty of " having received and paid for the Communist propaganda newspapers *Avante* and *Militante*, of having paid contributions, of having collected funds for the Party by buying and selling lottery tickets, of having attended meetings at which members of the Party hierarchy were in the chair, of having been in touch with ' officials ' and other members of the Party, of having recruited new members for the Party and of having organised and directed Communist cells ".

41. It appears from the charges upon which Mr. José Rodrigues Vitoriano was convicted, as shown in the certified photo-copies of the judgments communicated by the Government, that he seems to have engaged in activities outside the sphere of normal trade union activities. Apart from stating that he was a trade union leader, the complainants gave no information and mentioned no circumstances capable of establishing a link between his trade union position or activities and the action taken against him.

42. In these circumstances the Committee considers that the complainants have not supplied evidence that a violation of trade union rights had in fact occurred, and accordingly recommends the Governing Body to decide that the case does not call for further examination.

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[1] See Second Report, Case No. 31 (United Kingdom-Nigeria), para. 79; Third Report, Case No. 6 (Iran), para. 36; Sixth Report, Case No. 22 (Philippines), paras. 377-383; 17th Report, Case No. 104 (Iran), para. 219; 19th Report, Case No. 110 (Pakistan), paras. 74-77; 24th Report, Case No. 142 (Honduras), paras. 130-134; 25th Report, Case No. 140 (Argentina), para. 263; 52nd Report, Case No. 143 (Spain), para. 48; 62nd Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 152; 74th Report, Case No. 294 (Spain), para. 191; 76th Report, Case No. 364 (Ecuador), para. 342; 81st Report, Case No. 385 (Brazil), para. 148; 83rd Report, Case No. 370 (Portugal), para. 246; 84th Report, Case No. 423 (Honduras), para. 75.

[2] See 17th Report, Case No. 87 (India), para. 137; 24th Report, Case No. 142 (Honduras), para. 134; 26th Report, Case No. 147 (Union of South Africa), para. 111; 31st Report, Case No. 170 (France-Madagascar), para. 52; 45th Report, Case No. 213 (Federal Republic of Germany), para. 123; 58th Report, Case No. 156 (France-Algeria), para. 175; 67th Report, Case No. 241 (France), para. 22; 81st Report, Case No. 385 (Brazil), para. 149; 83rd Report, Case No. 303 (Ghana), paras. 225 and 228.

Case No. 452:

Complaint Presented by the International Federation of Christian Trade Unions against the Government of Colombia

43. The Committee examined this case at its meeting in February 1966 when it submitted an interim report to the Governing Body, as contained in paragraphs 106 to 115 of the Committee's 89th Report. In that report the Committee presented its conclusions and its final recommendations with regard to certain of the allegations, postponing examination of one allegation on which it had not received the Government's observations. The present report refers exclusively to that allegation.

44. Colombia has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

45. In its complaint dated 14 September 1965 the International Federation of Christian Trade Unions (I.F.C.T.U.) stated that, as a result of the police measures adopted by the Government in its aim of preventing freedom of action for the trade union movement, there were very few trade union meetings that could be held in Colombia without the presence of government secret agents.

46. By a communication dated 28 February 1966 the Government categorically rejects the suggestion that such measures have been adopted and states that it is without any foundation. It further states that the number of trade union organisations is increasing every day and that the Government in no way impedes their activities; there are over 3,000 first-level trade unions in the country, some 100 federations and two major labour confederations which have collaborated with the Government, on a basis of autonomy and independence, in planning social policy, and these bodies are stated to be performing their functions normally and fully.

47. When it examined another aspect of the same case in its 89th Report [1], the Committee pointed out that in a considerable number of cases [2] it had stated that the right of trade unions to meet freely in their own premises, without need for prior authorisation and without supervision by the public authorities, constituted a fundamental element in freedom of association.

48. In the present case the Committee observes that the complainants have couched their allegation in general terms without providing details or evidence in support. The Committee therefore recommends the Governing Body, noting the Government's statement referred to in paragraph 46 above, to decide that it would be purposeless to pursue further the examination of this aspect of the case.

Definitive Conclusions in the Cases Relating to Burundi (Cases Nos. 282 and 401) and Cameroon (Case No. 418)

Cases Nos. 282 and 401:

Complaints Presented by the International Federation of Christian Trade Unions and the Pan-African Workers' Congress against the Government of Burundi

49. This matter was examined by the Committee at its 41st and 42nd Sessions, held in November 1965 and February 1966 respectively. On these occasions it presented two interim

[1] See 89th Report, para. 110.

[2] See First Report, Case No. 8 (Israel), paras. 63-69; Second Report, Case No. 21 (New Zealand), paras. 11-31, Case No. 28 (United Kingdom-Jamaica), paras. 65-70; Sixth Report, Case No. 40 (France-Tunisia), paras. 374-574; Seventh Report, Case No. 56 (Uruguay), paras. 32-70; 12th Report, Case No. 16 (France-Morocco), paras. 292-428, Case No. 61 (France-Tunisia), paras. 447-492; 17th Report, Case

(footnote continued on next page)

reports, which were adopted by the Governing Body at its 163rd Session (November 1965) and 164th Session (February-March 1966).[1]

50. The case consists of three series of allegations: first, it was alleged that Mr. Niyirikana, President of the Christian Trade Union of Burundi, and Mr. Mayondo, Counsellor of that organisation, had been executed without trial at Bujumbura on 25 October 1965 and that other trade union leaders had been placed on a list of persons to be executed; secondly, it was alleged that certain leaders and militants of the Christian Trade Union of Burundi had been arrested in July 1964, including Messrs. Gegera, Ntahomarikiye, Monwangari, Nahinana, Baridwegur, Ntwenga, Nigere and Burundi; thirdly, it was alleged that on 15 January 1962 four trade unionists, Messrs. Nduwabike, Ndinzurwaha, Ntaymerijakiri and Baravura had been assassinated at Usumbura by members of the Uprona Party Youth Movement at the instigation of the authorities.

51. At its meeting in February 1966 the Committee deplored the fact that, in spite of the assurances given, all requests addressed to the Government to furnish its observations on the matters raised in the complaints had elicited no reply. In these exceptional circumstances the Committee, having received no co-operation from the Government in respect of a matter of the utmost gravity, decided to request the complainants to furnish any useful information at their disposal concerning recent developments in Burundi.[2]

52. In view of the nature of the allegations made and the information received from various sources concerning events in Burundi, the Committee, also at its meeting in February 1966, felt bound to include in its report the following passage [3]:

> The responsibility of the International Labour Organisation in the matter is limited to the protection of trade union rights, in respect of which it has responsibility under the I.L.O. Constitution and has accepted responsibility in agreement with the United Nations. It is evident that the tragic events in Burundi extend far beyond the scope of violation of trade union rights and concern directly the fundamental human rights of a considerable sector of the population of Burundi, and that, in these circumstances, the responsibility of the International Labour Organisation for the protection of trade union rights cannot be exercised effectively without parallel action by the United Nations to protect the fundamental human rights of the Burundi population as a whole. In the United Nations responsibility for matters relating to human rights rests with the Commission on Human Rights of the Economic and Social Council, the Economic and Social Council itself and the General Assembly.

Having made these remarks the Committee recommended the Governing Body to ask the Director-General to request the Secretary-General of the United Nations to bring the attention of the Commission on Human Rights of the Economic and Social Council to the question of the violation of human rights in Burundi at its forthcoming session, as a matter of urgency.[4]

53. This recommendation having been adopted by the Governing Body at its 164th Session, on 28 February 1966, the Secretary-General of the United Nations was informed by the Director-General, by letter dated 1 March 1966, of the conclusions adopted by the Governing Body, and was invited, in accordance with article II, paragraph 6, and article III of the Agreement between the United Nations and the International Labour Organisation, which came into force on 14 December 1946, to take the necessary measures for the matter to be placed on the agenda of the Commission on Human Rights. By letter dated 4 March 1966 the Government of Burundi was informed of the conclusions of the Committee as adopted by the Governing Body.

No. 104 (Iran), paras. 157-221; 19th Report, Case No. 110 (Pakistan), paras. 50-90, Case No. 133 (Netherlands-Netherlands Antilles), paras. 108-134; 24th Report, Case No. 121 (Greece), paras. 41-79; 25th Report, Case No. 152 (United Kingdom-Northern Rhodesia), paras. 179-248; 27th Report, Case No. 159 (Cuba), para. 373.

[1] See 85th Report, paras. 304-324, and 88th Report.

[2] Ibid., paras. 12, 13 and 18 *(a)* and *(c)*.

[3] Ibid., para. 17.

[4] Ibid., paras. 17 and 18 *(e)*.

54. The matter came before the Commission on Human Rights at its Twenty-second Session, held at New York from 8 March to 4 April 1966. In the debate which then took place the observer for Burundi stated that his Government opposed the inclusion in the agenda of the item proposed by the I.L.O. concerning the question of the violation of human rights in Burundi and emphasised that, in the opinion of his Government, the inclusion of the item would constitute an intervention in matters falling within the internal competence of the country, in violation of the United Nations Charter. He added that his Government considered that the I.L.O. had adopted its decision as a result of a misunderstanding, since the acts complained of simply constituted penal sanctions applied in accordance with the law against certain persons guilty of serious crimes. However, the observer for Burundi stated that his Government was prepared to conduct detailed discussions with the I.L.O. on the point in question, provided that the sovereignty of Burundi was fully respected and that there was no intervention in the internal affairs of his country.

55. In reply the I.L.O. representative recalled, without addressing himself to the substance of the question, that the decision of the Governing Body had been unanimous, without reservation or abstention, that serious allegations had been laid before the competent organs of the I.L.O., regarding violations of trade union rights in Burundi, which extended to the execution without trial of trade unionists and that, in spite of repeated requests for information made by the I.L.O., no reply had been received from the Government of Burundi. The I.L.O. representative indicated that the statement which had just been made by the observer for Burundi furnished for the first time certain clarifications. He then asked the observer to confirm that his statement to the effect that his Government was prepared to conduct detailed discussions with the I.L.O. meant that the Government of Burundi was now prepared to reveal the facts of the matter and to throw some light, as the I.L.O. had requested, on the procedure followed and on the sentences which, it was now said, had been imposed, resulting in the execution of the persons concerned. The observer for Burundi confirmed that this interpretation was correct and that his Government was prepared to send a mission to the I.L.O. to establish the facts and to discuss the situation. The representative for the I.L.O. stated that he would not insist that the item under consideration should be placed on the agenda of the Commission on Human Rights, provided that the report to the Economic and Social Council would take account of the relevant facts so that the Council and the General Assembly might be duly informed of them.

56. The Commission on Human Rights took due note of the statements made by the observer for Burundi and by the representative of the I.L.O. and decided, in view of these statements, not to place the matter on its agenda, but to include the text of the above statements in its report.

57. In addition, on 28 March 1966 Ambassador Térence Nsanzé, Permanent Representative of Burundi to the United Nations, on the instructions of his Government, called on the Director-General, who was in New York at the time. He stated, *inter alia*, on the subject of the execution of trade unionists in Burundi, that two trade union leaders had taken part in an uprising, during the events of October and November 1965, which had threatened to become general, with the most serious consequences for the entire country; therefore, they had been tried, condemned and executed. The Permanent Representative also stated that other persons involved in the uprising had been killed during the action, but that there was no question of execution without trial. The Permanent Representative went on to confirm that a mission from Burundi would visit the International Labour Office in Geneva and on the basis of the above facts would rebut the accusations made against his country and would reassure the I.L.O. concerning the past, present and future exercise of trade union freedom in Burundi.

58. The Director-General recalled that it was following the announcement of a forthcoming mission from Burundi to Geneva, under the conditions and for the reasons indicated by the Ambassador, that the I.L.O. had agreed not to insist that its communication to the Secretary-General of the United Nations be included in the agenda of the Commission on

Human Rights. He expressed the hope that, as a result of the declarations of the Ambassador and of the talks which would take place in Geneva with the delegation of Burundi, it would be possible to re-establish the atmosphere of understanding and collaboration which should mark the relations between Burundi and the I.L.O.

59. The mission from Burundi visited Geneva during the week from 18 to 23 April 1966. It was led by Ambassador Térence Nsanzé, Permanent Representative of Burundi to the United Nations, and also included the following persons: Mr. Isidore Rwamavubi, Director of Political Affairs, the Press and Information in the Burundi Ministry of Foreign Affairs and External Commerce; Mr. Félix Alexis Dédé, Legal Adviser to the Ministry of Foreign Affairs, and Mr. Charles Mabushi, Deputy Attorney-General. The delegation was received by the Director-General on 20 and 22 April 1966.

60. At the first meeting Mr. Nsanzé assured the I.L.O. of his country's devotion to the principles of the I.L.O. and emphasised his Government's readiness to undertake " a fruitful and mutually beneficial dialogue ". He was confident that the discussions would take place in an atmosphere impregnated with objectivity and realism. In reply the Director-General indicated that Burundi and the I.L.O. had the same aims, namely to understand the problems, to establish the facts, to prepare a formula permitting the resolution of the existing situation and to establish positive relations. The delegation requested the I.L.O. to specify in writing the points which it desired to have clarified, and a detailed questionnaire was submitted to it, based on the various requests for information contained in the reports of the Committee on Freedom of Association.

61. The delegation handed its reply to the Director-General at the meeting on 22 April 1966. Before dealing with the specific points raised in the I.L.O.'s questionnaire, the Government's reply formulated certain general observations which were intended to place the problem in its context and to define its true dimensions " in the climate and atmosphere in which it arose and developed ".

62. The Government recalled, first of all, that, in view of the competence of the I.L.O., its only obligation was to answer for any offences against freedom of association. While recognising that it was sometimes difficult to distinguish clearly between political activities and trade union activities, the Government stated that, in the framework of the tragic events which had occurred in Burundi, no confusion was possible and that aims such as the violent change of the régime, a programme of purges and lynchings and the acquisition of power by force could not be confused with a plan of action deriving from claims of a social character.

63. The Government went on to state that it would faithfully consent to a dialogue and that it was determined not to limit itself to a denial of the accusations made against it; it intended, on the contrary, to justify itself so that the I.L.O. might form an opinion after hearing both sides of the case. Regarding the Government's silence up to the present, the reply stated that this was not to be considered an admission of guilt. " However unwise it might have been tactically, the official silence was intended only to afford a breathing space, so that the question might be given mature consideration."

64. Certain reports, the reply continued, had attempted to throw on to the Government full responsibility for the violence which had been committed and even to imply that the Government had deliberately instigated this. In order to establish the exact facts the Government wished to summarise the history of the events of October-November 1965 as follows:

The attempted coup d'état soon had the effect of depriving the country for a time of any form of government, which resulted in the almost total disruption of all authority. The Head of State, by a miracle, narrowly escaped an attempt on his life. The Prime Minister was seriously wounded. The rebels temporarily controlled the streets and the situation as a whole. Anarchy, uncertainty and confusion reigned. There was utter chaos; the security forces were desperate; established institutions were adrift. . . . Could a more favourable situation be imagined for the release of the most blind passions and lowest instincts of a population torn by ethnic strife? There could be free play for the private settlement of individual quarrels. The ugly sounds of riots and civil

war could be heard. Irresponsible elements satisfied their personal vengeances. The army and police were divided. Whom could one trust in this atmosphere of total confusion and mutual distrust? All the time what remained of authority struggled with difficulty to gain control of the situation. While a handful of loyalist troops undertook the recapture of the capital, the major part of the territory was a prey to disorder and violence. Between the time when loyal forces began to stem the tide and full control of the situation was established there was an inevitable period when matters hung in the balance. At this time other acts of violence were perpetrated. If these were the facts and if this was the atmosphere, how was it possible in addition to insist unremittingly on the shouldering of its responsibilities by a Government which was weakening and was indeed almost in its death throes and which was just beginning, little by little, to recover its breath, its ground and its life? Abuses may doubtless have been committed and errors also. But this may all be explained by the sole anxiety to re-establish rapidly the order which had been disrupted and the desire to restore the situation. In such circumstances history teaches that it is the duty of every State to use its authority and to be firm. It is this firmness which has wrongly been termed a violation of liberty. Could liberty militate against liberty—the liberty of the community? In exceptional circumstances exceptional measures are necessary.

65. Indicating the spirit in which the Government intended to reply to the specific questions which had been addressed to it, the reply of the mission continued as follows:

Leaving aside the question of strict legal obligation, we consider it to be a moral obligation and a point of honour to conform to that international conscience of control and solidarity and to that universal spirit of co-operation which is reflected and embodied in what is already called " universal morality ". It is in this spirit and with this faith that one must understand the replies to be given below before the guarantees are presented which will provide concrete evidence of this good will, good faith and willingness to collaborate frankly and closely, under the symbol of international co-operation, in the cause of peace and for the advancement of man. For this reason we have avoided taking refuge behind the inflexibility of texts. We have been guided by the desire to reach constructive solutions and we have preferred the spirit to the letter of our obligations.

66. The Government went on to reply to the questionnaire submitted to the mission at its request at the first meeting with the Director-General, and began with the following general remarks: the Constitution of the Kingdom of Burundi guarantees freedom of association; specific laws govern the manner in which it is exercised; specific regulations define the rights, obligations and spheres of action of every association. As regards freedom of association, the Government states that it has subscribed to the principles of the Constitution of the I.L.O., to the Declaration of Philadelphia and to the Universal Declaration of Human Rights. " The exercise of trade union rights is therefore guaranteed ", continued the Government, " and in the case in question it has not been impeded or impinged upon ". The Government stated, moreover, that the national Constitution proclaimed the principle that all citizens were equal before the law and before the courts; the rules of procedure laid down in the numerous laws forming the Code of Penal and Civil Procedure assured the equality of everyone before the courts and therefore guaranteed the administration of good and fair justice; there was no privilege or discrimination of any sort either in favour of or against trade unionists; every citizen must conform to the law and no one, whether or not he was a trade unionist, might abuse his freedom to interfere with the freedom of others or to compromise public tranquillity and order; a trade unionist might not use his status as a shield for his reprehensible acts. In this case the elementary principles of regular justice, as set out above, had been respected.

67. The Government's reply dealt next with the various specific allegations made in the complaints. In regard to the allegation that Mr. Niyirikana, President of the Christian Trade Union of Burundi, and Mr. Mayondo, Counsellor of that organisation, were executed without trial at Bujumbura on 25 October 1965, the Government made the following observations.

68. With regard to the reasons for the arrest of the persons concerned, the Government stated that they were convicted of offences against the internal security of the State, attempted crimes against persons and their property, racial hatred, massacres, looting, arson, incitement to insurrection and military rebellion, and insubordination. The Government pointed out

that these were offences against the common law or political offences and were in no way connected with the exercise of trade union rights.

69. The Government indicated that a proper preliminary examination was made of the matter which resulted in the formulation of the charges set out above. This was clear from the reasons set forth in the judgment, a copy of which had been furnished by the Government to the I.L.O.

70. Following the decree instituting a state of emergency and a military régime to deal with the exceptional situation, the Government continued, the accused were summoned before the War Council, a special court created for this situation in conformity with the legislation in force regarding a state of siege. The Government pointed out that this tribunal was not set up solely to try the trade unionists but to try all those implicated in the attempted coup d'état of 19 October 1965 and the events deriving from it.

71. The Government explained that a war council is a military court, instituted under the Law of 29 June 1962 applying to the Kingdom of Burundi the legislation and regulations promulgated by the power exercising trusteeship (Belgium) and providing for a military régime and summary justice in times of grave disorder. The competence of this court extends to the repression of all political offences and offences against common law. Its composition is as follows: three military judges appointed by ministerial order under the decree establishing the military régime and state of emergency, a public prosecutor and a clerk of the court.

72. The Government stated that the installation of the military régime and state of emergency resulted in the temporary transfer of the powers of the ordinary common law courts to the military court. The procedure followed before this special court was by definition an exceptional procedure. The Government stated, however, that since the progressive return to normal life the military and emergency régime had been dissolved and therefore had come to an end at the same time as the peculiar circumstances which had given rise to it. The Government affirmed that recourse to this emergency procedure was intended only to restore public calm, order and tranquillity, to put a stop to violence and to bring life back to normal.

73. The Government further stated that the publication of proceedings is one of the fundamental principles of the national legislation and that sessions *in camera* are ordered only for cases where morality is concerned. In the event, continued the Government, since the affair did not concern morality but public order, all hearings were held in public.

74. The Government stated that the accused had the choice between being represented by counsel for their defence and defending themselves; the Government stated that they chose the latter alternative, which, it added, is quite current practice in the country.

75. The Government stated that in Burundi one of the basic principles of the right of defence demands that every accused is presumed innocent until proved to be the contrary; it follows that the principle of *actori incumbit probatio* was strictly applied and that, in the case in question, the burden of proof fell on the prosecution.

76. The Government further stated that in cases heard *in camera* all judgments must be pronounced in public hearings and that no departure from this rule was, in any event, permitted. In the case in question, stated the Government, all the judgments were of public knowledge as from their pronouncement; the formula "judged as well as pronounced in open court", prescribed on pain of nullity for the pronouncement of any judgment, was proof of this fact.

77. From the judgment itself, the text of which, as stated earlier, had been communicated to the I.L.O., it was evident that the persons concerned had been judged at the same time as nine other persons who were not trade unionists, and had been condemned for having committed the acts mentioned in paragraph 68 above as part of an attempt to overthrow the Government.

78. The Government further stated that, apart from the two trade unionists, Messrs. Niriyikana and Mayondo, judged and executed not as trade unionists but as members of a subversive political organisation and after sentence, no trade unionists had been executed or threatened with execution.

79. Concerning the allegations that Messrs. Gabriel Gegera, Mathieu Ntahomarikiye, Léon Monwangari, Lucien Nahinana, Uoachim Baridwegur, Venant Ntwenga, Emile Nigere and Anaclet Burundi, all leaders or militants of the Christian Trade Union of Burundi, were arrested in July 1964, the Government made the following observations.

80. The reason for arresting six of the eight persons mentioned above—Messrs. Gegera, Ntahomarikiye, Nahinana, Ntwenga, Nigere and Burundi—resided in the fact that they had participated in an uprising against the internal security of the State. " This fact ", the Government pointed out, " was confirmed by one of the principal leaders of the movement, Mr. Gervais Nyangoma, in his letter of 8 September 1965, in which he recognised that the persons responsible for the complaint had not been injured in their capacity as trade unionists but as individuals. In fact in 1964, at the instigation of Mr. Paul Mirerekano, a rebel movement was started. Its basic objective was to overthrow the established régime and to snatch power by force. To this end the conspirators, among whom were the six persons arrested, had included in their programme the physical liquidation of a certain number of political figures and certain high State officials. This attempted coup d'état was also crushed."

81. The Government stated that only the six persons mentioned in the preceding paragraph had been arrested in 1964. Mr. Uoachim Baridwegur, now the Minister of Social Affairs, had not been involved in the affair. Mr. Léon Monwangari, who was prosecuted for embezzlement, had not been troubled, since he succeeded in escaping to Rwanda.

82. The Government further stated that, for different reasons, certain persons mentioned in the complaints were now in prison. Mr. Monwangari was detained on suspicion of embezzlement. Messrs. Burundi and Ntwenga were detained on suspicion of having provoked fires at Kamenge on 4 July 1965. Messrs. Gegera, Ntahomarikiye and Nahinana were detained on suspicion of having been involved in the events of October 1965 as subversive agents.

83. " It is evident ", stated the Government, " that a decision to detain on suspicion constitutes or presupposes an act of prosecution." The Government pointed out that since the end of martial law and the state of emergency, proceedings had been instituted against the persons concerned before the ordinary courts in accordance with jurisdictional rules in force. It indicated that judgments had not yet been handed down in these cases but that the proceedings were following their normal course.

84. In reply to a question put by the Office as to whether other trade unionists besides the eight mentioned by the complainants had been arrested, the Government indicated that Mr. Maurice Kirotame, Secretary-General of the Christian Trade Union of Burundi, had been arrested; it stated, however, that this was for reasons other than the exercise of trade union activity.

85. Concerning the allegations relating to the assassination of four trade unionists in January 1962, the Government, after recalling that the events in question took place at a time when Belgium was still responsible for the international relations of Burundi, pointed out that the four trade unionists who died were the victims of reprisals produced in an atmosphere of public rage following the assassination of Prince Louis Rwagasagore, Prime Minister of the autonomous Government. Nevertheless, stated the Government, since independence this case had been on file, and arrests had been made; the question was, however, still pending before the competent authorities.

86. By way of conclusion, the Government's reply is expressed in these terms:

Since our purpose, as we have explained in our message of introduction, has no other significance than to clear the great atmosphere of tension which has burdened our relations, we considered it

useful to submit for the examination of our Government a certain number of measures designed to clarify the situation. These are assurances which we believe susceptible of restoring confidence and creating an atmosphere of healthy understanding and most effective co-operation.

(1) The mission gives the Organisation the assurance that its Government, in order to demonstrate in a concrete manner its desire for the greatest co-operation, would agree to study, with the top ranks of the Organisation and those of member States, the possibility of being represented by a permanent delegate to the I.L.O.

(2) The mission gives the assurance that its Government will agree, within a reasonable period, to ratify or to apply the international labour Conventions to which it is not yet a party with a view to ensuring better application of international labour standards and respect for trade union freedom.

(3) The mission gives the assurance that its Government will agree to receive, as soon as possible, an I.L.O. on-the-spot mission in Burundi, and to facilitate, as may be necessary, future contacts.

(4) The mission gives the assurance that its Government will do everything in future to keep the I.L.O. informed of all decisions, of all measures which may be taken in respect of the organisation, exercise and regulation of trade union activity and freedom. This information will be supplied spontaneously or at the request of the Organisation. The mission gives the assurance that its Government will receive any suggestion sympathetically.

(5) The mission gives the assurance that its Government has the firm intention of preparing as soon as possible an amnesty Bill to be applicable to all political detainees without distinction.

(6) Martial law and the state of emergency have already been ended. This action was calculated to ease and calm opinion. The return to normal conditions constitutes an effective guarantee for all those before the court.

The mission is of the opinion that such measures are necessary and constitute a real pledge for the safeguard of freedom and the establishment of better relations between its Government and the Organisation.

87. In addition to the above conclusions, which had been communicated in writing to the I.L.O., the head of the Burundi mission wished to make the following comments:

We have noted the obvious interest we all have in the situation which existed in Burundi. We have wished to analyse the problem with all possible objectivity and impartiality. Moreover, we have taken account of the fact that your assistance, the assistance of the Office supported by that of the Governing Body and reinforced by that of the Organisation as a whole, is a paramount condition for the success which we have a right to expect. We must here before you and by your intervention address ourselves to the entire Organisation in order to express our conviction that, as far as Burundi is concerned, we shall try, subject to circumstances rendering it possible, to give effect to the promises we have just made. I would like to inform you, on behalf of the Government, in the name of the supreme authority of Burundi, His Majesty King Mwambutsa IV—who saw me before the first meeting which we had here and who instructed me to tell you that he was closely concerned with the problem and that he relied on your co-operation—that on the part of Burundi the co-operation was complete. We have greatly appreciated your patience and we recognise you as an advocate of authenticity and justice. It is for that reason that you have waited to hear both sides of the story which permitted you to appreciate the events which unfortunately had been distorted by certain press publications, by certain international organisations. Now, we have the firm hope that these organisations will be able to receive correct information and the assurances which we have given you. We know that the International Labour Organisation strongly maintains impartiality. It is for this reason that henceforth we both have a duty which will lead you, for your part, to ask those organisations which have distorted the events to be good enough to place the matter and the facts in their correct perspective. After submitting this questionnaire to you, we would like to receive from you some guarantee, which will be a kind of encouragement, that you will do everything possible to contribute to the realisation of these assurances and to plead for truth and authenticity. This favourable atmosphere, which is a *sine qua non* for achieving this final goal, depends not only on Burundi but on the Organisation itself. We will not fail to communicate to our Government the good will, the determination with which you have collaborated with us, and we have the firm conviction that you will not spare any efforts to achieve that final success which will put Burundi on the road to close co-operation with the I.L.O. in those fields within the competence of your Organisation.

88. Replying to the representative of Burundi, the Director-General said that he was sure that since the first contact in New York a good distance had been travelled and con-

fidence had been established. The fact that since the meeting in New York the representative of Burundi had agreed to come to Geneva with an important delegation to discuss the matter, the fact that he had been prepared to examine the questions put to him and to give the information requested of him, and the fact that he had made the kind of statement which had just been heard in the name of the Government of Burundi all constituted impressive evidence of a desire on the part of Burundi to work on a co-operative basis in the interest of creating a better international atmosphere for the accomplishment of common objectives. The Director-General, therefore, expressed his thanks and asked the representative of Burundi to convey to his Government and to His Majesty King Mwambutsa IV his appreciation for what had been done and especially for the statement of the representative of Burundi concerning the importance that His Majesty and the Government attached to the resolution of the matter and to making the real facts available to public opinion and to other international organisations and to the United Nations itself, so that it might be possible to enter a new period of collaboration in which Burundi could be assisted in every way possible to enjoy a calmer and happier era.

89. The Director-General added that the Organisation and he himself wished nothing more than to give help to Burundi from these points of view. He promised not only to convey faithfully to the Committee on Freedom of Association of the Governing Body the letter of the reply received from the mission sent by Burundi but also to inform it of the atmosphere in which the discussions had taken place. It appeared to him that the statements made by the representative of Burundi were very important. The reply given and its conclusions were of great interest and importance and would be transmitted to the competent organs of the I.L.O. The Director-General said that he would also give an assurance that he personally would see to it that the members of the Committee were informed of the deliberate and careful manner in which the mission from Burundi had dealt with their requests. He expressed the hope that a trail had been blazed which would make it possible to study the matter in a new perspective and thus open a new chapter of positive and constructive co-operation and create a better situation in Burundi. In conclusion the Director-General added that such questions, which relate to human rights, were the very basis of civilisation and its future. When an attitude was adopted such as had been encountered that morning, he said, it became possible to go on consolidating ever more firmly the foundations of the edifice of civilisation so as to serve the highest interests of humanity. " We are here, you and I," he went on, " not only serving Burundi, but in these efforts, I hope, the world at large." The Director-General expressed the hope that, having passed beyond this phase in the discussions, it would become evident that relations between Burundi and the I.L.O. were those existing between an Organisation of which Burundi is a member State and a member State whose interests it is the mission of that Organisation to serve. It was evident, therefore, that the I.L.O. looked forward with pleasure to serving that member State, Burundi, in the accomplishment of its objective of improving the welfare of its people. He assured the representative of Burundi that his country could count on the I.L.O. to be at its side and to give its aid in this matter as a loyal and devoted secretariat. The Director-General thought it important to say this because he did not regard himself as being there as a prosecutor, or to render judgment, but to serve the interests of the Organisation as a whole. In sending a mission to the I.L.O., Burundi was simply discharging its obligations as a Member of the I.L.O., while he himself, as Director-General, was responding to the desires of the member States as a whole, one of which was Burundi. The Director-General concluded by emphasising that each of them was serving the other, in accordance with the obligations enunciated in the I.L.O. Constitution.

90. In view of the foregoing the Committee observes first of all that, although belatedly —a fact which has troubled the relations between the I.L.O. and Burundi—that country has now undertaken to co-operate fully in establishing the facts, as is manifested by the very specific and detailed observations which it has presented on all the aspects of the complaints made to the I.L.O. and in reply to all the points raised in the questionnaire put to the mission by the I.L.O.

91. Having noted, according to the information referred to above, that certain trade unionists, for various reasons, are still in detention (see paragraphs 82 and 83 above), the Committee would be glad if the Government would be good enough to keep the Governing Body informed as to the fate of the persons in question and, particularly, as to the results of the judicial procedures which it has stated are pending.

92. The Committee further notes, on reading the material furnished by the Government, that the facts of the utmost gravity which gave rise to the complaints appear to form part of a series of events related to an insurrection.

93. However, while noting the statement of the Government that the period of acute crisis recently experienced in Burundi led to recourse being had to exceptional procedures, the Committee must point out that exceptional measures always entail a danger of serious infringement of fundamental rights.

94. The Committee notes, first, that martial law and the state of emergency have been ended and, particularly as regards the judicial régime, that the situation appears to be returning to normal, and, secondly, that the Government envisages an amnesty which would be applicable without distinction to all political detainees.

95. Having noted the above information given by the Government, the Committee would be grateful if the Governing Body could be kept informed of all measures taken in respect of an amnesty for persons in detention, and in particular the trade unionists specifically mentioned in the complaints, as well as any other trade unionists who may be detained.

96. The Committee takes note of the several undertakings given by the Government, and particularly those envisaging the ratification of the Conventions relating to freedom of association and a possible I.L.O. mission to Burundi.

97. With regard to the case as a whole, and taking account of all the elements in the matter, the Committee recommends the Governing Body—

(a) while regretting that the Government has delayed so long in doing so, to note that the Government of Burundi has now agreed to co-operate fully with the I.L.O., particularly concerning the establishment of the facts in the event of complaints of violation of trade union rights;

(b) having noted, according to the information given by the Government, that certain trade unionists, for various reasons, are still in detention, to request the Government to be good enough to keep the Governing Body informed as to the fate of the persons in question, and particularly as to the results of the judicial proceedings which it states are pending;

(c) to note that the facts of the utmost gravity which gave rise to the complaints made to the I.L.O. seem in general to have formed part of a series of events related to an insurrection;

(d) while noting the statement of the Government that the period of acute crisis experienced in Burundi led to recourse being had to exceptional procedures, to point out that exceptional measures always entail a danger of serious infringement of fundamental rights;

(e) to note, on the one hand, that martial law and the state of emergency have been ended and, particularly as regards the judicial régime, that the situation appears to be returning to normal and, on the other hand, that the Government envisages an amnesty which would be applicable without distinction to all political detainees;

(f) having noted the above information furnished by the Government, to request the latter to be good enough to keep the Governing Body informed as to any measures taken regarding an amnesty of detained persons, and in particular of trade unionists mentioned by name in the complaints, as well as any other trade unionists who may be detained;

(g) to take note of the various undertakings given by the Government, as indicated in paragraph 86 above, and particularly those envisaging the ratification of the Conventions relating to freedom of association and a possible I.L.O. mission to Burundi;

(h) to request the Director-General to invite the Secretary-General of the United Nations to be good enough to bring to the notice of the Economic and Social Council for information the action taken following the discussion which took place in the Commission on Human Rights on 14 March 1966 and the terms of the present report.

Case No. 418:

Complaints Presented by the African Trade Union Confederation and the International Confederation of Free Trade Unions against the Government of Cameroon

98. This case has already been examined by the Committee at its 40th and 42nd Sessions, held in May 1965 and February 1966 respectively. On those two occasions the Committee submitted interim reports which may be found in paragraphs 324 to 359 of the 83rd Report and paragraphs 264 to 276 of the 87th Report respectively.[1] At its February 1966 session the Committee had submitted to it only one allegation that had remained in suspense—the one referring to the arrest of certain former leaders of the Cameroon Trade Union Confederation (F.S.C.)—the other allegation formulated by the complainants, concerning the circumstances in which the congress of that Federation had taken place in October 1964, having already been the subject of final recommendations by the Committee at its May 1965 session.[2]

99. The complainants alleged that the following trade union leaders had been arrested by the federal police at Douala: Pierre Mandeng, Isaac Tchuisseu, Samuel Moudourou, Adolphe Mouandjo Dicka, Simon Nbock Mabenga and Raphaël Ngamby. Several of these persons were subsequently transferred without trial from their prison to the political detention camp at Tchollire, where they were detained arbitrarily and denied any contact with the outside world. The complainants pointed out, furthermore, that one of the men concerned, Mr. Raphaël Ngamby, was a Workers' substitute member of the Governing Body of the International Labour Office.

100. In a first series of observations, submitted to the Committee at its May 1965 session, the Government declared that the arrest of the persons mentioned by the complainants had been motivated by the discovery at Mr. Ngamby's home of subversive documents likely to endanger the internal security of the State, and was consequently totally unconnected with the trade union membership or activities of those concerned.

101. Considering that this answer was insufficient the Committee, at its session held in May 1965, had recommended the Governing Body to request the Government to furnish more detailed additional information as to the exact reasons for the arrest of the persons concerned and, in particular, as to the precise nature of the documents the possession of which by those persons had, in the Government's view, justified the measures taken against them.[3]

102. These recommendations having been approved by the Governing Body, the request contained therein was made known to the Government, which replied by a communication dated 2 November 1965 that the Committee considered at its session in February 1966.

103. In its reply the Government merely " solemnly confirms that Raphaël Ngamby and his associates were dealt with according to current national legislation against citizens convicted of subversive activities ". It affirmed that their trade union membership and activities

[1] The 83rd Report was adopted by the Governing Body at its 162nd Session at the sitting held on 28 May 1965; the 87th Report was adopted by the Governing Body at its 164th Session (February-March 1966).

[2] See 83rd Report, paras 326-329, 333-342, 345-348 and 359 *(a)*.

[3] Ibid., para. 359 *(b)* (i).

were in no way responsible for those measures and declared that it believed that it had " furnished the Committee with every explanation in this matter which is compatible with the dignity of an independent State ".

104. After taking note of these declarations the Committee, at its session in February 1966, made the following recommendations to the Governing Body, which the latter approved:

. . . the Committee recommends the Governing Body—

(a) to draw the attention of the Government of Cameroon to the resolution concerning freedom of association and protection of the right to organise adopted by the First African Regional Conference of the International Labour Organisation (Lagos, December 1960), which, in paragraph 7, " Requests the Governing Body of the International Labour Office to invite governments in respect of whose countries complaints may be made to the Governing Body Committee on Freedom of Association to give their whole-hearted co-operation to that Committee, in particular by replying to requests for observations made to them and by taking the fullest possible account of any recommendations which may be made to them by the Governing Body following examination of such complaints ", and, in paragraph 8, " Requests the Governing Body to accelerate as far as possible the procedure of its Committee on Freedom of Association and to give greater publicity to the conclusions of that Committee ", and to request the Government to be good enough to review the situation in the light of this resolution;

(b) to urge the Government once again, bearing in mind the resolution cited in the preceding subparagraph and for the reasons stated in paragraphs 270 and 271 above, to be good enough, firstly, to furnish more detailed additional information as to the exact reasons for the arrest of the persons mentioned in the complaint and, in particular, as to the precise nature of the documents the possession of which by those persons has, in the Government's view, justified the measures taken against them, and, secondly, to indicate whether the trade unionists mentioned in the complaint have been or are going to be tried with all the safeguards of regular judicial procedure and, if so, to communicate the text of the judgments given and the grounds therefor;

(c) to express the hope once again that Mr. Ngamby's status as member of the Governing Body will receive due consideration in the light of the Government's obligations under article 40 of the Constitution of the International Labour Organisation, according to which members of the Governing Body shall, as such, enjoy " such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation ", and of the importance attached by the Governing Body and the Conference to the discharge of these obligations.[1]

. . . . . .

105. At its session held in February 1966 the Committee had also had placed before it a communication dated 5 November 1965 from the International Confederation of Free Trade Unions (I.C.F.T.U.), which alleged that the trade union leaders in question were denied the right to be visited by their families, refused medical supplies and forced to make their own arrangements to have food brought in to them; and that even then their guards deliberately delayed the distribution of parcels.

106. Noting that the Government, to which the text of that communication had been transmitted, had not yet furnished its observations thereon, the Committee recommended the Governing Body to urge the Government to be good enough to furnish those observations.[2]

107. This request, together with the conclusions quoted in paragraph 104 above, having been brought to the attention of the Government by a letter dated 2 March 1966, the Government replied by two communications dated 14 March and 3 May respectively.

108. In its further observations the Government " solemnly reaffirms " that the reason for the arrest of the persons mentioned by the complainants was that documents had been

[1] See 87th Report, para. 276 *(a)*, *(b)* and *(c)*.

[2] Ibid., para. 276 *(d)*.

found in their possession which had no relation to their trade union activities but showed that they were liable to endanger public order. The Government stresses that " in view of the nature of the said documents and the requirements of the internal and external security of the State, it would not be desirable to communicate the documents to any person or body whatsoever " and it " therefore regrets that it is unable to defer, on this point, to the recommendations made by the Committee on Freedom of Association ".

109. The Government goes on to state that Mr. Ngamby and the other trade union leaders mentioned in the complaints had, like other Cameroon citizens, been dealt with " by measures called for by the incompatibility of their behaviour with the higher interests of the country ". It points out that certain trade union members and leaders, including Mr. Moudourou [1], were released shortly after their arrest in view of the fact that the charges brought against them were not very serious.

110. As regards having the persons concerned brought to trial, the Government states that this procedure is not contemplated by the Ordinance of 4 October 1961 respecting the state of emergency, under which the persons concerned were required to take up supervised residence. The Government further points out that those measures were preventive ones and necessary for the maintainance of public order; it stresses the fact that the persons in question had had no charges brought against them and had not been imprisoned but simply placed in compulsory residence as a precaution.

111. The Government goes on to state that " as for bearing in mind, in the light of article 40 of the Constitution of the I.L.O., the fact that Mr. Raphaël Ngamby is a member of the Governing Body, [it] considers that the privileges and immunities deriving therefrom cannot be invoked save where the acts committed by the person in question are related to the responsibilities and attributions which accrue to him in his twofold character as trade union leader and member of the Governing Body of the I.L.O.". Now, " the Government has never ceased to affirm that those acts had nothing whatsoever to do with such attributions, so that the privileges and immunities in question cannot possibly be invoked in the present case ".

112. The Government's reply then deals with the allegations contained in the communication from the I.C.F.T.U. dated 5 November 1965.[2] As regards the allegations that the persons concerned were denied the right to be visited, the Government affirms that all prisoners are entitled to be visited and that the prison authorities give the necessary authorisation as a matter of course; this applies even more strongly to persons in compulsory residence.

113. As regards the allegation that parcels sent to the prisoners by post were deliberately delayed, the Government explains that, because of the distance that separates the camp of Tchollire from the parts of the country from which those persons come (in the south), and the condition of the roads, parcels sent by post may take as much as two weeks to arrive at their destination. " In the circumstances ", the Government states, " the persons in question may have been led to believe that the delay was the fault of their guards."

114. As regards the allegations concerning the provision of medical supplies and the fact that private arrangements have been made to have food brought, the Government states that these are completely unfounded and points out that persons in compulsory residence are subject to the same rules as prisoners with regard to accommodation, food and health supervision. " They are provided with the same food as persons detained in ordinary prisons, paid for out of the normal budget allocations set aside for that purpose. They are under medical supervision, receive on-the-spot medical care and supplies called for by their state of health and are, if necessary, evacuated to the official health establishment nearest their place of residence."

[1] See para. 99 above.

[2] See paras. 105 and 106 above.

115. In its observations the Government, as it has already done twice, solemnly affirms that the measures taken in regard to the trade union leaders in question had no connection whatsoever with their trade union membership or activities and were provoked only by political activities contrary to public order in which the individuals in question had engaged, as witness the documents seized at the home of one of them, Mr. Ngamby. The Government, however, states that for reasons of security it cannot reveal the contents of those documents as the Committee had requested.

116. It is not for the Committee to express an opinion on the position adopted by the Government in this connection. The Committee, however, points out that it finds itself, in view of the Government's refusal to comply with the request made to it, in such a position that it cannot determine whether or not there is any connection between the measures taken against the individuals mentioned in this case and the fact that they are trade union leaders or their activities as such.

117. The Committee therefore finds itself compelled to recommend the Governing Body to take note of the allegations made by the complainants concerning the arrest of trade union leaders and the observations furnished thereon by the Government and to express its regret that the Government has not furnished the information requested by the Committee and without which the Committee is not in a position to formulate conclusions on the merits of this aspect of the case.

118. In its observations the Government also states that the interested parties were not detained but simply placed under preventive compulsory residence and that this measure was taken in application of the Ordinance of 4 October 1961 respecting the state of emergency, which does not call for such persons to be brought before a court of law. The Government adds that one of the trade union leaders mentioned in the complaint, Mr. Moudourou, was released shortly after his arrest.[1]

119. While noting this last point with satisfaction the Committee nevertheless feels it should submit certain comments suggested to it by the observations of the Government. These show that, first of all, while the persons arrested may not be legally considered as " sentenced to imprisonment " but rather " required to take up compulsory residence under supervision at the Civic Rehabilitation Centre (residence under supervision) ", they are nevertheless deprived of their freedom as a " preventive measure " according to the Government. From the observations of the Government it also appears that by virtue of the Ordinance of 4 October 1961—which is legislation governing exceptional circumstances—the persons concerned will not be brought before a court of law.

120. On these two points, as it has already done on many occasions in the past when trade union leaders have been placed under preventive arrest [2], the Committee wishes to stress that preventive detention measures can constitute serious interference with the exercise of trade union rights and that, in order to avoid this, such measures should be taken only when justified by a serious situation; it also wishes to stress the danger that detention measures taken against trade union leaders can represent for the right to organise if—as appears to be the case in the present situation, thanks to a law of exception—they are not accompanied by appropriate judiciary safeguards.[3]

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[1] See paras. 99 and 109 above.

[2] See Fourth Report, Case No. 5 (India), paras. 18-51; Case No. 10 (Chile), paras. 52-88; Sixth Report, Case No. 47 (India), paras. 704-736; 12th Report, Case No. 63 (Union of South Africa), paras. 257-276; 13th Report, Case No. 62 (Netherlands), paras. 18-89; 16th Report, Case No. 112 (Greece), paras. 57-86; 17th Report, Case No. 104 (Iran), paras. 157-221; 27th Report, Case No. 143 (Spain), para. 186; 67th Report, Case No. 303 (Ghana), para. 318; 78th Report, Case No. 360 (Dominican Republic), para. 187; 85th Report, Case No. 441 (Paraguay), para. 56.

[3] See Fourth Report, Case No. 30 (United Kingdom-Malaya), paras. 140-161; Sixth Report, Case No. 49 (Pakistan), paras. 770-813; 12th Report, Case No. 87 (India), paras. 233-240; 25th Report, Case No. 136 (United Kingdom-Cyprus), para. 154; 81st Report, Case No. 385 (Brazil), para. 150, and Case No. 419 (Congo-Brazzaville), para. 193.

121. The Committee therefore feels that it should recommend the Governing Body to draw the attention of the Government to the fact that all governments should make it their duty to ensure that human rights are respected, in particular the right of prisoners to be brought to trial in the shortest possible time before an impartial and independent judiciary authority; the Governing Body should also express the hope that the Government will feel it is able to take these principles into account in the case of trade union leaders still in detention.

122. As regards the subsidiary allegations contained in the communication from the I.C.F.T.U. dated 5 November 1965, which contains only a series of affirmations [1], the Committee notes that the Government meets these affirmations with fairly detailed information concerning the conditions under which the individuals in question are kept in compulsory residence.[2]

123. In the circumstances, considering that the complainants have not brought sufficient proof in support of the claims they put forward, the Committee recommends the Governing Body to decide that this aspect of the case does not warrant further examination on its part.

124. As regards the case as a whole, the Committee recommends the Governing Body—

(a) to decide, for the reasons given in paragraph 123 above, that the allegations contained in the communication dated 5 November 1965 from the International Confederation of Free Trade Unions do not call for further examination on its part;

(b) to take note of the allegations made by the complainants concerning the arrest of trade union leaders and the Government's observations thereon, and to express its regret that the Government has not furnished the information requested by the Committee and without which the Committee is not in a position to formulate conclusions on the merits of this aspect of the case;

(c) to draw the Government's attention, for the reasons indicated in paragraphs 119 and 120 above, to the fact that every government should make it its duty to ensure that human rights are respected, in particular the right of prisoners to be brought to trial in the shortest possible time before an impartial and independent judiciary authority;

(d) to express the hope that the Government will find itself able to take into account the principles set forth in subparagraph *(c)* above in the case of trade union leaders still in detention.

Interim Conclusions in the Cases relating to Singapore (Case No. 194), United Kingdom (Aden) (Case No. 291), Spain (Cases Nos. 294, 383, 397 and 400), Peru (Case No. 335), Honduras (Case No. 381), Brazil (Case No. 385), Argentina (Case No. 399), India (Case No. 420), United Kingdom (Aden) (Case No. 421), Ecuador (Case No. 422) and Honduras (Case No. 423)

Case No. 194:

Complaint Presented by the World Federation of Trade Unions and the Malayan National Seamen's Union against the Government of Singapore

125. When the original complaint was presented in 1959 the Government of the United Kingdom was responsible in respect of Singapore. During the period when that responsibility still subsisted, the Committee submitted a number of interim reports on the case to the Governing Body.[3] Singapore acceded to the Federation of Malaya on 16 September 1963

[1] See para. 105 above.

[2] See paras. 112-114 above.

[3] See 44th Report, paras. 105-125; 47th Report, paras. 99-123; 52nd Report, paras. 123-155; 58th Report, paras. 458-474; 60th Report, paras. 163-182; 64th Report, paras. 26-33; 66th Report, paras. 385-399; 70th Report, paras. 104-124.

and the Government of Malaya then became the responsible Government. Singapore became independent on 9 August 1965 and became a Member of the I.L.O. with effect from 25 October 1965.

126. The Government of the United Kingdom, having ratified the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), declared its provisions to be applicable without modification to Singapore. When Singapore joined the I.L.O., however, it recognised that it would continue to be bound, as the Government of Malaya had done earlier, by 21 international labour Conventions. These no longer include the said Convention No. 84, which relates to non-metropolitan territories, but do include the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Singapore has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Government has drawn attention to these facts in a letter addressed to the Director-General on 3 February 1966.

127. When the Committee last examined the case in substance at its meeting in May 1963, it submitted an interim report to the Governing Body in paragraphs 104 to 124 of its 70th Report, approved by the Governing Body on 1 June 1963 in the course of its 155th Session.

128. It will be recalled that, at that time, two main issues remained outstanding, concerning which the Government of the United Kingdom, which was still responsible, was requested to furnish further information. The position with regard to these two questions is briefly summarised below.

Allegations relating to the Registration and Deregistration of Trade Unions

129. The first point related to the fact that, under the law of Singapore, appeals against the refusal or cancellation of the registration of trade unions lie to the competent minister and not to the courts. The Committee recommended the Governing Body, in paragraph 124 of its 70th Report—

(a) to draw attention once again to the importance which the Governing Body attaches to the principle that appeals against the refusal or cancellation of the registration of organisations by trade union registrars should lie to the courts;

(b) to note the statement by the Government of the United Kingdom that the situation in Singapore has improved and that, if the improvement continues, it is hoped to introduce legislation to give effect to Article 2 of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), in the near future;

(c) to express the hope once again that measures will be taken without delay to ensure full application of the Convention in Singapore in accordance with the principle enunciated in subparagraph *(a)* above;

(d) to request the Government of the United Kingdom to keep the Governing Body informed as to further developments in this connection.

. . . . . .

130. At the same time the Committee had before it factual allegations relating to the deregistration of the Malayan National Seamen's Union. While the Committee, for the reasons indicated in paragraph 116 of its 70th Report, decided to recommend the Governing Body to decide that the particular case of the union in question did not call for further examination, it drew attention to certain other points in the legislation which it had noted in the course of its examination of the allegations. The particular provision noted by the Committee was that contained in section 15 (1) *(c)* of the Trade Unions (Amendment) Ordinance, 1959, which empowers the Registrar to deregister a union if he is satisfied that it is being used or is likely to be used against the interest of workmen in the particular trade, occupation or industry represented. In this connection the Committee recalled, in para-

graph 118 of its 70th Report, that even where an appeal against deregistration lies to the courts in such circumstances, the I.L.O. Committee of Experts on the Application of Conventions and Recommendations had pointed out [1] that " the existence of a procedure of appeal to the courts does not appear to be a sufficient guarantee; in effect this does not alter the nature of the powers conferred on the authorities responsible for effecting registration, and the judges hearing such an appeal . . . would only be able to ensure that the legislation had been correctly applied ". The Committee, therefore, in paragraph 124 of its 70th Report recommended the Governing Body—

. . . . . .

(f) to draw the attention of the Government [of the United Kingdom], . . . having regard to the observations of the I.L.O. Committee of Experts on the Application of Conventions and Recommendations referred to . . . above, to the desirability of defining clearly in the legislation the precise conditions which must be fulfilled for a trade union to be entitled to registration or to entitle the Registrar to refuse or cancel registration and of prescribing specific statutory criteria for the purpose of deciding whether such conditions are fulfilled or not;

(g) to express the hope that, when legislation to give full effect to Article 2 of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), is introduced, account will be taken of the considerations set forth in subparagraph *(f)* above.

. . . . . .

131. Observations on this aspect of the case have now been furnished by the Government of Singapore, in a communication dated 16 March 1966.

132. After inviting attention to the statement [2] made by its representative at the 47th Session of the International Labour Conference in June 1963, the Government points out that, immediately after Singapore's accession to the Federation of Malaya on 16 September 1963, it faced, externally, military confrontation from a neighbouring country and, internally, intensified political subversion by foreign-inspired anti-national elements. The Government contends that this grave threat still subsists, even though Singapore became independent on 9 August 1965, and that it has been decided not to take any measure to modify the legislation in order to give effect to Article 2 of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), until such time as the threat to the national security is completely removed. It is claimed that the National Trades Union Congress, which represents 75 per cent. of the organised workers in Singapore, agrees fully with the Government on this point.

133. The representative of the Government of Singapore, in his statement before the Conference Committee on the Application of Conventions and Recommendations in June 1963 referred to by the Government, declared that the Government intended to provide for appeals to lie to the High Court against the refusal or cancellation of the registration of a trade union but that the chief concern of any government must be to preserve the security of the State against foreign-inspired subversive elements. Unfortunately, he said, a minority group of trade union leaders had become tools in the hands of these elements. He said that the Government had assured the independent and democratic trade union movement of Singapore that the legislation would be amended as soon as the menace of subversion had disappeared. The Workers' observer from Singapore confirmed to the Conference Committee that this assurance had been given. The Conference Committee urged the Government to re-examine the question without undue delay.

134. The Committee appreciates that, when its 70th Report was submitted to the Governing Body in May 1963 and when the representative of the Government of Singapore made the above statement to the Conference Committee in June 1963, the Government of

[1] See *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part IV), International Labour Conference, 43rd Session, Geneva, 1959 (Geneva, I.L.O., 1959), p. 108.

[2] See *Record of Proceedings*, International Labour Conference, 47th Session, Geneva, 1963 (Geneva, I.L.O., 1964), Appendix V: Report of the Committee on the Application of Conventions and Recommendations, Appendix II, p. 547.

Singapore was still bound by the obligation to apply the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), which is no longer the case. Nevertheless, the Committee, while appreciating also the fears of the Government of Singapore for the internal security of the country, feels bound to point out that the principles set forth in subparagraphs *(a)* and *(f)* of paragraph 124 of its 70th Report, cited in paragraphs 129 and 130 above, are fundamental principles of freedom of association generally accepted and applied in the vast majority of countries, whether they have ratified the Conventions guaranteeing freedom of association or not.

135. In certain cases [1] which have come before it in the past, in which the governments concerned were not specifically bound by the provisions of a ratified Convention directly relevant to the allegations made, the Committee considered it appropriate to point out that the Declaration of Philadelphia, which now constitutes an integral part of the I.L.O. Constitution and whose aims and purposes are among those for the promotion of which the Organisation exists, as mentioned in article 1 of the Constitution as amended in Montreal in 1946, recognises—

> the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve . . . the effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures.

In these circumstances the Committee considers it appropriate, as it did in the earlier cases cited above, that it should, in discharging the responsibility to promote those principles which has been entrusted to it, be guided in its task, among other things, by the provisions relating thereto approved by the International Labour Conference and embodied in the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), which afford a standard of comparison when examining particular allegations.

136. The Committee, therefore, while recognising that Singapore has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and is no longer bound formally—as it was when the Committee submitted its 70th Report to the Governing Body in May 1963—by the provisions of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), recommends the Governing Body—

(a) to draw the attention of the Government of Singapore to the importance which the Governing Body attaches to the generally accepted principle that appeals against the refusal or cancellation of the registration of organisations by trade union registrars should lie to the courts;

(b) to note the statements contained in the Government's communication dated 16 March 1966 as to the reasons why, in its view, it is inappropriate to amend the national legislation relating to trade unions at the present time;

(c) to express the hope, nevertheless, that the Government will find it possible in the near future to amend its legislation so as to give full effect to the generally accepted principle enunciated in subparagraph *(a)* above;

(d) to express the hope also that, when it does so, the Government will have full regard to the desirability of defining clearly in the legislation the precise conditions which must be fulfilled for a trade union to be entitled to registration or to entitle the Registrar to refuse or cancel registration and of prescribing specific statutory criteria for the purpose of deciding whether such conditions are fulfilled or not;

(e) to request the Government to be good enough to keep the Governing Body informed of any further developments in the matter.

[1] See 15th Report, Case No. 102 (Union of South Africa), paras. 130-131; 28th Report, Case No. 169 (Turkey), para. 292; 45th Report, Case No. 211 (Canada), para. 101; 48th Report, Case No. 191 (Sudan), para. 71; 65th Report, Case No. 266 (Portugal), para. 10; 67th Report, Case No. 303 (Ghana), para. 252.

Allegations relating to Detentions and Arrests of Trade Unionists

137. Some 19 trade unionists were alleged originally to have been arrested and held in preventive detention in 1958. At different stages in its examination of the case the Committee noted that certain of the detainees had been released on various dates. When the Committee examined the case at its meeting in May 1963, it had before it evidence to the effect that only one of the original 19 persons concerned was still in detention. According to a communication dated 4 March 1963 from the Government of the United Kingdom, the detention order in respect of this remaining detainee was due for review in or before April 1963.

138. In these circumstances, reaffirming the principles which it had already enunciated repeatedly in the course of its examination of this case, the Committee recommended the Governing Body, in paragraph 124 of its 70th Report—

. . . . . .

(h) to draw attention yet again to the importance which the Governing Body attaches to the principle of prompt and fair trial by an independent and impartial judiciary in all cases, including cases in which trade unionists are charged with political or criminal offences which a government considers have no relation to their trade union functions;

(i) to draw attention once again to its view that a situation in which one of the 19 trade unionists arrested in Singapore as long ago as 1958 is still detained and has not yet been brought to trial is incompatible with the generally accepted principle enunciated in subparagraph *(h)* above;

(j) to take note of the Government's statement that the detention order in respect of the remaining detainee was due to be reviewed, and to request the Government to inform the Governing Body as to the present position with regard to the said detainee.

139. In its communication dated 16 March 1966 the Government of Singapore states that the detention order in respect of the remaining detainee is being reviewed regularly with a view to his release when he is no longer considered a security risk.

140. Almost three further years have elapsed since the Governing Body, in June 1963, drew the attention of the Government of the United Kingdom to the incompatibility of the continued detention of the trade unionist in question with the principle of prompt and fair trial enunciated in paragraph 124 *(h)* of the 70th Report of the Committee cited in paragraph 138 above. But he is still in preventive detention and has never been brought to trial.

141. In these circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government of Singapore to the importance which the Governing Body has always attached to the principle of prompt and fair trial by an independent and impartial judiciary in all cases, including cases in which trade unionists are charged with political or criminal offences which a government considers have no relation to their trade union functions;

(b) having regard to the fact that one of the 19 trade unionists arrested in Singapore as long ago as 1958 is still detained and has not yet been brought to trial, to draw the attention of the Government of Singapore to the fact that three years have now elapsed since the Governing Body drew attention to the incompatibility of the continued detention of the trade unionist in question with the principle of fair trial enunciated in subparagraph *(a)* above, which is generally regarded as constituting one of the most fundamental human rights;

(c) to request the Government to inform the Governing Body, as a matter of urgency, whether it is intended that the person concerned shall now be given a fair trial without further delay, or, alternatively, whether his release is now envisaged at an early date.

* * *

142. In all the circumstances the Committee recommends the Governing Body—

(a) with regard to the allegations relating to the registration and deregistration of trade unions—

(i) to draw the attention of the Government of Singapore to the importance which the Governing Body attaches to the generally accepted principle that appeals against the refusal or cancellation of the registration of organisations by trade union registrars should lie to the courts;

(ii) to note the statements contained in the Government's communication dated 16 March 1966 as to the reasons why, in its view, it is inappropriate to amend the national legislation relating to trade unions at the present time;

(iii) to express the hope, nevertheless, that the Government will find it possible in the near future to amend its legislation so as to give full effect to the generally accepted principle enunciated in subparagraph (i) above;

(iv) to express the hope also that, when it does so, the Government will have full regard to the desirability of defining clearly in the legislation the precise conditions which must be fulfilled for a trade union to be entitled to registration or to entitle the Registrar to refuse or cancel registration and of prescribing specific statutory criteria for the purpose of deciding whether such conditions are fulfilled or not;

(v) to request the Government to be good enough to keep the Governing Body informed of any further developments in the matter;

(b) with regard to the allegations relating to detentions and arrests of trade unionists—

(i) to draw the attention of the Government of Singapore to the importance which the Governing Body has always attached to the principle of prompt and fair trial by an independent and impartial judiciary in all cases, including cases in which trade unionists are charged with political or criminal offences which a government considers have no relation to their trade union functions;

(ii) having regard to the fact that one of the 19 trade unionists arrested in Singapore as long ago as 1958 is still detained and has not yet been brought to trial, to draw the attention of the Government of Singapore to the fact that three years have now elapsed since the Governing Body drew attention to the incompatibility of the continued detention of the trade unionist in question with the principle of fair trial enunciated in subparagraph (i) above, which is generally regarded as constituting one of the most fundamental human rights;

(iii) to request the Government to inform the Governing Body, as a matter of urgency, whether it is intended that the person concerned shall now be given a fair trial without further delay, or, alternatively, whether his release is now envisaged at an early date;

(c) to take note of the present interim report, it being understood that the Committee will report further to the Governing Body when the information requested in subparagraph *(b)* (iii) above has been received.

Case No. 291:

Complaints Presented by the International Confederation of Arab Trade Unions, the International Confederation of Free Trade Unions, the World Federation of Trade Unions, the Aden Trades Union Congress, the Postal, Telegraph and Telephone International (Berne) and the Arab Federation of Petroleum Workers (Cairo) against the Government of the United Kingdom in respect of Aden

143. The Committee, having already submitted interim reports on this case to the Governing Body at its meetings in February 1963 [1], May 1963 [2], June 1964 [3] and

[1] See 68th Report, paras. 94-125.

[2] See 70th Report, paras. 219-279.

[3] See 76th Report, paras. 118-211.

February 1965 [1], continued its examination at its meeting in November 1965, when it submitted to the Governing Body an interim report respecting the allegations still outstanding contained in paragraphs 325 to 365 of its 85th Report, which was approved by the Governing Body at its 163rd Session (November 1965). That report contained requests, on the part both of the Committee and of the Governing Body, for further information on certain outstanding matters, which were brought to the notice of the Government of the United Kingdom by a letter dated 29 November 1965. The Government furnished further information in a communication dated 10 February 1966.

144. The United Kingdom has ratified the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and has declared them to be applicable, without modification, to Aden.

Allegations relating to the Industrial Relations (Conciliation and Arbitration) Ordinance, 1960

145. With regard to this matter, which has been dealt with at length in its earlier reports [2], the Committee, at its meeting in November 1965, had before it a communication from the Government dated 26 May 1965 in which the Government stated that a Bill to repeal the Industrial Relations (Conciliation and Arbitration) Ordinance, 1960, and to provide for industrial relations procedure in essential services would shortly be published for presentation to the Aden Legislative Council.

146. Accordingly, the Committee noted this statement and, in paragraph 332 of its 85th Report, requested the Government to be good enough to inform the Committee, as soon as possible, of further developments in the matter.

147. In its communication dated 10 February 1966 the Government states that a repealing Bill was published in June 1965. Following criticism of the Bill by certain trade unions, it was withdrawn from the Legislative Council, for further consideration by Ministers of the Aden Government, shortly before the suspension in September 1965 of the provisions of the Aden Constitution relating to the Council of Ministers and the Legislative Council. Consideration is now being given by the appropriate authorities in Aden to the possibility of proceeding with this legislation without waiting for the resumption of ministerial government.

148. In these circumstances the Committee takes note of the Government's statements referred to in the preceding paragraph and requests it to be good enough to inform the Committee, as soon as possible, of further developments in the matter.

Allegations relating to the Application of the Penal Provisions of the Industrial Relations (Conciliation and Arbitration) Ordinance, 1960

149. As indicated in paragraphs 334 and 335 of its 85th Report, the Committee decided at its meeting in November 1965 to defer its examination of allegations relating to the application in certain specific cases of the penal provisions of the Ordinance of 1960 until it had before it information as to the outcome of the more general question concerning the proposed repeal or amendment of the ordinance. In view of the fact that the Committee has again requested the Government to keep it informed of further developments in respect of the legislative changes under consideration, the Committee considers that it should once more defer its recommendations on these specific cases for the time being.

[1] See 81st Report, paras. 71-105.

[2] See 68th Report, paras. 101-122; 70th Report, paras. 222-237; 76th Report, paras. 121-130; 81st Report, paras. 74-76.

Allegations relating to the Suppression of a Trade Union Newspaper

150. In paragraphs 336 to 342 of its 85th Report the Committee, at its meeting in November 1965, examined further the allegations relating to the suppression of the Aden T.U.C. newspaper, *Al Ommal.*

151. In particular, having considered the further observations on this matter made by the Government in a communication dated 26 May 1965, the Committee pointed out that the following facts relating to this aspect of the case had been ascertained. First, *Al Ommal* was suppressed on the ground that it had published subversive or seditious material. Secondly, the Government was unable to furnish extracts from the said material, as it had been requested to do, because the reason for its suppression, the Government stated, was based on its "misrepresentation" of news over a long period. Thirdly, the publication of the said material did not lead to the editor of the newspaper being prosecuted. Finally, in Aden, the revocation of any newspaper's licence was entirely in the discretion of the public authorities, with no right of appeal to the courts.

152. In these circumstances the Committee recommended the Governing Body, in paragraph 365 *(c)* of its 85th Report—

to decide, with regard to the allegations relating to the suppression of a trade union newspaper—

(i) to draw the attention of the Government to the view which it has expressed on several occasions that the right to express opinions through the press or otherwise is clearly one of the essential elements of trade union rights;

(ii) to note that revocation of the licence of the Aden T.U.C. newspaper, *Al Ommal,* was effected by the public authorities in Aden in their discretion and without giving rise to any right of appeal to a court of law;

(iii) to draw the attention of the Government to its view that this discretionary power of the public authorities in Aden is not compatible with the right of a trade union organisation to organise its activities without interference on the part of the public authorities pursuant to Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which has been declared applicable without modification to Aden;

(iv) to request the Government to be good enough to inform the Governing Body of the measures it is intended to take to bring the legislation of Aden in this respect into conformity with Article 3 of the said Convention.

153. In its letter dated 10 February 1966 the Government of the United Kingdom states that, following the suspension in September 1965 of the provisions of the Aden Constitution relating to the Council of Ministers and the Legislative Council, government policy changes, as well as new legislation in Aden, have been confined to strictly essential measures and, so far as possible, the policies of previous representative governments are being preserved. The continuing security difficulties for the time being render impossible the introduction of measures which the Aden Government might otherwise wish to consider and in these circumstances, says the Government of the United Kingdom, no statement can be made as to measures intended by the Aden Government in relation to this matter at present, although it gives an assurance that the point will be considered further when circumstances permit.

154. In these circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government of the United Kingdom once again to the view which it has expressed on several occasions that the right to express opinions through the press or otherwise is clearly one of the essential elements of trade union rights;

(b) to draw the attention of the Government once again to its view that the discretionary power of the public authorities to revoke the licence of a trade union newspaper without this giving rise to any right of appeal to a court of law is not compatible with the right of a trade union organisation to organise its activities without interference on the part

of the public authorities pursuant to Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which has been declared applicable without modification to Aden;

(c) to note the assurance of the Government that the point will be considered further and to request the Government to undertake such reconsideration at the earliest possible date and keep the Governing Body informed.

Allegations relating to the Non-Recognition of the Aden Teachers' Union

155. When it further considered the allegations relating to the non-recognition of the Aden Teachers' Union at its meeting in November 1965 the Committee observed that the position with regard to the alleged non-recognition of the Aden Teachers' Union was not clear. It appeared from the information furnished by the Government that this union was a registered union and that, when it sought formal recognition on 6 February 1962, it was asked to supply details of its constitution and membership—although it had in the past been recognised for the purpose of informal discussion—by the Education Department of the State of Aden, but had not supplied them. The Committee observed, however, that it was alleged that recognition was refused to this union by the Federal Minister of Education because, since the formation of the Federation, education concerned the Federation and not just the State of Aden. This particular point had not been referred to by the Government in its observations. The Committee noted further that, in its reports pursuant to article 22 of the I.L.O. Constitution with respect to the application in Aden of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Government has referred to the Aden Teachers' Union as one of the "representative organisations" to which copies of its reports had been circulated.

156. In these circumstances, having regard to the obligation which the Government has assumed, under Article 3 of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), to ensure that all practical measures shall be taken to assure to trade unions which are representative of the workers concerned the right to conclude collective agreements with employers, the Committee, as indicated in paragraph 359 of its 85th Report, decided to request the Government to be good enough to state whether the Aden Teachers' Union or any other union was now competent to negotiate on behalf of teachers in Aden and to comment on the allegation that recognition had been refused because education had become a federal matter.

157. The request to furnish this information was conveyed to the Government by the Director-General in a letter dated 29 November 1965. In its communication dated 10 February 1966 the Government makes no reference to these points. The Committee therefore requests the Government once again to be good enough to furnish information as to whether the Aden Teachers' Union or any other union is now competent to negotiate on behalf of teachers in Aden and also to comment on the allegation that recognition was refused to the union because education had become a federal matter.

158. Finally, in a telegram dated 2 December 1965, the World Federation of Trade Unions (W.F.T.U.) alleged that the registration of the "Aden Teachers' Federation" had arbitrarily been cancelled. This complaint was transmitted to the Government, for its observations, by a letter dated 8 December 1965.

159. In its communication dated 10 February 1966 the Government assumes that the W.F.T.U. is referring to the Aden General Teachers' Union. The Government states that the registration of this union has not been cancelled. After there had been evidence of breaches of its rules, the Registrar of Trade Unions warned the General Secretary of the Aden General Teachers' Union that it was in danger of having its registration cancelled if it did not put its affairs in order. In any event, says the Government, it is doubtful whether this union can be considered to be genuinely representative of teachers as a whole, because

its latest statutory return indicated a membership of less than one-seventh of all teachers and none of the registered membership appeared to be fully paid up.

160. The Committee, while thanking the Government for this information, requests the Government to state whether the Aden General Teachers' Union mentioned in its reply is the same organisation as the Aden Teachers' Union referred to in paragraphs 155 and 156 above.

Allegations relating to the Employment (Registration and Control of Employment) Bill

161. These allegations were dealt with in detail by the Committee in paragraphs 183 to 196 of its 76th Report and paragraphs 101 to 104 of its 81st Report, when the Committee drew the attention of the Government, having regard to certain of the provisions of the Bill, to the guarantees and principles embodied in Articles 1 and 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and Article 3 of the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), both declared applicable without modification to Aden. The Committee also noted that it appeared from the text of the proposed Bill that, if it were to be enacted in that form, access to employment in general and to particular employment would depend on a worker's being registered and that a wide discretion would be accorded to the registering authority when deciding to grant or refuse negotiation. The Committee pointed out, in paragraph 194 of its 76th Report, that it had drawn attention in the past [1] to the fact that such provisions might tend to prevent the negotiation by collective agreement of better terms and conditions, including terms and conditions governing access to particular employment, and thereby to infringe the rights of the workers concerned to bargain collectively and to promote and improve their working conditions, which were generally regarded as essential elements of freedom of association

162. At its meeting in November 1965 the Committee had before it a communication dated 26 May 1965 from the Government, in which it repeated earlier statements that the Bill remained in abeyance.

163. The Committee, therefore, in paragraph 364 of its 85th Report, requested the Government to be good enough to inform it in due course of any further developments in connection with the Bill.

164. In its communication dated 10 February 1966 the Government states that the Employment (Registration and Control of Employment) Bill still remains in abeyance, and the Committee, therefore, requests the Government to be good enough to inform it in due course of any further developments in this connection.

* * *

165. In all the circumstances the Committee recommends the Governing Body—

(a) to decide, with regard to the allegations relating to the suppression of a trade union newspaper—

(i) to draw the attention of the Government of the United Kingdom once again to the view which it has expressed on several occasions that the right to express opinions through the press or otherwise is clearly one of the essential elements of trade union rights;

(ii) to draw the attention of the Government once again to its view that the discretionary power of the public authorities to revoke the licence of a trade union newspaper without this giving rise to any right of appeal to a court of law is not compatible with the right of a trade union organisation to organise its activities without interference on the part of the public authorities pursuant to Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which has been declared applicable without modification to Aden;

[1] See 15th Report, Case No. 102 (Union of South Africa), paras. 160-165.

(iii) to note the assurance of the Government that the point will be considered further and to request the Government to undertake such reconsideration at the earliest possible date and keep the Governing Body informed;

(b) to take note of the present interim report of the Committee with regard to the remaining allegations, it being understood that the Committee will report further thereon to the Governing Body when it has received additional information which it has decided to request the Government to be good enough to furnish.

Cases Nos. 294, 383, 397 and 400:

Complaints Presented by the International Confederation of Free Trade Unions, the International Federation of Christian Trade Unions and the World Federation of Trade Unions against the Government of Spain

166. The Committee last examined these cases, in consolidated form, at its meeting in November 1965, when it submitted the interim report contained in paragraphs 366 to 416 of its 85th Report, as approved by the Governing Body at its 163rd Session (November 1965).

167. In the above-mentioned report the Committee submitted its final conclusions and recommendations regarding a certain number of allegations, and with regard to some other allegations recommended the Governing Body to request the Government to supply certain additional information as described in paragraph 416 of that report. In this connection the only observations received from the Government relate to the amendment of section 222 of the Penal Code, these observations being examined in the present report. The Committee therefore recommends the Governing Body to repeat its request to the Government for additional information relating to the other points, examination of which has been suspended.

168. In a communication of 28 December 1965 the International Confederation of Free Trade Unions (I.C.F.T.U.) and the International Federation of Christian Trade Unions (I.F.C.T.U.) jointly presented new allegations relating to the amended provisions of section 222 of the Spanish Penal Code and to the sentence imposed on four workers on 24 November 1965 for propaganda activities in support of the Basque Workers' Solidarity Movement (S.T.V.).

169. In a communication dated 4 February 1966 the Government of Spain sent its observations regarding the new allegations referred to in paragraph 168 above.

Amendment of Section 222 of the Penal Code

170. The Committee submitted certain conclusions and recommendations on this question in paragraphs 374 to 376 and 416 (1) *(b)* of its 85th Report. The relevant part of paragraph 416 reads as follows:

With regard to the case as a whole the Committee recommends the Governing Body—

(1) as regards the information furnished by the Government on various questions relating to trade union rights in Spain—

. . . . . .

(b) (i) to take note of the proposed amendment to section 222 of the Penal Code, according to which strikes and lockouts are no longer included amongst the acts which constitute offences of sedition;

(ii) to point out the danger of the wording employed in clause 2 of the proposed amendment being interpreted in broad terms as prohibiting all types of strike, and to suggest that due regard be paid to this fact in the formulation by the Cortes of the final text, so as to exclude, without any doubt whatever, from the acts considered as offences of sedition, any strikes which might be promoted by workers with a view to furthering and defending their occupational interests.

. . . . . .

171. In their communication of 28 December 1965 the I.C.F.T.U. and the I.F.C.T.U. state that the amendment of section 222 of the Penal Code, as approved by the Cortes on 21 December 1965, the text of which they reproduce, does not in any way represent a true amendment of previous legislation which they allege to have treated all strikes as constituting the offence of sedition. The complainants further state that the new text clearly allows the authorities ample scope to describe any sort of workers' strike as an offence. They point out that the preamble to the Act of the Chief of State, as published in the Official Bulletin of the State, refers to the need " to remove employment disputes arising only out of labour questions from the scope of penal provisions ", but that 35 deputies voted against the new text, stating that the section, as amended, did not respect the aims set out in the preamble and did not guarantee genuine liberalisation of the right to strike.

172. In its communication dated 4 February 1966 the Government refers to the conclusions and recommendations previously adopted by the Committee on this question in its 72nd, 74th and 85th Reports and recalls that, at the 49th Session of the International Labour Conference, the Spanish Minister of Labour announced his Government's intention of revising section 222 in order to eliminate any confusion; this was to be done by means of a formal legal provision embodying a principle regularly applied for a long time, according to which only strikes aimed at promoting subversion or sedition were punishable. When the Bill was brought before the Cortes [1] it was discussed in accordance with constitutional legislative procedure, first by the Legal Committee of the Cortes and then in plenary sitting. During the debate in the Legal Committee various amendments were discussed and voted upon; all of the proceedings received full publicity, and the normal parliamentary guarantees were observed. Together with the amendments introduced in committee, the Bill was adopted in plenary sitting by 535 votes in favour to 35 against.

173. The Government repeats that its primary object in submitting the amending legislation was to give legislative form to a *de facto* situation and thus to recognise a principle constantly applied in the past whereby workers striking solely in order to obtain improved economic or occupational conditions should not be held guilty of the offence of sedition. It states that the new text establishes a binding distinction between, on the one hand, strikes aimed at undermining the security of the State, disturbing its normal activity or seriously disrupting national production, these being punishable offences and, on the other hand, other collective labour disputes, which are clearly and unequivocably excluded from the scope of the Penal Code. The Government believes that the new text constitutes a " genuine amendment of previous legislation ". With regard to the complainants' assertion that the new text gives the authorities ample scope to describe any form of workers' strike as an offence, the Government states that the power to determine whether an act constitutes an offence lies not with the government or administrative authorities but exclusively with the courts of ordinary jurisdiction, whose magistrates and judges are wholly independent of the Government within the framework of the Criminal Proceedings Act, all hearings and judgments being public. It is the courts which decide whether a given act should be held to constitute an offence, having regard to specific intent, in the particular instance that of " undermining the security of the State, disturbing its activity or disrupting, etc. . .".

174. In conclusion the Government states that it has acted in accordance with the spirit of the Committee's recommendations concerning the former wording of section 222 of the Penal Code. It further states that present Spanish legislation is also in conformity with the spirit of other recommendations by the Committee [2], according to which any restriction of the right to strike should be accompanied by adequate, impartial and speedy conciliation and arbitration procedure, since Decree No. 2354/62 of 20 September 1962 [3] lays down rules for procedure, conciliation and arbitration in the case of collective labour disputes.

[1] See 85th Report, para. 374.

[2] See 66th Report, para. 495 *(b)*; 68th Report, para. 152 *(a)*; and 74th Report, para. 200 *(d)* (ii).

[3] See 68th Report, paras. 135-138.

175. The Committee has always applied the principle that allegations relating to the right to strike do not fall outside its competence in so far as they affect the exercise of trade union rights, although it has held that it is not within its competence to examine allegations relating to strikes of a non-occupational character [1], to strikes aimed at coercing the government in a political matter [2], or to strikes directed against the policy of the government and not " in furtherance of a trade dispute ".[3] The Committee has also pointed out in several cases [4] that it is normal to recognise the right of workers and their organisations to strike as a legitimate means whereby they may defend their occupational interests.

176. According to the text of section 222 of the Penal Code prior to amendment, " combinations of employers for the purpose of paralysing work " and " strikes by workers " constituted the offence of sedition.

177. The Committee observes that, according to the text published in the Official Bulletin of the State [5], section 222 of the Penal Code has been amended, by Act No. 104 of 21 December 1965, to read as follows:

Section 222

The following shall be punished as guilty of sedition:

(1) officials, employees and individuals responsible for rendering any kind of public services recognised as essential and incapable of postponement who cease their activities or in any way impair the regularity of the service;

2) employers and workers who, with the object of making an attempt against the security of the State, of upsetting its normal activity, or of prejudicing its authority or reputation, cease or change the regularity of the work.

178. While recognising that the new wording of section 222 constitutes an important step forward, the Committee wishes to place on record the importance it attaches to the need for the new text to be interpreted so that strikes aimed at promoting and defending the workers' occupational interests cannot in any circumstances be considered as constituting the offence of sedition.

179. In these circumstances the Committee recommends the Governing Body—

(a) to take note of the adoption of the new text of section 222 of the Penal Code by Act) dated 21 December 1965;

(b) to take note of the statement by the Government in its communication of 4 February 1966, according to which strikes not aimed at undermining the security of the State, disturbing its normal activity or seriously disrupting national production are excluded from the scope of section 222 of the Penal Code following the amendment of that section, and according to which the courts of ordinary jurisdiction have exclusive competence to decide whether the provisions of the section may or may not be applied to a specific case;

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[1] See Sixth Report, Case No. 40 (Tunisia), para. 541; 49th Report, Case No. 229 (Union of South Africa), para. 92; 66th Report, Case No. 298 (United Kingdom-Southern Rhodesia), para. 542; 87th Report, Case No. 363 (Colombia), para. 89.

[2] See Second Report, Case No. 25 (United Kingdom-Gold Coast), para. 57; 66th Report, Case No. 298 (United Kingdom-Southern Rhodesia), para. 542; 87th Report, Case No. 363 (Colombia), para. 89.

[3] See 36th Report, Case No. 178 (United Kingdom-Aden), para. 56; 49th Report, Case No. 192 (Argentina), para. 168; 66th Report, Case No. 298 (United Kingdom-Southern Rhodesia), para. 542; 87th Report, Case No. 363 (Colombia), para. 89.

[4] See Fourth Report, Case No. 5 (India), paras. 18-51; 12th Report, Case No. 60 (Japan), paras. 10-83; 28th Report, Cases Nos. 141, 153 and 154 (Chile), para. 202; 30th Report, Case No. 167 (Honduras), para. 76, Case No. 181 (Ecuador), para. 94, Case No. 143 (Spain), para. 130, and Case No. 172 (Argentina), para. 778; 58th Report, Case No. 192 (Argentina), para. 447; 65th Report, Case No. 266 (Portugal), para. 77; 68th Report, Case No. 294 (Spain), para. 137; 78th Report, Case No. 364 (Ecuador), para. 79; 83rd Report, Case No. 399 (Argentina), para. 293.

[5] *Boletín Oficial del Estado, Gaceta de Madrid*, 23 Dec. 1965, No. 306, p. 17219.

(c) to stress the importance it attaches to the need for the new text to be interpreted so that strikes aimed at promoting and defending the workers' occupational interests cannot in any circumstances be considered as constituting the offence of sedition;

(d) to request the Government to keep the Governing Body informed of any specific cases of strikes in respect of which the courts may decide whether or no section 222 of the Penal Code is applicable.

Allegations relating to the Conviction of Four Workers in November 1965

180. In their communication of 28 December 1965 the complainants state that on 24 November 1965 the case against the workers Sabino Urrutia Ureta, Ambrosio Ibargüen Ereno, Luis María Echave Orobengoa and Jesús Otaduy Belastegui was heard by the Court of Public Order in Madrid. It is alleged that the accused had been arrested when they were carrying copies of the periodical *Lan Deya*, published by the Basque Workers' Solidarity Movement (S.T.V.), a clandestine trade union organisation affiliated to one of the complainant organisations. The four workers are stated to have been found guilty of the offence of engaging in illegal propaganda and to have been sentenced as follows: Mr. Urrutia Ureta to four years and two months' imprisonment and a fine of 20,000 pesetas; Mr. Ibargüen Ereno and Mr. Echave Orobengoa to one year's imprisonment and a fine of 10,000 pesetas; and Mr. Otaduy Belastegui to two years' imprisonment and a fine of 15,000 pesetas.

181. In its observations the Government states that " the Basque agitators " mentioned in the complaint were sentenced for engaging in illegal propaganda on behalf of a clandestine organisation, the S.T.V., which had been declared an unlawful association by legal order, and that this matter has no connection with labour disputes, the right to strike or trade union interests.

182. A copy of the verdict sent by the complainants states that on 8 May 1965 the accused Urrutia Ureta and Ibargüen Ereno collected some packets in Mondragón (Guipúzcoa) containing copies of the periodical *Lan Deya* published by the S.T.V., " an organisation whose aim is to overthrow the present structure of the Spanish State by force "; that the accused Echave Orobengoa, who works in a café in Mondragón, handed copies of *Lan Deya* to the accused Otaduy Belastegui; and that Otaduy Belastegui on several occasions distributed copies of *Lan Deya* in the neighbourhood of the Mondragón factories. The Court found that these charges were proven, constituting the offence of illegal propaganda as covered by the Penal Code, but that Mr. Urrutia Ureta's membership of the S.T.V. was not proven, such membership constituting the offence of unlawful association of which he was also accused.

183. The Committee recalls that, when examining another aspect of the complaints relating to Spain at its meeting in November 1965 [1], namely the allegations referring to the arrest of Mr. Rodríguez Manzano, it had before it certain information submitted by the Government concerning the S.T.V. and *Lan Deya*. The Government stated that the S.T.V. was political in character, since the Basque nationalist party itself, through its publication *Euzko Gaztedi*, confirmed the claim that the S.T.V. was a group belonging to the Basque nationalist party. The Government added that proof of the political character of the S.T.V. could be found in several statements drawn from different numbers of *Lan Deya* (a clandestine news sheet). The extracts communicated by the Government were as follows: " It is not necessary to recall that the régime is unlawful as to its origin and, accordingly, in its working " (*Lan Deya*, No. 9); " S.T.V. understands the situation and its line is firmly established; it is only by clandestine measures that our objectives can be achieved. . . . Nevertheless, participation in this revolutionary work does not imply necessarily that the Basque brotherhood renounces all lawful opportunities of finding a solution for the worker " (ibid., No. 11); " The Basque country is subject to nationalist domination. The economic policy, demography,

[1] See 85th Report, paras. 390-396

class organisation, racial, linguistic and cultural discrimination, and the exploitation of the Basque workers prevent the development and even the mere survival of Basque civilisation, and hence any truly original, free and individual contribution of the Basque genius to universal society and culture. French and Spanish nationalism, 'the enemy of separatism', divides a single nation made up of 2 million persons by a frontier whose only *raison d'être* lies in arbitrary colonialism" (ibid., No. 21).

184. In the case of Mr. Rodríguez Manzano the Committee observed that the offences of unlawful association and illegal propaganda in respect of which he was convicted might be related to the exercise of trade union rights, although it appeared that Mr. Rodríguez Manzano's acts had in some ways gone outside the normal framework of trade union activities as such. In the present case the four persons concerned were tried and convicted, according to the complainants, for trade union activities and, according to the Government, for acts coming within the terms of the offence of illegal propaganda. To judge from the text of the verdict as transmitted by the complainants, these acts appeared somewhat similar to those which had led to the conviction of Mr. Rodríguez Manzano, in respect of whom reference was made to the same offence, and the Committee believes that it is impossible in this case also to conclude categorically, on the basis of the evidence provided, that the acts concerned are unrelated to the exercise of trade union rights, although they may have gone outside the framework of normal trade union activities.

185. With regard to the Court of Public Order which sentenced the four accused, the Committee has already observed, in paragraph 381 of its 85th Report, that it consists of a president and two magistrates who are career judges, that with regard to procedure the Court must conform strictly to the provisions of the Act respecting ordinary criminal proceedings, that the representatives of and counsel for the defence are also governed by the rules of ordinary jurisdiction and that appeals against the judgments given by the Court may be lodged with the Second Chamber of the Supreme Court of Justice.

186. In the circumstances the Committee recommends the Governing Body to take note of the fact that the persons mentioned were convicted for the offence of illegal propaganda defined in the Penal Code, and to request the Government to inform it if an appeal has been lodged with the Supreme Court of Justice against the verdict and, if so, to communicate the verdict together with the grounds stated therein as well as to inform the Governing Body of any changes in the legal situation of the four workers to whom the complaint refers.

* * *

187. With regard to the case as a whole the Committee recommends the Governing Body—

(a) as regards the allegations relating to the amended text of section 222 of the Penal Code, having regard to the fact that allegations relating to the right to strike do not fall outside the competence of the Committee in so far as they affect the exercise of trade union rights—

(i) to take note of the adoption of the new text of section 222 of the Penal Code by Act dated 21 December 1965;

(ii) to take note of the statement by the Government, in its communication of 4 February 1966, according to which strikes not aimed at undermining the security of the State, disturbing its normal activity or seriously disrupting national production are excluded from the scope of section 222 of the Penal Code following the amendment of that section, and according to which the courts of ordinary jurisdiction have exclusive competence to decide whether the provisions of the section may or may not be applied to a specific case;

(iii) to stress the importance it attaches to the need for the new text to be interpreted so that strikes aimed at promoting and defending the workers' occupational interests cannot in any circumstances be considered as constituting the offence of sedition;

(iv) to request the Government to keep the Governing Body informed of any specific cases of strikes in respect of which the courts may decide whether or not section 222 of the Penal Code is applicable;

(b) as regards the allegations relating to the conviction of four workers in November 1965—

(i) to take note of the fact that Mr. Sabino Urrutia Ureta, Mr. Ambrosio Ibargüen Ereno, Mr. Luis María Echave Orobengoa and Mr. Jesús Otaduy Belastegui were convicted by the Court of Public Order for committing the offence of engaging in illegal propaganda as described in the Penal Code;

(ii) nevertheless to request the Government to inform the Governing Body whether any appeal has been made to the Supreme Court and, if so, to communicate the text of the verdict, together with the grounds stated, as well as to communicate any changes in the legal situation of the workers concerned;

(c) to repeat the request to the Government for additional information on the other points referred to in paragraph 416 of the Committee's 85th Report, examination of which has been suspended;

(d) to take note of this interim report, it being understood that the Committee will report further to the Governing Body when the additional information described in sub-paragraphs *(a)* (iv), *(b)* (ii) and *(c)* of this paragraph has been received.

Case No. 335:

Complaint Presented by the Peruvian Workers' Confederation against the Government of Peru

188. The committee examined this case most recently at its meeting in November 1965 when it submitted to the Governing Body an interim report that appears in paragraphs 417 to 460 of its 85th Report, as approved by the Governing Body at its 163rd Session (November 1965). The present report refers solely to the three series of allegations examination of which had been postponed, the Government having been requested to supply certain additional information in this connection, as mentioned in paragraph 460 of the 85th Report.

189. Peru has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Allegations relating to Requirements for the Formation of a Trade Union

190. The complainants stated [1] in their communication dated 3 June 1963 that the provisions of sections 7 and 9 *(b)* of Presidential Decree No. 009 of 3 May 1961 concerning organisation of trade unions did not conform to the standards laid down in Convention No. 87. Section 7 of that decree requires a minimum of 20 members for the formation or continuance of a trade union and further states that workers in workplaces that have five or more workers but do not reach the minimum number stated above may appoint one delegate to represent them in dealings with the employer and the authorities. Section 9 *(b)* states that the members of a trade union must belong to the undertaking or the activity uniting them.

191. In its observations the Government explained the practical reasons on which the minimum membership requirements were based and further stated that the law did not prevent the representation of workers not affiliated to a trade union for the purposes of making claims and concluding collective agreements.

[1] See 85th Report, paras. 434 and 436.

192. Before formulating its conclusions on these allegations the Committee considered it necessary to request the Government to state whether workers in workplaces with fewer than 20 members could unite with those of other workplaces to form a trade union and, if so, subject to what conditions (paragraph 460 *(d)* of the 85th Report).

193. In its reply to this request for information the Government states, by means of a communication dated 19 January 1966, that under section 7, clause 2, of the above-mentioned decree the workers at workplaces having five or more workers can elect a delegate to represent them in dealings with the employer and the authorities, such election being by secret ballot and by majority decision. The Government further states that the " basic organisms " thus created can affiliate within the same branch of activity, as in the case of the Sole Union of Bus Workers constituted by the " basic organisms " in undertakings within that branch of activity having less than 20 workers.

194. In its examination of a previous case [1] in which legislation in the country concerned required a minimum membership of 50 with a view to the formation of a trade union and stated that " no worker shall join any trade union other than that formed by the workers of the government unit or the private establishment in which he is engaged ", the Committee referred, *inter alia*, to the conclusion reached by the Committee of Experts on the Application of Conventions and Recommendations [2] that the establishment of a trade union may be considerably hindered or even rendered impossible when legislation fixes the minimum number of members of a trade union at a figure that is obviously too high (for example 50). In the present case the minimum membership of 20 laid down by Peruvian legislation does not seem excessive and therefore no obstacle exists to the formation of trade unions.

195. The Committee notes that workers at workplaces with more than five but less than 20 workers can join together with those at other workplaces within the same branch of activity in order to form a trade union. However, the Committee observes that the information supplied by the Government does not state whether workers in establishments having five employees or less enjoy the right to belong to a trade union. Presidential Decree No. 009 does not appear to define the situation of such workers. In this connection the Committee considers it is necessary to refer to the provision in Article 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), that workers " 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.

196. In these circumstances the Committee recommends the Governing Body to request the Government to inform it whether workers in such establishments can join with workers in other establishments in order to form a trade union or join an existing trade union and, if so, subject to what conditions.

Allegation relating to the Personal Quality of Trade Union Office

197. The complainants stated that the provision of section 10 of Presidential Decree No. 009 according to which membership or office in a trade union is strictly personal, and cannot be transferred or delegated for any reason, acts as an obstacle to the operation of trade unions because it impedes the discharge of functions and compels trade union leaders to travel themselves to Lima every time there is business to transact, with all the consequent expenses.

198. In its communication of 19 January 1966 the Government states that the provision contained in section 10, as quoted, is based on the necessity to protect the rights of trade

[1] See 48th Report, Case No. 191 (Sudan), para. 72.

[2] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 43rd Session, Geneva, 1959 (Geneva, I.L.O., 1959), para. 31, p. 108.

union members, since nobody is in a better position to represent them than the person designated for that purpose. The Government states that the section concerned was extended by means of Presidential Decree No. 12 of 21 August 1962, which it quotes. Section 1 of that decree states that in any collective grievances or claims brought before the employers or the administrative authorities for the branch concerned the workers may be represented only by—

(a) the appropriate trade union;

(b) failing this possibility, the representatives appointed by 50 per cent. plus one of the employees at the workplace or workplaces engaged in the same type of activities;

(c) the organisation of the next higher degree if the grievance or claim refers to workers employed at different workplaces within the same class of activities . . .; and

(d) the third-degree organisation if the grievance concerns the interests of workplaces engaged in different types of activities. . . .

199. Section 3 of Presidential Decree No. 12 states that the advisory function devolving upon the higher-degree trade union organisation vis-à-vis the administrative labour authorities is to be discharged without prejudice to direct representation of workers, as provided for in the same decree.

200. The preamble to the amending decree states that, in order to facilitate solution of workers' problems, direct intervention by those concerned must be guaranteed in connection with all grievances or claims and that such intervention shall ensure the greater efficiency of supply of information and experience as necessary. The Government further mentions that section 11 of Presidential Decree No. 009, as amended by Presidential Decree No. 021 of 21 December 1962, provides for the possibility of representation through delegates when it states that for the purposes of registration the provisional executive board or a specially authorised delegate shall submit the relevant request to the labour authorities.

201. It would appear that the provisions quoted by the Government refer to disputes and claims in which direct participation by elected officers is normally required in accordance with trade union rules. The provision quoted by the complainants in support of their complaint merely states that the quality of trade union officer is personal and may not be delegated. It seems clear to the Committee that if all these provisions, or any of them, were applied in such a manner as to impede the trade union organisations in using the services of experts who were not necessarily elected officers, such as industrial advisers, lawyers or attorneys able to represent them in judicial or administrative dealings, there would be serious doubt as to the compatibility of such provisions with Article 3 of Convention No. 87, according to which workers' organisations shall have the right, *inter alia*, to organise their administration and activities. However, the Committee observes that the complainants have not submitted any precise details or evidence to show that this is so.

202. In these circumstances the Committee recommends the Governing Body, while reaffirming the importance which it attaches to the principle enunciated in Article 3 of Convention No. 87, cited in paragraph 201 above, to decide that this aspect of the case does not call for further examination.

Allegations relating to the Dismissal of Trade Union Officers

203. The complainants alleged also that, following the proclamation of Presidential Decree No. 009, officers of trade union organisations already existing but not meeting the requirements of that Decree had been deprived of trade union status and were being dismissed.

204. In its above-mentioned communication the Government states that under the Constitution of Peru legislation has no retroactive effect and that the provisions of an enactment cannot in any way affect previously acquired rights. In this connection the Government refers to the existence of trade union bodies whose status has not been adversely

affected by the adoption of Presidential Decree No. 009. The Government denies any cases of dismissal such as alleged by the complainants, and states that Presidential Decision No. 23 D.T. of 18 February 1957 remains in force, section 1 of which provides that, during the period of submission of claims and of proceedings in relation thereto and immediately following settlement by decision or agreement, workers' representatives may not be dismissed other than on grounds laid down in section 294 of the Commercial Code and supplementary provisions. These grounds are as follows: fraud or breach of trust; engaging in commercial dealings for one's own account without express knowledge and authorisation by the employer; and serious failure to show the respect and consideration due to the employer, his family members or his representatives. Presidential Decision No. 27 of 20 April 1957 also remains in force, prohibiting the dismissal of the officers of a trade union in the course of formation.

205. Had it been shown that the alleged dismissals were due to the trade union activities of the trade union officers concerned and as a result of the entry into force of a new enactment depriving such officers of protection against dismissal on the grounds indicated, there might have been serious reason to question the compatibility of the new legislation with the provisions of Article 1, paragraph 2 *(b)*, of Convention No. 98, stating that protection of workers against acts of anti-union discrimination in respect of their employment shall apply particularly in respect of acts calculated to cause the dismissal of a worker by reason of union membership or because of participation in union activities. However, the Committee observes that the complainants have failed to submit details in support of their complaint, such as the names of officers dismissed on the grounds alleged or the circumstances of such dismissals.

206. In these circumstances, for the reasons stated in paragraphs 203 to 205 above, the Committee recommends the Governing Body, while reaffirming the importance that should be attached to the above-mentioned provision of Article 1, paragraph 2 *(b)*, of Convention No. 98, to decide that there would be no point in continuing examination of this aspect of the case.

* * *

207. With regard to the case as a whole the Committee recommends the Governing Body—

(a) in respect of the allegation relating to the personal quality of trade union office, while reaffirming the importance which it attaches to the principle enunciated in Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), that trade union organisations shall have the right to organise their administration and activities, to decide, in view of the complainants' failure to submit sufficient evidence in support of their complaint, that this aspect of the case calls for no further examination;

(b) in respect of the allegations relating to dismissal of trade union officers, to decide, for the reasons stated in paragraphs 203 to 205 above, and while reaffirming the importance that should be attached to the principle enunciated in Article 1, paragraph 2 *(b)*, of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), according to which protection of workers against acts of anti-union discrimination in respect of their employment shall apply particularly in respect of acts calculated to cause the dismissal of a worker by reason of union membership or because of participation in union activities, that no useful purpose would be served by continuing examination of this aspect of the case;

(c) with regard to the requirements for formation of a trade union, to request the Government to inform it whether workers at establishments employing five or less persons may join with those of other establishments in order to form a trade union or may join an existing trade union and, if so, subject to what conditions;

(d) to take note of the present interim report, on the understanding that the Committee will submit a further report when it has received the information to be requested in accordance with subparagraph *(c)* of this paragraph.

Case No. 381:

Complaint Presented by the Latin American Federation of Christian Trade Unionists against the Government of Honduras

208. The Committee examined this case previously at its meeting in February 1965, when it submitted an interim report appearing in paragraphs 76 to 81 of its 82nd Report, approved by the Governing Body at its 162nd Session (May 1965).

209. Honduras has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

210. In its complaint dated 18 March 1964 the Latin American Federation of Christian Trade Unionists alleged that the trade union leader Humberto Portillo had been murdered. In its reply dated 20 May 1964, which is summarised in paragraph 79 of the 82nd Report, the Government mentioned the existence and activities of an organisation (the Integrated Liberation Movement) devoted to terrorism and sabotage, which had gone so far as to attack persons with the purpose of embarrassing the trade unions and workers. These acts of violence had made three victims—two officials murdered on the north-coast banana plantations and a trade union leader, Mr. Humberto Portillo, shot dead in the streets of Tegucigalpa in December 1963. As the Government had stated that investigations were going on with the purpose of throwing light on the death of Mr. Portillo, the Committee recommended the Governing Body in paragraph 81 of the above-mentioned report to request the Government to furnish all possible information on the results of the investigations. This recommendation was approved by the Governing Body and communicated to the Government by a letter dated 9 June 1965.

211. In a letter dated 18 January 1966 the Government states that it has not so far been possible to throw light on the crime but that investigations continue. From a report of the National Investigation Department, enclosed with the letter, it appears that, although various suspects were taken into custody and questioned, they were released because their complicity in the crime could not be proved.

212. The Government states that no responsibility in the matter can be attributed to it. It adds that since the motives of the crime are unknown, there is no proof that it was necessarily connected with the trade union activities of Mr. Portillo. In any case the matter comes within the competence of the courts of justice, whose responsibility it is to establish the truth. Lastly, the Government states that it reaffirms its intention of complying to the full with its international obligations, especially with respect to the preservation of freedom of association.

213. The Committee takes note of these statements by the Government, which appear to modify those contained in the latter's communication of 20 May 1964, since the earlier statements seemed to be based on the assumption that Mr. Portillo had been murdered because he was a trade union leader, by members of an organisation devoted to embarrassing the trade unions and workers by this and other acts.

214. In these circumstances the Committee recommends the Governing Body—

(a) to take note of the statement by the Government that it has not yet been possible to throw light on the circumstances relating to the murder of the trade union leader Mr. Humberto Portillo;

(b) to take note that the competent authorities are continuing to investigate the case;

(c) to express the hope that the Government will take all the necessary steps to establish the truth concerning this grave matter;

(d) to request the Government to be good enough to inform the Governing Body of everything new arising in connection with the case;

(e) to take note of this interim report, on the understanding that the Committee will submit a new report when the Government has supplied the information referred to in sub-paragraph *(d)*.

Case No. 385:

Complaints Presented by the World Federation of Trade Unions, the Latin American Federation of Christian Trade Unionists and the International Federation of Christian Trade Unions against the Government of Brazil

215. This case has been the subject of four interim reports by the Committee, contained respectively in paragraphs 133 to 152 of its 81st Report, 271 to 277 of its 83rd Report, 474 to 491 of its 85th Report and 209 to 233 of its 87th Report.

216. With regard to the only part of the allegations still outstanding and which had two aspects—one, more general, relating to arrests and sentencing of trade union leaders, and the other relating to the particular case of Mr. Clodsmith Riani—the Committee, in paragraph 233 of its 87th Report, made the following recommendations, which were approved by the Governing Body at its 164th Session (February-March 1966):

. . . . . .

(b) with regard to the particular case of Mr. Riani—

(i) to take note of the Government's statement that, by a judgment of the Tribunal for the Fourth Military Region dated 15 December 1965, Mr. Riani was found guilty of subversion contrary to public order and sentenced to 17 years' rigorous imprisonment;

(ii) to note the Government's statement that Mr. Riani had appealed against this decision to the Military High Court;

(iii) to note the Government's statement that the Brazilian military courts, consisting of the Military High Court and its lower courts, are an integral part of the Brazilian judicial system, of which the Military High Court constitutes the oldest organ, and that Mr. Riani, therefore, was tried by an " impartial and independent judicial authority " within the meaning attached to that terminology by the Committee on Freedom of Association;

(iv) to observe that the Government had not acceded to the request made to it to furnish detailed information on the case of Mr. Riani and, in particular, the texts of the judgments rendered;

(v) to draw the attention of the Government to the fact that the question as to whether the matter in respect of which sentences had been imposed on trade unionists was to be regarded as a matter relating to a criminal or political offence or a matter relating to the exercise of trade union rights was not one which could be determined unilaterally by the government concerned in such a manner as to prevent the Governing Body from inquiring further into it;

(vi) to draw the attention of the Government to the fact that the question at issue was not the application of the legislation of a sovereign State but the question whether there had been any violation of internationally accepted principles governing the exercise of trade union rights or of the Constitution of the International Labour Organisation;

(vii) to reaffirm, in these circumstances, the importance of ensuring that, where trade unionists are accused of political offences or common law crimes, they should receive a fair trial at the earliest possible moment by an impartial and independent judicial authority, a principle which represents the application to the questions submitted to the Committee on Freedom of Association of the provisions of articles 9, 10 and 11 of the Universal Declaration of Human Rights and which, having been applied by the Committee in respect of all complaints of a nature similar to those before it in the present case, assumes a quite special importance when the person concerned is a member or deputy member of the Governing Body of the International Labour Office, by reason especially of article 40 of the Constitution of the International Labour Organisation, which provides that members of the Governing Body shall enjoy " such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organisation "; and to draw the attention of the Government to the importance attached by the Governing Body and the Conference to the discharge of those obligations;

(viii) to urge the Government once again to furnish the text of the judgment by which Mr. Riani was sentenced to 17 years' rigorous imprisonment and of the reasons adduced therein;

(ix) to request the Government to inform the Governing Body as to the result of the appeal lodged by Mr. Riani and to furnish the text of the judgment and of the reasons adduced therein and, generally, to keep the Governing Body informed of any further developments in connection with the case of Mr. Riani;

(c) to request the Government once again to furnish the texts of the judgments handed down or to be handed down in the cases of the other trade union leaders named by the World Federation of Trade Unions and referred to in paragraphs 227 and 228 above, together with the reasons adduced therein;

(d) to request the Government to furnish the texts of the judgments given by the courts of first instance and, when they are handed down, of the judgments of the appellate court, together, in both cases, with the reasons adduced therein, in respect of the persons named by the Latin American Federation of Christian Trade Unionists and referred to in paragraphs 230 and 231 above.

. . . . . .

217. The above conclusions were brought to the notice of the Government by a letter dated 9 March 1966, to which the Government replied by a communication dated 20 May 1966.

218. With this communication the Government transmitted to the I.L.O. the judgment against Mr. Riani by the Tribunal for the Fourth Military Region, together with the reasons adduced therein. It furnished also the text of the statement respecting the appeal lodged by Mr. Riani drawn up by the Attorney-General for cases before military tribunals. As regards the latter text the Government observes in its reply that the Public Prosecutor's Department has expressed itself to be in favour of a partial revision of the judgment so as to provide for a sentence of ten years' imprisonment instead of the sentence of 17 years imposed on the person concerned by the court of first instance. The Government states also that the appeal proceedings are pending and that, when they have terminated, it will forward to the Office the text of the judgment and of the reasons adduced therein.

219. The reply of the Government forwarding the text of the judgment of the court of first instance having been received by the Office only on 20 May 1966, the Committee decided to adjourn its examination of this text until its next meeting and recommends the Governing Body to take note of the information already furnished by the Government, to note that the Government has stated that it will forward the judgment of the appellate court when it has been given, to request the Government to be good enough to furnish also the information indicated in subparagraphs *(c)* and *(d)* of paragraph 233 of the 87th Report of the Committee, cited in paragraph 216 above, and to adjourn the examination of the case until the further information requested from the Government has been received.

Case No. 399:

Complaints Presented by the General Confederation of Labour of Argentina against the Government of Argentina

220. This case was examined previously by the Committee at its meetings in May 1965 and November 1965, when it submitted interim reports which appear in paragraphs 278 to 304 of its 83rd Report and in paragraphs 492 to 503 of its 85th Report, approved respectively by the Governing Body at its 162nd and 163rd Sessions (May 1965 and November 1965).

221. In those reports the Committee submitted its final conclusions with respect to some of the allegations made by the complainants, and the only aspect of the case which remains outstanding is that relating to proceedings against trade union officers. The present report therefore deals only with this point.

222. Argentina has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

223. A summary of the allegations of the General Confederation of Labour (C.G.T.) with regard to proceedings against trade union officers will be found in paragraphs 290 and 291 of the Committee's 83rd Report. It is alleged in substance that on the initiative of the Government criminal proceedings were started against that organisation, with a request for a sentence of imprisonment on all its officers and the closing of its offices, because the C.G.T. had approved a " Battle Plan " comprising social, economic and political objectives. Since its claims were going unheeded, the C.G.T. had decided to start the occupation of factories in order to back up its demands. As a result the chairmen and general secretaries of over 300 organisations were charged with breaches of state security and incitement to commit offences. The detention was ordered of 119 union leaders.

224. In its reply of 30 November 1964 the Government stated (see paragraph 292 of the 83rd Report) that the execution of the so-called Battle Plan involved the commission of offences under the Penal Code, including dispossession of property and the unlawful detention of members of the staff of the undertakings concerned. The Government argued that such action had been taken not in consequence of a labour dispute with the undertakings in question but as part of a political plan. The Government pointed out that none of the trade union leaders against whom proceedings had been initiated had been kept in custody.

225. In paragraph 293 of its 83rd Report the Committee recalled that it had always applied the principle that allegations respecting the right to strike were not outside its competence in so far as they affected the exercise of trade union rights. It had also pointed out that the right of workers and their organisations to strike as a legitimate means of defending their occupational interests was generally recognised. The Committee had, however, also held that the restriction of political strikes and strikes to coerce the government or the community to recognise certain action was not an infringement of trade union rights.

226. The Committee observed that in the present case the object of the strike was to exert pressure on the Government and so oblige it to proceed to certain measures of an economic, social and political character, and that, moreover, the movement was accompanied by the occupation of a number of establishments and the prevention in some cases of free movement on the part of senior employees of the undertakings concerned. The Committee concluded that the proceedings entered against the trade unionists involved did not justify the allegation that trade union rights had been infringed. Nevertheless, since the complainants had also alleged that the principal officers of over 300 unions had been charged with security offences and that these various cases were now before the courts, the Committee requested the Government to inform it of the exact character of the offences with which the said trade union officers were charged, and to keep it posted about any new development in this connection.

227. When the case came before it again at its November 1965 meeting, the Committee observed that in referring to this aspect of the case in its communication of 27 August 1965 the Government had confined itself to stating that it had asked the judicial authorities for the relevant information. The Committee therefore decided to repeat its previous request and to postpone examination of this aspect of the case pending receipt of the additional information requested from the Government.

228. By a communication dated 14 March 1966 the Permanent Mission of the Argentine Republic in Geneva forwarded the Government's reply to the request for further information. The Government begins by supplying certain details with regard to the proceedings against the 119 trade union leaders indicted in connection with the adoption of the Battle Plan, on which the Committee has already commented in its 83rd Report (see paragraph 226 above). The information now supplied by the Government includes the names of the officials in question and makes it clear that they were charged with incitement to commit an offence, which is an offence under section 209 of the Penal Code, in that they were responsible for the forceful measures agreed upon at the meetings of the C.G.T. held on 15 and 16 January 1964. The Government also states that, although a judge had ordered the detention of the accused

in December 1964, they were all subsequently released without prejudice to the pursuance of their case.

229. The Government also gives information with regard to the proceedings against three other trade unionists. Mr. Felipe Ernesto Ludueña, Trade Union Secretary of the Peronist Revolutionary Movement, who had held office with the Santa Cruz branch of the Naval Dockyard and Tanker Building Workers' Union, was charged in March 1965 with infringement of section 212 of the Penal Code, which prescribes penalties for various acts of a terrorist nature. A provisional stay of proceedings was granted in April 1965. Mr. Carlos Kristoff, Deputy Secretary of the Plumbing, Sewage, Waterworks and Allied Workers' Union, was charged in September 1965 with interference with freedom to work and causing bodily harm, but was subsequently released without prejudice to the pursuance of his case. Mr. Raúl Alberto García, a member of the executive of the Federation of Wage-Earning and Salaried Telephone Employees of the Argentine Republic, was charged on 1 December 1965 with intimidation of the public. He was subsequently released, and his case was finally dismissed on 23 December 1965.

230. Finally, the Government declares that at the present time there is not a single person held in custody in Argentina on political or trade union grounds, and that all the police and legal action referred to was taken on account of offences against public order or common law offences.

231. It would appear from the information supplied by the Government that the 119 trade union leaders indicted in connection with the adoption of the Battle Plan were charged purely with the offence provided for in section 209 of the Penal Code, namely incitement to commit an offence, and not with breaches of state security, as has been alleged in the complaint. The Committee notes that these persons, whose detention was ordered during the initial proceedings, have now been released without prejudice to the pursuance of their case.

232. With regard to the three trade unionists mentioned in paragraph 229 above, who were arraigned individually, the Committee observes that although all three have been released, two of them, Messrs. Ludueña and Kristoff, appear to be still subject to the jurisdiction of the criminal courts for the offences with which they have been charged. It is not clear whether these offences have any connection with the acts imputed to the 119 trade unionists mentioned earlier, and the Committee would therefore be grateful if the Government would inform it as to the exact nature of the offences with which Messrs. Ludueña and Kristoff are charged and to keep it informed of any new development with respect to the legal position of these trade unionists.

233. In these circumstances the Committee recommends the Governing Body, while taking note of the Government's statement in its communication of 14 March 1966 to the effect that at the present time nobody is held in custody in Argentina on political or trade union grounds, and that the trade union leaders indicted in connection with the adoption of the C.G.T.'s Battle Plan were charged purely with incitement to commit an offence, to request the Government to be good enough to keep it informed of any new development with respect to the situation regarding the proceedings concerning these officials, and to take note of this interim report, on the understanding that the Committee will report further when it has received the additional information to be requested from the Government in pursuance of paragraph 232 above.

Case No. 420:

Complaint Presented by the Calcutta Port Commissioners Workers' Union against the Government of India

234. This case was examined by the Committee at its meeting in November 1965, when the Committee submitted an interim report in paragraphs 85 to 125 of its 86th Report, which was approved by the Governing Body at its 164th Session (February-March 1966).

In that report the Committee submitted definitive recommendations on certain allegations relating to workers' housing rights, an infringement of the Industrial Disputes Act, 1947, disciplinary measures in general against workers, discriminatory treatment with regard to the granting of loans, casual labour, inhumane treatment of workers and the right to strike. With regard to allegations relating to disciplinary measures against workers who occupied vacant quarters and to anti-union discrimination in respect of grading and promotion to the detriment of the members of the complaining organisation, the Committee decided to request the Government to furnish further information on certain points before formulating recommendations to the Governing Body. The Government furnished further information on these two series of allegations by a communication dated 16 April 1966, and it is these outstanding allegations only which are further considered in the present report.

235. India has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Allegations relating to Disciplinary Measures against Workers Who Occupied Vacant Quarters

236. These allegations and the Government's first observations thereon were analysed in paragraphs 95 and 96 of the Committee's 86th Report. They related to the suspension of certain workers who occupied premises which they found vacant, and it was contended that 15 of them, who were suspended for a longer time than the others, were discriminated against because they belonged to the complaining organisation. The union raised a formal dispute under the Industrial Disputes Act and then, it was alleged, the employers illegally stopped or reduced the subsistence allowance of the suspended men during the conciliation proceedings, contrary to section 33 of the Act, which prohibits the changing of conditions of service during such proceedings. The Government agreed that the workmen were suspended, stated that it was because they illegally occupied certain premises and said that eight were reinstated after vacating the premises.

237. The Committee decided to request the Government to comment on the allegation that the stoppage or reduction of the subsistence allowances of the suspended workmen took place during the actual period of the conciliation proceedings, which lasted apparently from 18 June to 19 July 1964, and therefore infringed the Industrial Disputes Act.

238. In its communication dated 16 April 1966 the Government states that conditions of service were not altered during the conciliation period. According to Rule No. 53 of the service rules in force, the subsistence allowance may be cut after a certain period of suspension if the period of suspension is prolonged through the acts of the persons concerned. In this case the suspension was prolonged in the case of some of the workmen concerned because they had still refused to vacate the premises they had occupied. This involved no breach of section 33 of the Industrial Disputes Act, which simply provides that conditions of service applicable immediately before conciliation proceedings begin shall not be changed during the proceedings. Rule No. 53 existed as a condition of service before the proceedings and was not altered and, says the Government, the reduction of subsistence was a measure already provided for in advance.

239. It would appear from the explanation of the Government that the conditions of service provided for in service rules were not altered during the conciliation proceedings but that the subsistence allowance was cut after a certain period in accordance with the existing rules, a consequence which apparently could have arisen at that date irrespective of whether there was conciliation or not. The Government affirms that suspension continued because some of the workmen still refused to vacate the premises occupied and that workmen who had vacated the premises were reinstated. It does not appear to the Committee either that a breach of the Industrial Disputes Act has been proved or that the evidence furnished by the complainants is sufficient to prove discrimination in the matter against members of the complaining organisation.

240. The Committee therefore recommends the Governing Body to decide that these allegations do not call for further examination.

Allegations relating to Acts of Anti-Union Discrimination in respect of Grading and Promotion to the Detriment of the Members of the Complaining Organisation

241. These allegations were considered by the Committee in paragraphs 101 to 106 of its 86th Report.

242. The complainants alleged that various officers and members of their union had been discriminated against, because of their union affiliation, by being refused or deprived of promotion or being illegally deprived of acquired seniority rights to the advantage of junior or less skilled employees. In this connection the complainants referred to the cases of Mr. A. K. Mukherjee, Mr. N. Das and Mr. Chakraborty, respectively general secretary, assistant secretary, and organising secretary of the union, and Messrs. D. Singh, S. K. Sarkar, S. J. N. Roy, S. Chatterjee and S. Ghosh, all active members of the union, and also to the case of the greasers employed in the Hydraulic Power Station.

243. The complainants alleged also that unfair labour practices happened daily in Calcutta Port. It was not possible for each workman to go to the courts, stated the complainants, because litigation was expensive and took too long, a few years elapsing before a decision was reached, and because the authorities were vindictive towards workers who took such action.

244. The complainants also criticised the procedure for settling disputes under the Industrial Disputes Act, 1947. In the case of Messrs. Roy, Chatterjee and Ghosh the union formally raised an industrial dispute but, it was alleged, the Regional Labour Commissioner had failed to give a ruling after about three years, while the Minister of Labour had refused to refer the case of Messrs. Chakraborty and Mukherjee to a tribunal for adjudication.

245. In its communication dated 17 April 1965 the Government stated that most of these cases had been handled without success by the Conciliation Officer and that in each case the action taken by the employers was found to be "in accordance with seniority rules" or employment rules, and that referral to a tribunal for adjudication was refused for this reason or because the allegations of victimisation made were "found to be without substance".

246. It appeared to the Committee, at its meeting in November 1965, that, where employees of a government concern raise a dispute which is not settled by a Conciliation Officer, it does not go forward for settlement by adjudication unless the competent authority gives permission. This happened certainly in the cases of Mr. Chakraborty and Mr. Mukherjee and, perhaps, in the case of the greasers of the Hydraulic Power Station. In the case of Messrs. Roy, Chatterjee and Ghosh the position was not clear because the complainants said that the Labour Commissioner had failed to give a ruling after three years, while the Government stated that the action taken was in accordance with seniority rules.

247. The Committee, therefore, having noted also that the Government had not commented on the complainants' allegation that court procedure was too lengthy and expensive for workers to have recourse to it, decided to request the Government to be good enough to explain what remedy is open to the worker whose case is not settled by conciliation and according to what rules and by whom the decision is taken as to whether his case may be adjudicated, and to state how these rules were applied in the particular cases referred to in paragraph 242 above.

248. In its communication dated 16 April 1966 the Government states that under section 12 (1) of the Industrial Disputes Act, 1947, the Conciliation Officer may, where an

industrial dispute exists or is apprehended (unless a notice has been given under section 22 of the Act and the dispute relates to a public utility service), hold conciliation proceedings in the prescribed manner; he intervenes or does not intervene in his discretion. The " appropriate government " need not refer a dispute for adjudication if it is of the opinion that the party raising the dispute has not made out a *prima facie* case or it would otherwise be inexpedient in the larger interests of industrial peace to refer the dispute for adjudication.

249. The Government states that the disputes concerning Messrs. Mukherjee and Chakraborty were not considered fit for adjudication as the action taken by the management was found to be in accordance with the rules and recommendations of the committee appointed to look into the complaints regarding seniority. The other cases were not referred for adjudication because the union " could not substantiate its allegations of victimisation or unfair labour practices before the Conciliation Officers concerned ".

250. If a worker's case is not settled by conciliation and the appropriate government refuses a further request for adjudication, and if further mutual negotiation does not achieve a settlement, the parties can issue a writ in the High Court or the Supreme Court claiming that the action of the government in refusing the dispute for conciliation or adjudication is not in accordance with the law.

251. The Committee thanks the Government for its explanation as to the operation of the relevant provisions of the Industrial Disputes Act and the circumstances in which recourse may be had to the High Court. Two points remain on which the Committee would be glad to have the Government's comments. In the case of Messrs. Roy, Chatterjee and Ghosh it was alleged that the union had formally raised an industrial dispute but that, after three years, the Regional Labour Commissioner had failed to give a ruling. It was also contended that litigation by each workman in the courts was too expensive and took too long (a few years elapsing before a decision was reached) for workmen to embark upon it. Before submitting its definitive recommendations to the Governing Body, the Committee requests the Government to be good enough to furnish its comments on these two points.

252. Further cases involving the same legislation have been alleged in a communication from the complainants dated 3 February 1966. The first relates to the nature of the work which workers at the main pumping station are required to perform. The second relates to the provision of safety clothing. The third relates to incentive payments for diesel engine employees. It is alleged that disputes were formally raised in respect of these matters but that the Government has blocked every effort by the workers to seek adjudication. In its communication dated 16 April 1966 the Government states that observations on this aspect of the matter will be furnished in due course.

253. In these circumstances the Committee requests the Government to be good enough to furnish observations on the contentions of the complainants referred to in paragraph 251 above and also to forward, as soon as possible, its observations on the communication from the complainants dated 3 February 1966.

* * *

254. In all the circumstances the Committee recommends the Governing Body—

(a) to decide that the allegations relating to disciplinary measures against workers who occupied vacant quarters do not call for further examination;

(b) to take note of the present interim report with respect to the remaining allegations, it being understood that the Committee will report further thereon to the Governing Body, when it has received additional observations which it has requested the Government to be good enough to furnish.

Case No. 421:

Complaint Presented by the Arab Federation of Petroleum Workers (Cairo) against the Government of the United Kingdom in respect of Aden

255. The Committee has already submitted interim reports on this case in paragraphs 194 to 203 of its 81st Report, paragraphs 516 to 524 of its 85th Report and paragraphs 277 to 284 of its 87th Report.

256. The United Kingdom has ratified the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and has declared them to be applicable without modification to Aden.

257. It was alleged originally, in the complaint dated 23 November 1964, that nine executive members of the Aden Petroleum Workers' Union had been arrested. At its meeting in November 1965 the Committee had before it a communication from the Government dated 13 August 1965, in which the Government stated that five of the persons concerned had been released, the four still in detention being Messrs. Faruq Mohammed Abdul Rahiman Makkawi (referred to by the complainants as Farouk Mekkawi), Ali Ahmad Ali Hamami (named by the complainants as Ali Ahmed Hammami), Ahmed Haidra (named by the complainants as Ahmed Hiedra) and Taha Ahmad Ghanim (named by the complainants as Taha Ghanem). The authorities stated that these four persons could not then be brought to trial, that they were detained under Emergency Regulations and that their release date could not be anticipated, as their presence at large at that time would be prejudicial to public order and security. The Government repeated its earlier statement that the detention of the persons in question arose solely from the need to combat subversion and terrorism and was in no way connected with trade union activities.

258. At its meeting in February 1966 the Committee had before it a communication from the Government dated 21 January 1966, in which the Government stated that a Review Tribunal had been set up and had operated since October 1965, and that, by 31 December 1965, 82 cases had been reviewed and there remained in detention only three persons whose cases had not been reviewed. The Tribunal's recommendations in respect of 40 detainees had still to be submitted to the High Commissioner. Since 1 October 1965 four persons had been released unconditionally and five released from detention and placed under restricted residence.

259. The Committee, having noted that the communication from the Government made no specific reference to the four trade unionists named in paragraph 279 of its 87th Report (their names are cited in paragraph 257 above), recommended the Governing Body, in paragraph 284 of its 87th Report—

. . . . . .

(a) to draw the attention of the Government once again to the importance which it attaches to the observance of the right of all detained persons to receive a fair trial at the earliest possible moment;

(b) to draw attention to the fact that the four trade unionists referred to in paragraph 279 above had already been held for over 12 months without trial when the case was further reported on to the Governing Body in November 1965;

(c) to take note of the Government's statement that a Review Tribunal has been examining cases of detainees since October 1965 and that a number of detainees have been released;

(d) to express its regret, however, that the Government's latest observations give no indication of the situation of the four trade unionists in question;

(e) to express the hope that, in accordance with the principle enunciated in subparagraph *(a)* above, these four trade unionists, if still in detention, will either be released or brought to trial at the earliest possible moment;

(f) to request the Government to inform the Governing Body as a matter of urgency as to the present situation of the four trade unionists and, if they are still detained, as to what steps it is intended to take in this connection.

. . . . . .

260. The 87th Report of the Committee was approved by the Governing Body at its 164th Session (February-March 1966) and the recommendations cited in the preceding paragraph were brought to the notice of the Government of the United Kingdom by a letter dated 7 March 1966.

261. In a communication dated 30 March 1966 the Government states that, after review of their cases by the Tribunal, Messrs. Faruq Mohammed Abdul Rahiman Makkawi, Ali Ahmad Ali Hamami and Taha Ahmad Ghanim still remain in detention, while Mr. Ahmed Haidra continues to be detained in his home state of Dathina. In a further communication dated 11 May 1966 the Government states that the four persons in question are being detained because their presence at large would be prejudicial to the maintenance of public order and security, and not on account of any trade union activities, but that their cases are kept under regular review.

262. In these circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government once again to the importance which it attaches to the observance of the right of all detained persons to receive a fair trial at the earliest possible moment ;

(b) to draw attention to the fact that the first of the four trade unionists referred to in paragraph 261 above has been held without trial since August 1964 and the other three since October 1964, a situation which appears to be incompatible with the generally accepted principle enunciated in subparagraph *(a)* above;

(c) to express the hope that, in accordance with the said principle, the four trade unionists in question will either be released or brought to trial at the earliest possible moment;

(d) to request the Government to be good enough to inform the Governing Body as a matter of urgency as to what steps it is intended to take in this connection;

(e) to take note of the present interim report, it being understood that the Committee will report further on the matter to the Governing Body when the information referred to in subparagraph *(d)* above has been received.

Case No. 422:

Complaint Presented by the Latin American Federation of Christian Trade Unionists against the Government of Ecuador

263. The last time the Committee examined this case was at its meeting in November 1965, and on that occasion it submitted a provisional report which appears in paragraphs 525 to 540 of its 85th Report, approved by the Governing Body at its 163rd Session (November 1965). The present report refers only to the allegations whose examination remained in suspense, i.e. those referring to the arrest of trade union leaders in connection with which more complete information was sought from the Government, pursuant to paragraph 540 *(b)* of the 85th Report.

264. Ecuador has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

265. In two communications, dated 24 November and 23 December 1964, the Latin American Federation of Christian Trade Unionists complained of the arrest of eight officials of the Ecuadorian Federation of Catholic Workers. Francisco Checa and Carlos Aroca are alleged to have been apprehended and imprisoned in September 1964 while they were

attending a meeting of peasants convened to found a peasants' league; Pedro Moreno Rocha, Carlos Idovro Vergara and Mesías Zamora Pérez were imprisoned for distributing leaflets to peasants with the aim of convening a meeting to found another peasants' league. It was also alleged that the trade union leader Hugo Espinosa, who was held incommunicado, and the trade union leaders Luis Cajas and Teodoro Reinoso were imprisoned but that the latter two were subsequently released.

266. After examining the case in its entirety at its meetings held in February and May 1965, the Committee recommended the Governing Body to ask the Government for its observations respecting the alleged imprisonment, since no observations had been received up to that time. By a communication dated 27 August 1965 the Government declared, without giving any more precise details, that the arrest referred to had been carried out for infringement of specific provisions of the penal legislation which had no connection with trade union activities. On re-examining the case at its meeting held in November 1965, the Committee noted that in similar cases it had always followed the rule that the governments concerned should be requested to submit further and as precise information as possible concerning the arrests or detentions and the exact reasons therefor. It also noted that, if in certain cases the Committee had concluded that allegations relating to the arrests or detentions of trade union militants did not call for further examination, this had been after it had received information from the governments showing sufficiently precisely and with sufficient detail that the arrests or detentions were in no way occasioned by trade union activities but solely by activities outside the trade union sphere which were either prejudicial to public order or of a political character. Finally, in paragraph 540 *(b)* of its 85th Report, the Committee again recommended the Governing Body to reiterate to the Government its request to send more complete information on this aspect of the case, including an account of the offences with which each of the trade unionists had been charged and the result of the prosecutions commenced in this respect.

267. This recommendation was approved by the Governing Body and transmitted to the Government, which replied by a communication dated 11 February 1966. The Government stated in its reply that the arrest of Messrs. Checa and Aroca was due to blatant infringements of specific provisions of the penal legislation of Ecuador. The authorities responsible for applying the appropriate penalty, however, had been conciliatory enough to order the release of these men with the very purpose of avoiding the distortion of the reasons for their arrest. The Government declared in this connection that the fact of being a trade union official did not entitle anyone to devote himself to overthrowing public order on the pretext of organising workers' unions. As regards the arrest of Messrs. Moreno Rocha, Hidrovo Vergara (called Idovro Vergara by the complainants) and Zamora Pérez, the Government stated that, according to the information supplied by the authorities dealing with each case, the arrest was due to these persons having been found distributing subversive leaflets with no printer's mark and disturbing political order in the district, particularly among the country people: the three men were released after signing a declaration before the authorities, binding them to take no part in political activities which in the opinion of the Government have no connection with trade unionism. The distribution of leaflets with no printer's mark is an offence punishable under section 272 of the Penal Code with imprisonment of from three months to one year and a fine of from 80 to 200 sucres.

268. With respect to the last-mentioned three trade unionists, the Committee noted the Government's declaration that the arrest had been made in respect of an offence punishable under the Penal Code. However, in view of what had been said by the Government concerning political activities in connection with the trade unionists' acts, the Committee thought it necessary to bear in mind the opinion expressed by the Committee of Experts on the Application of Conventions and Recommendations which states that [1] " provisions prohibiting trade unions in general terms from engaging in any political activities . . . may

[1] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 43rd Session, Geneva, 1959 (Geneva, I.L.O., 1959), para. 69, p. 115.

raise difficulties by reason of the fact that the interpretation given to them in practice may change at any moment and restrict considerably the possibility of action of the organisations. In this connection the Committee thinks it useful to make reference to the resolution adopted by the International Labour Conference at its 35th Session (Geneva, 1951) in which it is stated, among other things, that when trade unions undertake or associate themselves with political action, this action shall not be ' of such a nature as to compromise the continuance of the trade union movement or its social or economic functions, irrespective of political changes in the country '. It would therefore seem that States should be able, without prohibiting in general terms and *a priori* all political activities by occupational organisations, to entrust to the judicial authorities the task of repressing abuses which might, in certain cases, be committed by organisations which had lost sight of the fact that their fundamental objective should be ' the economic and social advancement ' of their members ".

269. On the other hand the Committee deplores the fact that, in spite of repeated requests for precise information concerning the detention of the other trade unionists mentioned in the complaint, the Government has once again restricted itself to stating in its communication of 11 February 1966, referring to only two of the cases of arrest, that both the trade unionists concerned had infringed the provisions of the Penal Code, without throwing more light on the exact nature of the alleged offences with which these persons are charged, and that no judicial proceedings seem to have been taken against them.

270. Although these two trade unionists, Messrs. Checa and Aroca, have been released at some time after the date on which the complaint was lodged, in view of the importance it has always attached, in all cases where trade unionists are detained for political offences or common law crimes, to the principle that the persons concerned should be tried with all the safeguards of regular judicial procedure, at the earliest possible moment and by an impartial and independent judicial authority, the Committee, in accordance with the practice it has followed hitherto in similar cases, recommends the Governing Body to draw the Government's attention to the dangers that measures for the detention of trade unionists might entail for freedom of association if such measures are not accompanied by proper judicial safeguards, and to the fact that every government should make it a rule to ensure respect for human rights and, in particular, the right of every detained person to receive a fair trial at the earliest possible moment by an impartial and independent judicial authority.[1]

271. With respect to the other three trade unionists, Messrs. Espinosa, Cajas and Reinoso, whose arrest has also been alleged by the complainants, the Government has not submitted any information up to the present.

272. In these circumstances the Committee recommends the Governing Body—

(a) to note that the trade unionists Pedro Moreno Rocha, Carlos Idovro Vergara, Mesías Zamora Pérez, Francisco Checa and Carlos Aroca have been released;

(b) to draw the Government's attention, however, to—

(i) the importance the Committee has always attached to the opinion of the Committee of Experts on the Application of Conventions and Recommendations to the effect that trade unions should not be prohibited in general terms from engaging in any political activities, and that the judicial authorities should be entrusted with the task of repressing abuses which might be committed by organisations which

[1] See Fourth Report, Case No. 5 (India), paras. 18-51, Case No. 10 (Chile), paras. 52-88, and Case No. 30 (United Kingdom-Malaya), paras. 140-161; Sixth Report, Case No. 47 (India), paras. 704-736, and Case No. 49 (Pakistan), paras. 770-813; 12th Report, Case No. 87 (India), paras. 233-240, and Case No. 63 (Union of South Africa), paras. 257-276; 13th Report, Case No. 62 (Netherlands), paras. 18-89; 16th Report, Case No. 112 (Greece), paras. 57-86; 17th Report, Case No. 104 (Iran), paras. 157-221; 24th Report, Case No. 142 (Honduras), paras. 97-148; 25th Report, Case No. 136 (United Kingdom-Cyprus), para. 154; 27th Report, Case No. 143 (Spain), para. 186, and Case No. 152 (United Kingdom-Northern Rhodesia), para. 410; 62nd Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 152; 67th Report, Case No. 303 (Ghana), para. 318; 81st Report, Case No. 385 (Brazil), para. 150, and Case No. 419 (Congo(Brazzaville)), para. 193; 83rd Report, Case No. 418 (Cameroon), para. 358.

had lost sight of the fact that their fundamental objective should be " the economic and social advancement " of their members;

(ii) the dangers that measures for the detention of trade unionists might entail for freedom of association if such measures are not accompanied by proper judicial safeguards, and the fact that every government should make it a rule to ensure respect for human rights and, in particular, the right of every detained person to receive a fair trial at the earliest possible moment by an impartial and independent judicial authority;

(c) to request the Government once again to forward, as a matter of urgency, its precise observations concerning the alleged detention of Messrs. Hugo Espinosa, Luis Cajas and Teodoro Reinoso, indicating further the present situation of these persons before the law;

(d) to take note of the present interim report, it being understood that the Committee will report further when it has received the additional information from the Government, as indicated in subparagraph *(c)* above.

Case No. 423:

Complaints Presented by the National Trade Union of Public Servants of Honduras against the Government of Honduras

273. This case already came before the Committee at its May 1965 meeting, when it submitted an interim report on the subject which will be found in paragraphs 63 to 78 of its 84th Report, approved by the Governing Body at its 162nd Session (May-June 1965). In that report the Committee submitted its final conclusions and recommendations with respect to the allegations relating to the registration and recognition of the complaining organisation, and the paragraphs which follow will deal only with the remaining allegations, examination of which was left outstanding pending the receipt of certain additional information requested from the Government.

274. Honduras has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

275. In its complaint dated 29 November 1964 the National Trade Union of Public Servants of Honduras (SINASEPH) stated that Professor Amílcar Salinas Rivera had been arrested and wrongfully dismissed from his post in the public administration four days after being elected Secretary-General of that organisation's Action and Public Relations Committee. The complainants held that the action taken against Professor Salinas Rivera was due to his trade union activities and added that Miss Marina Barnica, who had played a prominent part in the founding of the union, had been dismissed from her post as secretary at the Labour Inspectorate on the same day.

276. When it examined the case at its meeting in May 1965 the Committee observed that in its observations the Government had given no specific explanation with respect to these allegations, merely referring to certain purely political activities which could not be pursued by trade unions. In consequence, for the reasons stated in paragraphs 75 and 76 of its 84th Report, the Committee recommended the Governing Body, while reaffirming the importance it attached to ensuring that trade union members arrested for political offences or for offences under ordinary law should be tried within the shortest possible period by an impartial and independent judicial authority, to request the Government to make specific observations concerning the reasons for the arrest of Mr. Salinas Rivera, and his present situation, and also to request the Government to send its observations concerning the reasons for the dismissal of Miss Marina Barnica and Mr. Salinas Rivera. Since it appeared from an earlier communication from the Government that Mr. Arístides Mejía Castro,

who had signed the complaint as President of the SINASEPH, had also been dismissed [1], the Committee also requested the Government for observations with respect to his case.

277. These recommendations, having been approved by the Governing Body, were transmitted to the Government by letter dated 28 June 1965, to which the Government replied on 12 January 1966.

278. The Government declares on the basis of a report from the National Investigation Corps, copy of which it attaches, that Professor Salinas Rivera was arrested for the proved offence of attempting to overthrow the democratic form of government, but that he was subsequently released. The Government adds that since 18 August 1965 the person concerned has occupied a post as instructor at the Co-operative Technical Industrial Centre at San Pedro Sula, and attaches an attestation to that effect. Miss Marina Barnica was dismissed at the request of her immediate superior, the Chief of the Labour Inspectorate at San Pedro Sula, for failure to perform her duties. The Government also explains that Mr. Mejía Castro was not dismissed; he requested permission to resign from his post as Chief of the Workers' Education Department in order to go to the Central American Institute of Trade Union Studies, where he took up employment on 1 September 1964. The Government attaches a number of documents relating to Mr. Mejía Castro's request, including a copy of the request itself, wherein, *inter alia*, he expresses his gratitude for the confidence shown in him during his employment with the Ministry of Labour and Social Welfare and recommends a candidate to replace him. The Government denies having infringed Article 1 of Convention No. 98, considering that the persons named in the complaint have not been the victims of discrimination in respect of employment, nor were they dismissed on account of their trade union activities.

279. The Committee takes due note of the information supplied by the Government, from which it appears that Mr. Mejía Castro left his post of his own accord and that Miss Barnica was dismissed purely on account of her work. As far as the latter is concerned, since the complainants confine themselves to mentioning her dismissal and her earlier trade union activities without furnishing any evidence which would serve to establish a link between the two, the Committee considers, in the light of the Government's reply, that it would serve no useful purpose to proceed with its examination of this aspect of the case.

280. As regards Professor Salinas Rivera, the Government's reply announces that he has been released. The reply does not, however, refer specifically to the allegation that Professor Salinas Rivera was dismissed from his post in the public administration at the time of his arrest, i.e. four days after he was elected Secretary-General of the Action and Public Relations Committee of the National Trade Union of Public Servants of Honduras.

281. In these circumstances the Committee recommends the Governing Body—

(a) with respect to the allegation relating to the dismissal of Miss Marina Barnica, to take note of the Government's statement to the effect that she was dismissed on account of her work and to decide, for the reasons stated in paragraph 278 above, that this aspect of the case does not call for further examination;

(b) to request the Government to be good enough to comment on the allegation that Professor Amílcar Salinas Rivera was dismissed from his post in the public administration on account of his trade union activities;

(c) to take note of the present interim report, on the understanding that the Committee will report further to the Governing Body when it has received the information requested from the Government in subparagraph *(b)* of this paragraph.

Geneva, 25 May 1966.

(Signed) Roberto AGO,
Chairman.

[1] See 84th Report, para. 68.

Ninety-first Report [1]

Introduction

1. The Committee on Freedom of Association set up by the Governing Body at its 117th Session (November 1951) met at the International Labour Office, Geneva, on 23 May 1966, under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body.

2. In accordance with the procedure laid down in paragraph 12 of its 29th Report, as amended by paragraph 5 of its 43rd Report, the Committee recommends the Governing Body to examine the present report at its 165th Session.[2]

3. The Committee considered the case relating to the Republic of South Africa (Case No. 472), with respect to which it submits in the present report, for the approval of the Governing Body, the conclusions which it has now reached.

Conclusions in the Case relating to the Republic of South Africa (Case No. 472)

Case No. 472:

Complaint Presented by the World Federation of Trade Unions against the Government of the Republic of South Africa

4. On 3 March 1966 the World Federation of Trade Unions submitted a complaint of alleged infringements of trade union rights in the Republic of South Africa, which was received by the International Labour Office on 14 March 1966.[3]

5. The complainants allege that, in 1961, 193 African workers employed by the Bay Transport Company went on strike in support of their occupational demands, after negotiations had broken down. As strikes by African workers are prohibited under the Native Labour (Settlement of Disputes) Act, 1953, as amended—a fact which the complainants condemn as a measure of racial discrimination—they were arrested and then fined £7 10s. each. Subsequently negotiations were resumed, and a settlement was eventually reached. In 1965, it is alleged, ten of these workers (Messrs. Eric Zuma, Llewellyn Yava, Daniel Magongo, Milton Baleni, Alfred Qungani, Matthew Mpolongwana, Amoz Zembetha, Richard Klaas, Arnold Nhantana, and Welcome Duru) were arrested on charges of having furthered the aims of the banned African National Congress—a political organisation declared unlawful under the Suppression of Communism Act—and sentenced to four-and-a-half years' imprisonment, all except the last named having previously been illegally detained for more than one year.

6. It is also alleged that three officers of trade unions belonging to the South African Congress of Trade Unions, Messrs. Zolly Malindi, Bernard Huna and Elyah Loza, have been held in solitary confinement since December 1965 without having been charged or brought to trial.

7. The particular incident of the imposition of fines on 193 African workers has previously been considered by the Committee when it had before it a complaint submitted by

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[1] See above, footnote 1, p. 1.

[2] See above, footnote 1, p. 2.

[3] With respect to allegations relating to the Republic of South Africa previously examined in substance see 85th Report, Cases Nos. 300, 311 and 321, paras. 59-166, and earlier South African cases referred to therein.

the South African Congress of Trade Unions.[1] At its meeting in November 1965 the Committee recalled [2] that it had always applied the principle that allegations respecting the right to strike are not outside its competence in so far as they affect the exercise of trade union rights [3] and pointed out, as it already had done on numerous occasions [4], that the right of workers and their organisations to strike as a legitimate means of defending their occupational interests is generally recognised. The case of the 193 workers was one more example of the application of the legal provisions prohibiting strikes by African workers which had already been considered by the Committee in Case No. 102 relating to the Union of South Africa. The Committee had then observed that, while temporary restrictions were placed on the right to strike of employees covered by the Industrial Conciliation Act and a complete prohibition was placed on strikes by such employees engaged in certain essential services, section 18 (1) of the Native Labour (Settlement of Disputes) Act placed a total prohibition on strikes by African workers, irrespective of the nature of their occupation.[5] It had expressed the view that, where the right to strike is accorded to workers and their organisations, there should be no racial discrimination with respect to those to whom it is accorded [6], and had recommended the Governing Body to note that in South Africa the existence of racial discrimination in respect of trade union rights is further confirmed by the fact that the nature and extent of the limitations placed on the right to strike differ widely as between employees covered by the Industrial Conciliation Act and African workers.[7] After examining the allegations relating to the case of the 193 workers who were fined for striking, the Committee reaffirmed this recommendation in paragraph 166 *(f)* (iii) of its 85th Report. This recommendation was affirmed by the Governing Body at its 163rd Session (November 1965) and was communicated to the Government of the Republic of South Africa by a letter dated 26 November 1965.

8. It appears from the complaint that ten of the strikers referred to above were, in 1965, sentenced for an offence against the Suppression of Communism Act. It is not clear from the complaint whether the fact of their having been on strike in 1961 was the basis for their conviction in 1965 of furthering the aims of a political organisation declared unlawful pursuant to the Act. On the more general question of the consequences of the Suppression of Communism Act on the exercise of trade union rights considered by the Committee in Case No. 63 relating to the then Union of South Africa, the Committee concluded:

> In so far as the South African Act of 1950 was enacted, as the Government contends, purely for a political reason, namely that of barring Communists in general, as citizens, from all public life, the Committee considers that the matter is one of internal national policy with which it is not competent to deal and on which it should therefore refrain from expressing any view. However, in view of the fact that measures of a political nature may have an indirect effect on the exercise of trade union rights, the Committee wishes to draw the attention of the South African Government to the views which it has expressed in the above cases [in Case No. 5 (India), Fourth Report, paras. 18-51, and Case No. 10 (Chile), Fourth Report, paras. 52-88] with regard, first, to the principle that workers, without distinction whatsoever, should have the right to join organisations of their own

[1] See 85th Report, Cases Nos. 300, 311 and 321 (Republic of South Africa), paras. 131-139.

[2] Ibid., para. 137.

[3] See 28th Report, Case No. 143 (Spain), para. 109, Cases Nos. 141, 153 and 154 (Chile), para. 202, and Case No. 169 (Turkey), para. 297; 47th Report, Case No. 143 (Spain), para. 66; 58th Report, Case No. 221 (United Kingdom-Aden), para. 109; 65th Report, Case No. 266 (Portugal), para. 77; 66th Report, Case No. 294 (Spain), para. 481; 71st Report, Case No. 173 (Argentina), para. 67; 72nd Report, Case No. 211 (Canada), para. 27; 78th Report, Case No. 364 (Ecuador), para. 79; 83rd Report, Case No. 399 (Argentina), para. 293.

[4] See Fourth Report, Case No. 5 (India), paras. 18-51; 12th Report, Case No. 60 (Japan), paras. 10-83; 28th Report, Cases Nos. 141, 153 and 154 (Chile), para. 202; 30th Report, Case No. 167 (Honduras), para. 76, Case No. 181 (Ecuador), para. 94, Case No. 143 (Spain), para. 130, and Case No. 172 (Argentina), para. 778; 58th Report, Case No. 192 (Argentina), para. 447; 65th Report, Case No. 266 (Portugal), para. 77; 68th Report, Case No. 294 (Spain), para. 137; 78th Report, Case No. 364 (Ecuador), para. 79; 83rd Report, Case No. 399 (Argentina), para. 293.

[5] See 15th Report, para. 153.

[6] Ibid., para. 154.

[7] Ibid., para. 185 (4).

choosing and, secondly, to the importance of due process in cases in which measures of a political nature may indirectly affect the exercise of trade union rights. Consequently the Committee recommends the Governing Body to communicate the above conclusions to the Government of the Union of South Africa.[1]

This recommendation was approved by the Governing Body at its 124th Session (March 1954) and the above conclusions were communicated to the Government of the then Union of South Africa by a letter dated 20 March 1954.

9. In the present case it is also alleged that, before their conviction, nine of the ten workers named had been held in preventive detention for over one year and that three officers of the South African Congress of Trade Unions have been detained since December 1965 without having been charged or brought to trial. The question of preventive detention is one which the Committee has been called upon to examine in a considerable number of cases, including some relating to the Republic of South Africa. In all these cases the Committee has consistently pointed out that in all cases in which trade unionists are preventively detained these measures may involve a serious interference with the exercise of trade union rights and has emphasised the right of all detained persons to receive a fair trial at the earliest possible moment.[2] In Cases Nos. 300, 311 and 321 relating to the Republic of South Africa the Committee recommended the Governing Body, in paragraph 166 *(b)* (iii) of its 85th Report, to bring these principles to the notice of the Government of the Republic of South Africa. This recommendation was approved by the Governing Body at its 163rd Session (November 1965) and was communicated to the Government by a letter dated 26 November 1965.

10. The questions of principle raised by the complaint now before the Committee have thus been the subject of recommendations by the Governing Body in earlier cases, but in the present case a new question concerning the jurisdiction and competence of organs of the International Labour Organisation to deal with the matter arises.

11. The present complaint was received by the I.L.O. on 14 March 1966. On 11 March 1966 the period of notice given by the Republic of South Africa of its intention to withdraw from the International Labour Organisation expired. The Republic of South Africa remained a Member of the United Nations.

12. According to the procedure for the examination of complaints of alleged infringements of trade union rights agreed upon between the United Nations and the International Labour Organisation, as set forth in the letter of 19 January 1950 from the Director-General of the I.L.O. to the Secretary-General of the United Nations [3] stating the proposed terms of reference of the Fact-Finding and Conciliation Commission, which were subsequently approved by the Economic and Social Council when it adopted resolution 277 (X) concerning trade union rights (freedom of association) on 17 February 1950 in the course of its Tenth Session, before the Governing Body of the I.L.O. refers to the Fact-Finding and Conciliation Commission on Freedom of Association an allegation which it has received against a Member of the United Nations which is not a Member of the I.L.O., such allegation should

[1] See 12th Report, para. 276. These conclusions were reaffirmed in Case No. 102 (15th Report, para. 185 (1)) and subsequent cases relating to South Africa.

[2] See Fourth Report, Case No. 5 (India), paras. 18-51, Case No. 10 (Chile), paras. 52-88, and Case No. 30 (United Kingdom-Malaya), paras. 140-161; Sixth Report, Case No. 47 (India), paras. 704-736, and Case No. 49 (Pakistan), paras. 770-813; 12th Report, Case No. 87 (India), paras. 233-240; Case No. 63 (Union of South Africa), paras. 257-276, and Case No. 16 (France-Morocco), paras. 292-428; 13th Report, Case No. 62 (Netherlands), paras. 18-89; 16th Report, Case No. 112 (Greece), paras 57-86; 17th Report, Case No. 104 (Iran), paras. 157-221; 24th Report, Case No. 142 (Honduras), paras. 97-148; 25th Report, Case No. 136 (United Kingdom-Cyprus), para. 154; 27th Report, Case No. 143 (Spain), para. 186, and Case No. 152 (United Kingdom-Northern Rhodesia), para. 410; 62nd Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 152; 66th Report, Case No. 251 (United Kingdom-Southern Rhodesia), para. 409; 83rd Report, Case No. 303 (Ghana), para. 225, and Case No. 418 (Cameroon), para. 358; 85th Report, Cases Nos. 300, 311 and 321 (Republic of South Africa), para. 110.

be referred to the Economic and Social Council for its consideration.[1] In resolution 277 (X) approving the arrangements, adopted on 17 February 1950 by the Economic and Social Council, the I.L.O. was invited to refer, in the first instance, to the Economic and Social Council any allegations regarding infringements of trade union rights against a Member of the United Nations which is not a Member of the I.L.O. If the Governing Body has before it such allegations regarding infringements of trade union rights, it will, before referring them to the Commission, refer them to the Economic and Social Council for consideration. The procedure provides that the Secretary-General of the United Nations will seek the consent of the Government concerned before any consideration of the allegation by the Economic and Social Council ; if such consent is not forthcoming, the Economic and Social Council will give consideration to such refusal with a view to taking any appropriate alternative action designed to safeguard the rights relating to freedom of association involved in the case.[2]

13. In these circumstances the Committee recommends the Governing Body—

(a) to refer to the Economic and Social Council for consideration, in accordance with resolution 277 (X) of 17 February 1950, the allegations which have been received from the World Federation of Trade Unions against the Government of the Republic of South Africa, which is no longer a Member of the I.L.O., to the effect that 193 African workers were fined for striking in contravention of the provisions of the Native Labour (Settlement of Disputes) Act, 1953, as amended, which prohibits all strikes by African workers; that over four years later ten of those workers were sentenced to four-and-a-half years' imprisonment for an offence punishable under the Suppression of Communism Act, 1950, as amended; that prior to such conviction nine of the ten persons concerned had been held in preventive detention for more than one year; and that three officers of the South African Congress of Trade Unions have been detained since December 1965 without having been charged or brought to trial;

(b) to inform the Economic and Social Council that in examining allegations of this kind in earlier cases relating to the Republic of South Africa, which arose while South Africa was a Member of the I.L.O., the Governing Body has communicated to the Government of South Africa the following findings and recommendations:

(i) where the right to strike is accorded to workers and their organisations, there should be no racial discrimination with respect to those to whom it is accorded; the nature and extent of the limitations placed on the right to strike differ widely as between employees covered by the Industrial Conciliation Act, 1956, and African workers;

(ii) workers without distinction whatsoever should have the right to join organisations of their own choosing and full due process should be observed in cases in which measures of a political nature may indirectly affect the exercise of trade union rights;

(iii) the preventive detention of trade union leaders may involve a serious interference with the exercise of trade union rights; all detained persons should receive a fair trial at the earliest possible moment;

(c) to note that, in accordance with Economic and Social Council resolution No. 277 (X) of 17 February 1950, it is for the Economic and Social Council to decide what further action it proposes to take in the matter by seeking the consent of the Government of the Republic of South Africa to the case being referred to the Fact-Finding and Conciliation Commission on Freedom of Association or in any other manner.

Geneva, 25 May 1966. *(Signed)* Roberto AGO, *Chairman.*

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[1] See *Fourth Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1950), pp. 324-326.

[2] See First Report, para. 20.

Ninety-second Report [1]

INTRODUCTION

1. The Committee on Freedom of Association set up by the Governing Body at its 117th Session (November 1951) met at the International Labour Office, Geneva, on 23 May 1966, under the chairmanship of Mr. Roberto Ago, former Chairman of the Governing Body. During the absence of the Chairman, while the Committee considered the case relating to Italy (Case No. 471), the chair was taken by Mr. Henry Hauck.

2. In accordance with the procedure laid down in paragraph 12 of its 29th Report, as amended by paragraph 5 of its 43rd Report, the Committee recommended the Governing Body to examine the present report at its sitting immediately following the close of the 50th (1966) Session of the International Labour Conference.[2]

3. The Committee considered—*(a)* 15 cases in which the complaints had been communicated to the governments concerned for their observations, namely the cases relating to Belgium (Case No. 376), Japan (Case No. 398), Bolivia (Case No. 409), Paraguay (Case No. 439), Panama (Case No. 446), Uganda (Case No. 448), Honduras (Case No. 454), Ireland (Case No. 455), Mexico (Case No. 460), Spain (Case No. 461), Panama (Case No. 466), Congo (Leopoldville) (Case No. 468), Cuba (Case No. 469), Italy (Case No. 471) and Ecuador (Case No. 473); and *(b)* two complaints relating to the United Kingdom (Aden) (Case No. 465) and Chile (Case No. 475), which were submitted to the Committee for opinion prior to being communicated to the governments concerned.

Cases the Examination of Which the Committee Has Adjourned

4. The Committee adjourned until its next session its examination of the case relating to Bolivia (Case No. 409), in which it is still awaiting further information previously requested from the government concerned, and the case relating to the Congo (Leopoldville) (Case No. 468), in which the Committee has asked the Director-General to obtain further information from both the government and the complainants concerned before it submits its recommendations to the Governing-Body.

5. The Committee adjourned until its next session the cases relating to Panama (Case No. 446), Mexico (Case No. 460), Panama (Case No. 466) and Cuba (Case No. 469), in which it has not yet received the observations of the governments concerned, and the case relating to Italy (Case No. 471), in which the Government's observations were received too late to permit of their being examined by the Committee at its present session. With regard to the case relating to Panama (Case No. 446), the Committee took note of a communication from the Government stating that the matter was receiving attention.

6. The Committee also adjourned until its next session the case relating to Spain (Case No. 461).

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[1] See above, footnote 1, p. 1.

[2] The 92nd Report of the Committee on Freedom of Association was examined and approved by the Governing Body at its 166th Session on 23 June 1966.

Cases in Which the Committee Submits Its Conclusions to the Governing Body

7. In the present report the Committee submits for the approval of the Governing Body the conclusions which it has now reached concerning the remaining cases before it, namely the cases relating to Belgium (Case No. 376), Japan (Case No. 398), Paraguay (Case No. 439), Uganda (Case No. 448), Honduras (Case No. 454) and Ireland (Case No. 455), and the complaints relating to the United Kingdom (Aden) (Case No. 465) and Chile (Case No. 475), which were submitted to the Committee for opinion. These conclusions may be briefly summarised as follows:

(a) the Committee recommends that the complaints relating to the United Kingdom (Aden) (Case No. 465) and Chile (Case No. 475), which were submitted to it for opinion, should, for the reasons indicated in paragraphs 8 to 17 of this report, be dismissed without being communicated to the governments concerned;

(b) with regard to the case relating to Belgium (Case No. 376) the Committee, for the reasons indicated in paragraphs 18 to 41 of this report, has reached certain conclusions to which it wishes to draw the attention of the Governing Body;

(c) with regard to the cases relating to Japan (Case No. 398), Paraguay (Case No. 439), Uganda (Case No. 448), Honduras (Case No. 454) and Ireland (Case No. 455) the Committee, for the reasons indicated in paragraphs 42 to 227 of this report, has presented an interim report stating certain conclusions to which it wishes to draw the attention of the Governing Body.

Complaints Which the Committee Recommends Should Be Dismissed without Being Communicated to the Governments Concerned

Case No. 465:

Complaint Presented by the International Confederation of Arab Trade Unions against the Government of the United Kingdom in respect of Aden

8. The Director-General has received a communication dated 13 January 1966 from the International Confederation of Arab Trade Unions containing allegations of infringements of trade union rights in Aden.

9. The Director-General decided to submit the communication in question to the Committee for its opinion, pursuant to the provision in the procedure according to which, if the Director-General should have any difficulty in deciding whether a particular complaint can be regarded as sufficiently substantiated to justify him in communicating it to the Government concerned for its observations, it is open to him to consult the Committee before taking such action.[1]

10. The complaint of the International Confederation of Arab Trade Unions, which is contained in a telegram, alleges in general terms that the "monopolistic companies" terrorise native workers, that the Shell Company has dismissed workers and that the workers of that undertaking have called a strike, which the complainant requests the I.L.O. to support.

11. By a letter dated 21 January 1966 the Director-General informed the complaining organisation of its right to furnish further information in substantiation of its complaint within a period of one month, but it has not done so.

[1] See Ninth Report, para. 23 *(d)*.

12. As the complainants have not availed themselves of the opportunity offered to them to furnish further information in substantiation of their complaint, which is drafted in very vague terms, the Committee recommends the Governing Body to decide that the complaint does not call for further examination.

Case No. 475:

Complaint Presented by the National Association of Public Servants against the Government of Chile

13. By a telegram dated 14 March 1966 addressed to the Secretary-General of the United Nations, who transmitted the text to the I.L.O. by a communication dated 17 March 1966, the Chilean National Association of Public Servants protested, in very general terms and without giving any details, at the repression of workers in El Salvador (Chile) and requested that the United Nations undertake an investigation in order to avoid repetitions of violations of human rights.

14. In accordance with the procedure in force [1] the Director-General wrote to the complaining organisation on 5 April 1966, informing it that any further information it might wish to submit in substantiation of its complaint should be forwarded to him by 5 May 1966. No communication containing additional information has so far been received from the National Association of Public Servants.

15. Although the complaint was not transmitted to the Government of Chile, the latter of its own accord addressed a communication to the Director-General, dated 19 April 1966, enclosing the text of a statement published on 11 March 1966 relating to events which had taken place in El Salvador on that date. Basically, the statement refers to the fact that the forces of law and order intervened in El Salvador to ensure compliance with a decree putting an end to a strike. A group of 85 members of the police and the army was attacked by some 1,300 persons when attempting to occupy trade union premises in which clandestine meetings had been held. The forces of order were surrounded and had to resort to the use of arms to repulse the attack, and a number of people were killed and wounded during the shooting. The Government also refers to the legal steps which it had to take to prevent unlawful strikes which it says had been organised under plans for political sabotage. These steps included the creation of emergency zones and the taking of proceedings against the leaders and instigators of unlawful strikes. Orders for arrest were given by courts of law or, in exceptional cases, by the chiefs of emergency zones in the exercise of their legal powers. Section 38 of Act No. 12927 stipulated that work should be resumed in all mining undertakings where illegal strikes had taken place. Finally, on 13 April 1966, the Government decided to abolish the emergency zones, since the situation was back to normal.

16. In accordance with the procedure in force [2] the Director-General decided to submit the complaint to the Committee for its opinion as to whether it was sufficiently substantiated to justify him in communicating it to the government concerned.

17. As the complainants have not availed themselves of the opportunity offered to them to furnish further information in substantiation of their complaint, which, in so far as it can be considered to refer to trade union rights, is drafted in exceedingly vague terms, and, notwithstanding the fact that the Government has, on its own initiative, sent its observations relating to the case, the Committee recommends the Governing Body to decide that the complaint presented by the National Association of Public Servants does not call for further examination.

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[1] See Ninth Report, para. 23 *(a)*.

[2] Ibid., para. 23 *(d)*.

DEFINITIVE CONCLUSIONS IN THE CASE RELATING TO BELGIUM (CASE NO. 376)

Case No. 376:

Complaint Presented by the International Confederation of Senior Officials against the Government of Belgium

18. The complaint of the International Confederation of Senior Officials is contained in a communication addressed directly to the I.L.O. and dated 31 January 1964, and is supplemented by a communication dated 14 February 1964. The complaint and the additional observations in its support were transmitted to the Government for observation in two letters dated respectively 10 February and 3 March 1964. The Government replied by a communication dated 18 June 1964. The Committee proceeded to a preliminary examination of the allegations and observations submitted thereon by the Government at its 38th Session in November 1964.

19. Belgium has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

20. The complainants allege that the system applied in Belgium, under which important social and pecuniary privileges are granted only to members of particular organisations, is contrary to the principles of freedom of association. This restriction, they continue, is in fact operated to the sole advantage of members of officially recognised organisations. Despite the existence of criteria the recognition of a trade union in Belgium depends upon a unilateral decision of a political authority, with the result that the only unions recognised are those linked more or less closely to the three national parties that regularly participate in coalition governments. The consequence, the complainants state, is that workers wishing union activities to remain independent, or refusing to support organisations professing a political ideology to which they do not subscribe, are deprived of privileges conceded to their colleagues. The complainants state that, while it is normal and even desirable for the Government to encourage trade unionism among workers, it is wrong for pressure in that direction to be exerted on behalf of officially recognised organisations only. Such a system, they continue, means arbitrary restriction of the workers' choice to the three big existing organisations—socialist, christian and liberal.

21. In its observations submitted on 18 June 1964 the Government pointed out that the social and pecuniary privileges granted to the recognised organisations are generally granted because these organisations render great services to the community. In fact, the Government continues, at the national level and that of the industry or undertaking, the workers' representative organisations help to promote social progress and to improve the working conditions of employed persons, whether union members or not. The social privileges in question should, therefore, be regarded as a reward for the action taken by the unions. The Government adds that no regulations have ever been made by the Executive that expressly exclude non-trade-union workers from social privileges. The Government is not a party to agreements between the organisations of employers and workers concerning the reservation of social privileges; it has no decisive role to play in the conclusion of these agreements.

22. When it examined the case at its meeting in November 1964 the Committee was of the opinion that in order to determine more clearly the possible scope of the system to which the complainants object it would be useful for the Committee to know, first, the exact nature of the social and pecuniary privileges refered to in the present matter, and secondly the way in which the privileges in question are granted (or withheld) and, more precisely, whether this is done under legislation or collective agreements. The Committee

therefore requested the Government to furnish additional information on these two points. The request was submitted to the Government in a letter dated 18 November 1964 and the Government replied by a communication dated 2 February 1965.

23. In its answer, in order to ensure a better understanding of the practice, which it claims to be recent, of granting privileges to members of trade unions, the Government first of all gives a picture of the legal and sociological background against which the Belgian system of collective labour relations is set.

24. Freedom of association, it states, is guaranteed by article 20 of the Constitution and by the Act of 24 May 1921. Section 1 of this Act stipulates that " no person shall be compelled to join or refrain from joining any association ". Section 3 lays down penalties for any person who " for the purpose of compelling a particular individual to join or refrain from joining an association, resorts to violence, molestation or threats... ". Section 4 lays down penalties for any person who, " with intent to attack freedom of association, makes the conclusion, the execution or (even with due regard to customary notice) the continuance of a contract of work or service conditional upon the affiliation or non-affiliation of one or more persons to an association ". These provisions, the Government continues, enable any individual to secure justice from the courts whenever he considers that his own freedom of association has been impaired by violence, molestation or coercion. It adds that the general practice is to go to court to secure damages for any injury suffered in cases of this type.

25. The Government goes on to state that in Belgium no compulsory legal status is applied to trade union organisations. They are at liberty to avail themselves or not, as they wish, of the system laid down in the Occupational Association Act of 31 March 1898. Hitherto, the trade union organisations have preferred not to do so, and they therefore constitute *de facto* associations, with no obstacle in the way of their establishment or operation.

26. The Government defines collective agreements as agreements dealing with general employment relations and conditions, concluded between one or more workers' organisations on the one hand and one or more employers' organisations on the other. It follows, at least at the level of an undertaking or undertakings, that any trade union organisation is at liberty to conclude collective agreements on any subject, provided that their terms are not contrary to public order or the law of the land. These provisions, states the Government, may therefore institute better conditions than those prescribed by law or they may grant privileges not prescribed by law—as in the case of benefits confined to union members.

27. At the national or regional level, the Government continues, the law takes steps to encourage collective relations between employers' and workers' organisations; these steps are essentially practical and relate to joint committees, whose main function is to lay down general scales of pay for the various degrees of skill, in particular by means of collective agreements. It is impossible to give seats on the joint committees to all organisations; the law therefore stipulates that only the largest organisations can belong to these committees and it lays down a number of criteria for selecting the representative organisations: in order to be considered representative and to have a seat on a joint committee a trade union organisation must form part of a national organisation covering more than one occupation, having a membership of at least 30,000 and represented on the Central Economic Council and the National Labour Council.

28. Nothing, continues the Government, keeps a joint committee from negotiating collective agreements establishing privileges for the members of the signatory organisations, and this results from the regulations governing the status of the joint committees and also from the principle of free negotiation which forms the basis of the collective bargaining system. Nor does this system, adds the Government, keep any trade union organisation, if it is powerful enough, from proving that it meets the criteria for recognition as a national representative body and taking its place on these joint committees.

29. Before pronouncing on the substance of this question it is necessary to look at it against the background of the problems concerning advantages accorded to certain trade unions which the Committee has had to consider in the past.

30. In such cases the Committee has drawn a distinction between advantages accorded by the State and those resulting from agreements between employers and workers.

31. Where it is the State which in law or in practice distinguishes between the different unions concerned the Committee has taken the view that such measures should go no further than to recognise a factual situation and be founded on objective criteria established beforehand and based on factors which offer no opportunity for abuse.[1] In these circumstances the Committee has conceded that certain advantages, especially with regard to representation, might be accorded to trade unions by reason of the extent of their representativeness [2], but has taken the view that the intervention of the public authorities with regard to advantages should not be of such a nature as to influence unduly the choice of the workers in respect of the organisation to which they wish to belong.[3]

32. Moreover, where the special advantages are accorded by collective agreement and without intervention by the State they may be assimilated to union security clauses, as referred to subsequently.

33. In these circumstances, judging from the Government's observations in the present case, it would appear that in Belgium, at the national and, apparently, at the regional level also, the conditions that must be fulfilled if a trade union organisation is to be considered representative and so entitled to participate in a joint committee and negotiate the reservation of privileges to its members are three in number: that the organisation shall form part of a national organisation covering more than one occupation; that this national organisation shall have at least 30,000 members; and that this national organisation shall be represented on the Central Economic Council and the National Labour Council. The Government states in its observations that the established system does not keep an organisation that is powerful enough from proving that it meets the criteria for recognition as a national representative body and taking its place on these joint committees.

34. As concerns the first two criteria—that the organisation forms part of a national organisation covering more than one occupation and that the national organisation has at least 30,000 members—it might, it appears, be considered that, in the case of national or regional joint committees whose competence extends to all branches of economic activity, the organisations wishing to take part in the joint committees might fulfil the criteria if they are sufficiently representative. It might, however, be wondered whether these criteria are also valid for joint committees restricted to one branch of activity or to a specified sector and whether, in such event, there is not a danger of forming an incorrect appraisal of the representative quality of the organisations in the sector in question.

35. As regards the third condition—that the national organisation to which the organisation in question belongs shall be represented on the Central Economic Council and the National Labour Council—if representation on these two councils is not automatic but depends on the discretion of the public authorities, it would seem important that the intervention of the public authorities does not result in discretionary preference being given to certain trade unions to the detriment of others and therefore that recognition by the State of the representative quality of trade union organisations should be based on pre-established objective criteria which leave no scope for abuse.

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[1] See 67th Report, Case No. 303 (Ghana), paras. 286-299; 77th Report, Case No. 368 (Austria), paras. 15-20.

[2] See 53rd Report, Case No. 244 (Belgium), paras. 28-38; 67th Report, Case No. 241 (France), paras. 20-46.

[3] See 57th Report, Case No. 248 (Senegal), para. 28; 58th Report, Case No. 231 (Argentina), para. 552; 67th Report, Case No. 277 (Senegal), para. 60; 68th Report, Case No. 313 (Dahomey), para. 56.

36. With regard to the more specific questions raised by the Committee on the nature, scope and attribution of the social and pecuniary privileges in question, the Government first of all explains how the system of privileges may be defended on what might be called moral grounds by stating that the usual justifications of the system are that the trade union organisations contribute to the development of the economic and social life of the nation; that they are the best guarantee of social peace; that it is their members alone who bear the weight of efforts that ultimately benefit the whole community; that it is only fair for the undertakings benefiting from the economic development and social peace to grant privileges to their trade unionists in return for the sacrifices made.

37. With regard to the scope of these privileges the Government states that the persons covered are trade unionists belonging to an organisation that has signed the collective agreement under which privileges are granted and that the cost of the privileges is met by the employer or employers signing the agreement.

38. The Government offers the following observations on the nature of the privileges and the manner of attributing them. The privileges are pecuniary in nature and generally take the form of annual bonuses, more or less equal to the amount of the union dues. They are unconnected with any contractual scheme; in other words they do not arise out of a statutory system (established by legislation on contracts of employment, for example) or an individual contract of employment (contract of employment concluded between a certain worker and a certain employer). They depend neither on the actual performance of work nor on any social legislation. They are therefore benefits outside the legal and contractual systems and—properly called—not social benefits but trade union benefits. The privileges granted to certain trade unionists are always attributed by collective agreement and not by legislation.

39. It is difficult for the Committee to assess exactly to what extent the privileges, as described by the Government, are economically attractive enough to induce a worker to join one union rather than another or to leave the union he belongs to for another offering him the benefit of the reserved advantages. Furthermore, according to the Government's statement, the privileges are always attributed under collective agreements. Belgium, however, being one of the countries in which collective agreements can be extended by decision of the Government, it would seem appropriate that the Government, when it decides to extend a collective agreement, should take care that this extension does not result in infringing the workers' freedom of choice in joining a union by reason of the economic effects of the clauses providing for pecuniary privileges.

40. The above having been stated it none the less remains true that the privileges are in general attributed under collective agreements and, in view of this, they can be compared with union security clauses. As the Committee observed in previous cases [1], the International Labour Conference considered union security clauses to be matters for regulation in accordance with national practice. It cited in this connection the following statement by the committee set up by the Conference to examine the question: " The Committee finally agreed to express in the report its view that the Convention (No. 98) could in no way be interpreted as authorising or prohibiting union security arrangements, such questions being matters for regulation in accordance with national practice."

41. The Conference accepted this point of view in adopting the report of the committee it had set up, and the Committee on Freedom of Association therefore considers that it is not qualified to examine the problem as concerns its essence and recommends to the Governing Body to decide, while noting the observations contained in the preceding paragraphs, that it is not called upon to formulate a decision on the case.

[1] See 13th Report, Case No. 96 (United Kingdom), paras. 115-139; 15th Report, Case No. 114 (United States), paras. 36-64; 17th Report, Case No. 120 (France), paras. 78-98.

INTERIM CONCLUSIONS IN THE CASES RELATING TO JAPAN (CASE NO. 398), PARAGUAY (CASE NO. 439), UGANDA (CASE NO. 448), HONDURAS (CASE NO. 454) AND IRELAND (CASE NO. 455)

Case No. 398:

Complaints Presented by the Miners' International Federation, the General Council of Trade Unions of Japan and the Japan Coal Miners' Union against the Government of Japan

42. The complaint of the Miners' International Federation was presented on 30 April 1964. On 10 May 1964 a complaint was submitted jointly by the General Council of Trade Unions of Japan and the Japan Coal Miners' Union, further information in support of their complaint being forwarded on 15 July 1964. The observations of the Government of Japan on these complaints are contained in a communication dated 17 December 1964. At its meeting in November 1965 the Committee decided to request the Government to furnish further information on certain aspects of the case. The Government did so by a communication dated 1 February 1966.

43. Japan ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), on 20 October 1953, and it came into force for Japan on 20 October 1954. On 14 June 1965 Japan ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which will come into force for Japan on 14 June 1966.

44. The different allegations, which are related more particularly but not entirely to the alleged inadequate application in Japan of the provisions of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), are considered separately below.

Allegations relating to Acts of Anti-Union Discrimination against Officers and Members of the Miike Coal Miners' Union

(a) *Alleged Discharge of Ten Union Officers.*

45. The complainants allege that on 23 August 1963 ten officers of the Miike Coal Miners' Union were dismissed for the following purported reasons. Mr. M. Miyakana, President of the union, was discharged for various acts committed in connection with the Miike coal miners' strike in 1960 and, especially, for having boarded a picketing boat in July 1960, thus impeding the transport of personnel and materials by the Mitsui Mining Company (the employers), for having encouraged illegal picketing activities, and for having impeded the application of an interim decision of the District Court. One or more of these reasons or acts in connection with the leading of illegal strike activities or participation in such activities and in demonstrations and in impeding the carrying on of the work—all in the course of the 1960 dispute—were adduced as grounds for dismissing also Mr. T. Kubota, Vice-President of the union, Mr. S. Haibara, General Secretary, and other leading officials: Messrs. H. Nagata, S. Kamachi, T. Kitaoka, H. Koga, M. Kimura, A. Tsukamoto and M. Matsufuji.

46. The complainants point out that the discharges took place two years after the commission of the acts referred to, these acts being pleaded as a pretext, whereas the real aim is to destroy the union. They consider the dismissals to run counter to the conciliator's proposals in 1960 that the question of responsibility for the dispute of 1960 should not be pursued. The complainants contend also that the acts committed by the individuals concerned were not illegal but were legitimate trade union activities.

47. In support of their claim that the discharges are part of a plan to destroy the union the complainants make the following contentions. In the Company's rationalisation pro-

gramme made known in August 1959, which eventually gave rise to the dispute, provision was made for the dismissal " by nomination " of redundant workers, based on certain criteria. Apart from age, length of service, family responsibilities, etc., two of the criteria listed were " a man whose attitude in daily service could be condemned by the Company " and " a man whose personality is not adaptable to collective life ". It is alleged that in the course of the negotiations on the question the Company hinted that trade union militancy would be an adverse criterion. In fact, say the complainants, 1,200 of the union membership were declared redundant, including 400 of the most active members, regarded as " production disturbers ".

48. As regards the above cases of alleged unfair labour practice, the Government stated in its communication dated 17 December 1964 that it was unable to judge the merits thereof, this being a matter for the labour relations commissions or the courts. In fact most of the cases referred to above and throughout the complaints were the subject of proceedings pending before labour relations commissions or courts. An application for the maintenance of the status of the ten union officers was submitted to the Fukuoka District Court on 1 October 1963.

49. The Committee observed, at its meeting in November 1965, that it had followed the practice in the past [1] of postponing its examination of matters which were the subject of pending national judicial proceedings where such proceedings might make available information of assistance to the Committee in appreciating whether or not allegations were well founded, and that, in many cases, it had requested governments to communicate the texts of judgments given and the grounds therefor.[2]

50. The Committee therefore decided to request the Government to be good enough to inform it as to the outcome of the proceedings in the Fukuoka District Court and to furnish a copy of the judgment and of the reasons adduced therein.

51. In its communication dated 1 February 1966 the Government states that the case is still pending in the Fukuoka District Court. In view of the many complex points involved, 19 oral proceedings were held between 1 October 1963 and December 1965 to complete the listing of legal and factual points at issue. On 25 December 1965 the parties were making preparations for testimony.

52. The Committee thanks the Government for this information and requests the Government to be good enough to inform it in due course as to the outcome of the pending proceedings in the Fukuoka District Court and to furnish a copy of the judgment and of the reasons adduced therein.

(b) *Alleged Discharge of 28 Active Union Members.*

53. It is alleged that 28 union activists were dismissed on 11 December 1961, on the purported ground of acts committed in the course of the dispute in 1960. Certain of these persons were prosecuted in respect of these acts but all were acquitted except two, whose appeals are pending. Yet, say the complainants, the dismissals have not been cancelled since the acquittals, which in the complainants' view proves that the dismissals were anti-union acts.

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[1] See Sixth Report, Case No. 22 (Philippines), paras. 353-383; 12th Report, Case No. 69 (France), para. 446, and Case No. 61 (France-Tunisia), paras. 447-492; 17th Report, Case No. 97 (India), paras. 120-156; 26th Report, Case No. 147 (Union of South Africa), paras. 107-111; 34th Report, Case No. 130 (Switzerland), para. 6; 49th Report, Case No. 213 (Federal Republic of Germany), para. 73; 58th Report, Case No. 234 (Greece), para. 558, and Case No. 262 (Cameroon), para. 65; 72nd Report, Case No. 294 (Spain), para. 101; 81st Report, Case No. 385 (Brazil), para. 149; 83rd Report, Case No. 418 (Cameroon), para. 357.

[2] See 17th Report, Case No. 97 (India), para. 137; 24th Report, Case No. 142 (Honduras), para. 134; 26th Report, Case No. 147 (Union of South Africa), para. 111; 31st Report, Case No. 170 (France-Madagascar), para. 52; 34th Report, Case No. 130 (Switzerland), para. 6; 45th Report, Case No. 213 (Federal Republic of Germany), para. 123; 58th Report, Case No. 156 (France-Algeria), para. 175; 67th Report, Case No. 241 (France), para. 22; 81st Report, Case No. 385 (Brazil), para. 149; 83rd Report, Case No. 418 (Cameroon), para. 357.

54. The Government stated, in its communication dated 17 December 1964, that an application for a court decree maintaining the status of those concerned was submitted to the Fukuoka District Court on 20 December 1961.

55. The Committee, at its meeting in November 1965, decided to request the Government to be good enough to inform it as to the outcome of the proceedings referred to above and to furnish copies of the judgments and of the reasons adduced therein.

56. In its communication dated 1 February 1966 the Government states that the matter is still pending in the Fukuoka District Court, the larger part of the scheduled examination of evidence having been completed as at 25 December 1965.

57. The Committee therefore requests the Government to be good enough to inform it in due course as to the outcome of the pending proceedings in the Fukuoka District Court and to furnish copies of the judgments and of the reasons adduced therein.

(c) *Alleged Discrimination against Union Members in respect of Recruitment, Wages and Work Assignment and Payment of Accident Compensation.*

58. Under the rationalisation plan the existing mining schools were closed. With regard to those persons whose training ended in March 1960 the following discrimination is alleged to have been practised. On 29 October 1960 an agreement was signed providing for their employment to be deferred until 1962. On 27 July 1962, it is alleged, 38 of the former trainees who were nominated by a new rival union were all hired as temporary workers, but 19 nominated by the Miike Coal Miners' Union were all rejected; after protests, seven of the latter were hired as temporary employees on 28 December 1962. On 1 April 1963 the 38 first engaged became " direct miners ", but this status, it is alleged, was not accorded to the seven supporters of the Miike Coal Miners' Union.

59. It is alleged that there is great discrimination in respect of wages paid to members of the Miike Coal Miners' Union and of wages paid to those who leave the union. According to a table furnished by the complainants the average monthly wage of union members in January 1961 was $61 and that of non-union members $66.2, this difference having steadily increased until, in May 1963, the respective figures were $69.6 and $93.9.

60. The position is aggravated by the system of job evaluation. The team leader evaluates the wage ranking of each member of the team. Before the 1960 dispute this was done smoothly and impartially. Since then, it is alleged, members of a rival union have systematically been rated higher than members of the Miike Coal Miners' Union. The employers, it is alleged, appoint team leaders with little experience if they belong to the rival union and ignore the claims of members of the Miike Coal Miners' Union who have far greater experience and qualifications.

61. In the case of transport workers in the Yotsuyama mine, it is alleged, members of the Coal Miners' Union with 15 years' experience were paid on 7 January 1964 on the basis of 2.09 " work points ", and members of the new rival union with three years' experience on the basis of 2.24 work points.

62. Prior to the 1960 dispute, it is alleged, job assignments were determined by union-management consultation pursuant to a collective agreement. Since that time, it is alleged, assignment has been carried out unilaterally by the competent officer of the Company in a manner which discriminates against union members.

63. The complainants state that Mr. Obuchi, of the "coal-digging survey ", was absent through illness from 8 December 1958 to 8 December 1961. On his return, still sick, he was put on heavy manual work, the Company refusing to return him to his original work on the ground that the workshop was full. It is alleged that the chief of the personnel unit and another member of the unit hinted persistently that if he left the Coal Miners' Union and joined the new rival union he could go back to his survey work. He left his union and joined the rival union and the very next day, it is alleged, he was back on his original survey job.

64. The complainants refer to the case of Mr. T. Kamimura, a coal-cutter with 22 years' experience. It is alleged that he, as a member of the Miike Coal Miners' Union, is employed in the hottest part of the mine on the heaviest work, whereas members of the rival union with less experience can earn twice as much in better conditions. It is alleged that those who transfer to the new union are immediately moved to positions where conditions are better and wages higher.

65. With regard to the assignment of transport workers in the second shift of Miyaura mine for the period of 4 to 31 January 1964, it is alleged that 95 members of the Miike Coal Miners' Union were assigned to " transport proper " and 395 to odd jobs, whereas 1,321 members of the rival union were assigned to " transport proper " and none at all to odd jobs.

66. The complainants submit the following table in respect of February, April and May 1964 at the Miyaura mine.

Month	Total workers attending	Trade union adherence	Proper work	Odd jobs	Higher jobs	Workers recruited
February	1,867	Miike Union ...	243	302	15	28
		Rival Union	1 232	0	75	56
April	1,550	Miike Union ...	209	229	1	26
		Rival Union	1 023	0	88	56
May	1,697	Miike Union ...	222	193	11	25
		Rival Union	1 178	0	93	55

67. In January 1964 the dormitory unit at Yotsuyama mine was to be curtailed and some of the workers there to be transferred. On 11 January, it is alleged, Mr. Saruwatari, Chief of Personnel Unit, told one of the Coal Miners' Union members affected, Mr. Miyazaki, that he would have him appointed secretary in charge of a coal-digging unit if he joined the new union; as he would not secede from his old union he was assigned to an inferior job in the drying-room.

68. In May 1964, it is alleged, at Yotsuyama mine Mr. H. Hirakawa, a 24-year-old member of the rival union with two years' experience, was assigned to proper work 25 times and never to odd jobs and earned $3.69 per day; Mr. N. Takara, a 28-year-old member of the rival union with three years' experience, was assigned to proper work 12 times and twice to odd jobs, earnings $2.31 per day. But Mr. Y. Beri, a 24-year-old member of the Miike Union with three years' experience, was assigned 13 times to proper work and three times to odd jobs, earning $2.23 per day, while Mr. Y. Tokunaga, a 31-year-old member of the Miike Union with eight years' experience, was assigned 18 times to proper work and three times to odd jobs and earned $2.26 per day.

69. The complainants maintain that safety in the mines has not been improved since the accident in November 1963, and that since April 1964 accidents have begun to increase as a result of increased production. The biggest accident rate is where temperatures are higher and it is precisely to these places, it is alleged, that members of the Miike Coal Miners' Union are assigned, as an act of discrimination against the union.

70. In their further communication dated 15 July 1964 the General Council of Trade Unions of Japan and the Japan Coal Miners' Union refer to the position of families bereaved by the disaster on 9 November 1963. According to the complainants social security in Japan is inadequate and the employers also try to evade their duty to aid bereaved families and those who are disabled. After the accident the union pressed the Company to find employment for miners' widows and dependants, but it states that little has been done.

71. It is alleged that in regard to the payment of compensation for bereavement union discrimination is being practised, so that an average of $2,350 is paid where the deceased was a member of the Miike Coal Miners' Union, and of $3,328 or $3,972, as the case may be, where he was a member of one of the two rival unions. Figures are submitted to demonstrate similar discrimination in the case of miners who have been disabled.

72. As regards the matters referred to in paragraphs 58 to 64 above, the Government stated in its communication dated 17 December 1964 that a complaint of unfair labour practices was filed with the Fukuoka Prefectural Labour Relations Commission on 27 November 1961. An order granting part of the remedy sought was made by the Commission on 31 August 1964. Both sides were dissatisfied and, on 18 September 1964, requested a review by the Central Labour Relations Commission.

73. The Committee, therefore, decided at its meeting in November 1965 to request the Government to be good enough to inform it as to the outcome of the review proceedings and to furnish copies of the orders of the respective commissions, together with the grounds adduced therein.

74. With its communication dated 1 February 1966 the Government has furnished the text of the order made by the Fukuoka Prefectural Labour Relations Commission on 31 August 1964 in respect of the matters referred to in paragraphs 58 to 64 above. It states, however, that the review by the Central Labour Relations Commission requested on 18 September 1964 is still pending.

75. The Committee therefore requests the Government to be good enough to inform it in due course of the outcome of the review proceedings and to furnish a copy of the order of the Central Labour Relations Commission and of the grounds adduced therein.

76. Also at its meeting in November 1965 the Committee decided to request the Government to be good enough to furnish its observations on the matters referred to in paragraphs 65 to 71 above, which are formulated in the form of detailed allegations in paragraphs 43 to 45 of the complaint dated 10 May 1964 and its relevant annexes and in Chapters I and II of the further complaint dated 15 July 1964.

77. In its communication dated 1 February 1966 the Government states that complaints regarding the matters referred to in paragraphs 65 to 68 above were filed with the Fukuoka Prefectural Labour Relations Commission in December 1964 and are now pending. The Committee therefore requests the Government to be good enough to furnish in due course a copy of the order made by the Commission together with the reasons adduced therein.

Allegations relating to Repudiation of Collective Bargaining with the Miike Coal Miners' Union and to Interference with the Union

78. It is alleged that since the 1960 dispute the Company has consistently refused to negotiate with the union as part of its policy aimed at the destruction of the union.

79. According to an agreement concluded between the union and the Company on 6 November 1961 the recruitment of " contractors' miners " is to be carried out in " consultation with the union ". Before any agreement had been reached by consultation, it is alleged, the Company recruited contractors' miners in Mikawa mine on 1 February 1962 and in Yotsuyama mine in October 1962.

80. On 11 July 1963 the Company notified the union of a 6 per cent. wage cut as part of the rationalisation programme. It is alleged that all requests for negotiation were refused.

81. The complainants refer to the question of re-employment of miners affected by the closing of certain pits.

82. On 28 June 1963, it is alleged, an agreement was signed by the Company and the Mitsui Miners' Federation (the rival union organising the Mitsui-employed miners) accord-

ing to which 2,200 miners at three pits due to be closed were to be employed in other pits. A similar agreement was signed by the Company with the Federation of Mitsui Mining Company Staff Unions (the rival union for staff personnel). But, it is alleged, when the Miike Coal Miners' Union requested negotiation on the same matter, on 6 August 1963, the Company refused to negotiate with it.

83. Serious accidents took place in Yotsuyama mine on 28 and 29 August 1963 and on 17 October 1963. It is alleged that all requests for consultation on safety in the pits were refused by the Company.

84. On 9 November 1963 the Miike mining disaster occurred, which cost several hundreds of lives. After the disaster the union bargained with the Company on the question of compassionate allowances, the situation of bereaved families and consultation of the workers in the taking of safety measures in the future. Yet, on 19 January 1964, when danger manifested itself in another pit and the union lodged a protest, the Company is alleged to have refused all consultation.

85. All the matters alleged thus far represent, in the view of the complainants, attempts by the Company to disrupt and destroy the Miike Coal Miners' Union.

86. It is further alleged that, as from 14 September 1961, the Company prohibited propaganda or meetings of the union on the employers' premises and barred entry to union officers in defiance of a memorandum of agreement made on 25 November 1960, and that union officers seeking to have normal communications with their members have been kept out by force.

87. According to the text furnished by the complainants the memorandum gave effect to the hitherto generally recognised practice according to which union officers had the right to enter company premises to disseminate information to their members when the latter were off duty.

88. The complainants allege that in the course of the 1959-60 dispute the Company employed gangsters against the union. It is alleged that these gangsters roamed the areas where the miners lived and attacked miners and their families, distributed handbills by helicopter urging the murder of union leaders, drove cars into union picket lines and attacked them with weapons. One unionist, Mr. K. Kubo, was stabbed to death on 29 March 1960 by a gangster named Kazuki.

89. On 1 January 1960, it is alleged, the Company distributed printed bulletins to all miners' families during the big dispute, calling upon them to oppose the policy of the union.

90. Officers of the Company are alleged to have tried to split the union during the dispute by inviting members regarded as malcontents to restaurants and instructing them how to split the union. The Company is alleged to have published a guide book for those used to split the unions. A split in the union took place on 17 March 1960.

91. Certain of these matters gave rise to proceedings in the Fukuoka District Court. There, on 1 July 1960 a witness, Mr. S. Iwashita, is alleged to have said that on 5 March 1960 he had been invited to a drink at the house of a foreman, Mr. Mizoguchi, who said that a new union would be formed on 13 March and urged him to join it, in which case the Company would pay him 100,000 yen, plus 5,000 yen for every miner he induced to join it. The witness said that Mr. Mizoguchi asked him for an early reply as he had to "report every morning to the Assistant Manager about his gains". Witness T. Miyazuki is alleged to have said that 40 miners were entertained with *sake* at a restaurant in Yanagawan City. Four critics of the union, including a member of the City Council, were there, as was Mr. Kozakai, Yotsuyama Assistant Pit Manager. On behalf of the Company, which paid for the party, Mr. Kozakai is alleged to have made a speech criticising the union. Of the 40 miners present, said the witness, all but himself were persuaded to join the new union.

92. With regard to the matters referred to in paragraphs 90 and 91 above, which are the subject of paragraph 38 and Annex 20 of the complaint of 10 May 1964, the Government stated, in its communication dated 17 December 1964, that complaints were filed with the Fukuoka Prefectural Labour Relations Commission on 10 and 12 March 1960. The Commission made an order granting part of the remedy sought on 31 August 1964. Both sides were dissatisfied and, on 18 September 1964, requested a review by the Central Labour Relations Commission.

93. At its meeting in November 1965 the Committee decided to request the Government to be good enough to inform it as to the outcome of the review proceedings and to furnish copies of the orders of the respective commissions and of the reasons adduced therein. With regard to the matters referred to in paragraphs 78 to 89 above, which are formulated in the form of detailed allegations in paragraphs 22 to 37 and 39 to 42 of the complaint dated 10 May 1964 and in its relevant annexes, the Committee decided to request the Government to be good enough to furnish its observations.

94. In its communication dated 1 February 1966 the Government, while furnishing a copy of the order made by the Fukuoka Prefectural Labour Relations Commission on 31 August 1964, states that review proceedings are still pending before the Central Labour Relations Commission. The Committee, therefore, requests the Government to be good enough to inform it in due course as to the outcome of the review proceedings and to furnish a copy of the order of the Central Labour Relations Commission together with the reasons adduced therein.

95. With regard to the matters referred to in paragraphs 78 to 89 above (appearing in paragraphs 22 to 37 and 39 to 42 of the complaint of 10 May 1964 and the relevant annexes), the Government states that jurisdiction is vested in the Labour Relations Commission and the Government is not in a position to judge whether or not these matters constitute unfair labour practices.

96. It is not clear whether or not the matters referred to in paragraphs 78 to 89 above have formed the subject of applications to the Labour Relations Commission. If they have, the Committee appreciates that the Government does not care to comment on matters which are *sub judice* and requests the Government, if that be the position, to be good enough to furnish information as to the applications made to the Commission and as to the orders made or to be made. If the matters in question are, as the Government's reply appears to suggest, normally within the jurisdiction of the Labour Relations Commission but have not actually been submitted to the Commission, they cannot be regarded as *sub judice* but as factual allegations concerning which the Committee must repeat its earlier request to the Government to be good enough to furnish its observations.

Allegations relating to Lack of Measures for Guaranteeing the Right to Organise

97. The complainants allege that national machinery which should protect the right to organise and so ensure the application of the provisions of Articles 1, 2 and 3 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), does not function adequately. In this connection the complainants refer to the Law Courts, the Labour Relations Commissions and government organs such as the police, the Labour Standards Inspection Office and the Mine Safety Supervision Bureau.

(a) *Allegations relating to the Law Courts.*

(i) *Alleged Delay in Legal Proceedings.*

98. It is contended that lawsuits in respect of matters connected with labour disputes are unduly protracted and place an excessive economic burden on the workers—thus applications by the Miike Coal Miners' Union for temporary decisions by the courts during the 1959-60 dispute were left unresolved for years. The following cases are cited.

99. Mr. C. Endo, an official of the union's Mikawa branch, was dismissed on 6 April 1959 as a disciplinary measure on account of " workshop struggle ". On 22 April 1959 the Company asked the Fukuoka District Court for an injunction prohibiting his entry to its premises; on 21 April the union had already asked this court for an order to preserve his position. It is alleged that the court ruled in favour of the Company on its application on the same day as it was made but that no ruling on the union's application, filed one day earlier, had been given by 30 November 1963.

100. Precisely the same sort of thing is alleged, with regard to the same court, in respect of applications filed by both sides immediately after the dismissal on 3 October 1959 of three members of the union's Mikawa branch, Messrs. M. Shimoda, K. Iwashita and J. Hayashi.

101. As mentioned earlier, 1,200 men were discharged as redundant on 5 December 1959. Following mediation by the Labour Relations Commission most of them agreed to being " retired ". One hundred and sixty-eight of the men fought the case from the outset by applying to the Fukuoka District Court to have their discharge invalidated. By 30 November 1963 no decision had been given by the court.

102. Two union members, Mr. T. Takayama and Mr. M. Kojo, were dismissed on disciplinary grounds on 13 December 1960. The union applied to the court for an interim order to preserve their position but, it is alleged, the court had not even held its first hearing on the matter by 30 November 1963. The situation is said to be the same with regard to an application filed with the court on 20 December 1961 in respect of the dismissal of Mr. A. Matsuwa on 16 May 1961, an application filed on 30 December 1961 in respect of the dismissal of Mr. T. Hayashimasa on 28 December 1961, and an application filed in February 1962 in respect of the dismissal of Mr. I. Tanuguchi on 18 January 1962.

103. As mentioned earlier, 28 union members were dismissed on 11 December 1961 on the ground of acts committed in connection with the 1959-60 dispute. On 20 December 1961 the union applied to the Fukuoka District Court for a decision. It is alleged that hearings have been held since June 1962 but that, by 30 November 1963, decisions had been given only in three cases.

104. The complainants allege that in the course of the dispute the courts gave speedy satisfaction to the Company with regard to the applications which it filed, without even giving the union an opportunity to present its arguments, but that when the union made applications it met with delay and frustration.

105. As regards the various cases referred to in paragraphs 99 to 103 above the Government, in its communication dated 17 December 1964, furnished statistics demonstrating the large numbers of witnesses called, the considerable number of hearings held and the thousands of pages of transcripts of evidence involved in each case. A variety of other reasons also were given for the delays in the hearings of the cases concerned—postponements of hearings at the request of parties, failure to deliver pleas in due time, etc. Thus cases brought by employees were inevitably lengthy. On the other hand, said the Government, applications by the employer were generally easier to dispose of, being limited to some specific issue, such as the prohibition of entry into property, about which there was generally no room for discussion. For a worker to submit evidence in a case of alleged unjustified dismissal took a far longer time. Most cases submitted by employers were heard under an " informal procedure " without the need for oral proceedings. Some of the cases submitted by employees were dealt with likewise within 15 days, but most of them followed the " formal procedure ", with the holding of oral proceedings, and nearly half of them took something like 277 days before being terminated. The Government gave technical details as to how the long duration of a case was contributed to by the detailed procedural rules laid down in the Code of Civil Procedure.

106. At its meeting in November 1965 the Committee observed that it was not clear from the Government's reply what the present position was with regard to the disposal of

the particular cases referred to in paragraphs 98 to 103 above, but it appeared that most of them were still pending. In the circumstances, before expressing its opinion on these particular issues, the Committee decided to request the Government to be good enough to inform it when these particular cases were concluded and to inform it also as to the outcome of the proceedings.

107. In its communication dated 1 February 1966 the Government states that the applications by Mr. Endo and by Mr. Shimoda and others (see paragraphs 99 and 100 above) were dismissed by the Fukuoka District Court on 2 October 1964, but that appeals to the Fukuoka High Court are pending. The cases referred to in paragraphs 101 to 103 above are still pending in the Fukuoka District Court. In these circumstances the Committee requests the Government to be good enough to furnish copies of the judgments given or to be given by the Fukuoka District Court or High Court, as the case may be.

(ii) *Alleged Anti-Union Tendency of the Courts.*

108. With regard to the prosecution of seven workers under the law for the punishment of violence, the judge of the Kumamoto Court, it is alleged, limited the statements by the accused and their counsel to 30 minutes and limited their time for cross-examining witnesses. The complainants state that one of their counsel, Mr. Yokoyama, criticised an interim decision of the Fukuoka District Court and was fined 30,000 yen by the judge of the Kumamoto Court for contempt of court. The complainants furnish the purported text of the statement in respect of which counsel was fined.

109. The Government in its communication dated 17 December 1964 furnished very detailed observations on this aspect of the case. It is for the court to decide how far and to what extent each witness shall be examined, and counsel on both sides must comply with its decisions. It would appear that in the particular case cited a whole series of rulings were made by the court with the object of excluding irrelevant evidence and limiting testimony and cross-examination to pertinent facts, which, in turn, led to repeated protests by counsel. According to the observations furnished the various objections and motions by counsel appear to have continued for hours at a time. The particular counsel referred to by the complainants appears to have been fined on the ground that he accused the court, among other things, of political partiality and losing its reason.

110. It appears to the Committee that the complainants have adduced no evidence either to show that the rulings of the Kumamoto Court in any way infringed trade union rights or, more generally, to substantiate their allegations as to anti-union tendency by the courts.

111. The Committee, therefore, for the reason indicated in paragraph 110 above, recommends the Governing Body to decide that these particular allegations do not call for further examination.

(b) *Allegations relating to the Labour Relations Commissions.*

112. The complainants allege that the system for the settlement of disputes is ponderous and inflexible. A remedy can usually be effected in an unfair labour practice case by the local Labour Relations Commission concerned, subject to an appeal either to the Central Labour Relations Commission or by administrative suit to a court of law. Administrative litigation adopts a three-court system like the normal judicial system. Thus, say the complainants, the employer is able to use no less than five courts or commissions to delay the proceedings and nullify the attempts of the union to secure a remedy.

113. Proceedings even before the local Labour Relations Commission itself are alleged to be unduly protracted—according to the complainants the average number of days required merely for the first hearing of an unfair labour practice case was 104 in 1960, 121 in 1961 and 144 in 1962.

114. In the view of the complainants the Commissions do not understand the meaning of the right to organise. Since November 1959 the Central Labour Relations Commission

offered four drafts for a settlement of the Miike dispute by mediation, none of which, in the view of the complainants, contained any remedy in respect of the encroachment of the right to work represented by the dismissal of 1,200 workers which gave rise to the dispute. They criticise the suggestion of the Commission that replacement of discharge by retirement would constitute an appropriate settlement as demonstrating a complete misunderstanding of the dispute. In their view the Commission deviated from its function of mediation by trying to enforce its terms as if it were acting as a compulsory arbitrator, which it was not.

115. In two of its drafts for a mediation settlement the Commission, say the complainants, proposed that there should be " no further pursuance of dispute responsibility " and that this was one of the clauses on the basis of which the dispute was terminated. Yet, two years later, the Company dismissed ten union officers and 28 members on the ground of acts committed during the dispute thus, in the view of the complainants, violating the mediation settlement. Because of this, on 25 March 1963 the union asked for further mediation by the Central Labour Relations Commission but, it is alleged, the Commission ran away from its responsibilities when the Company made it plain that it would not withdraw from the position it had adopted.

116. The Government explains that a trade union or worker may choose in unfair labour practice cases between asking the Labour Relations Commission for a remedy or going directly to the courts, in accordance with the Code of Civil Procedure, to seek damages or nullification of dismissal, etc. Either party dissatisfied with a finding of fact and order issued by a Labour Relations Commission can appeal to a court by administrative suit. As the complainants state, it is possible for as many as two Commissions and three courts to be involved.

117. From 1959 to 1963, states the Government, 82 to 87 per cent. of settled cases were settled through withdrawal or compromise, and only 13 to 18 per cent. by order of the Commission. It is therefore not fair to judge the time taken to dispose of a case by order without taking account of the fact that the overwhelming majority of cases end in a compromise. In 1963 the average number of days for settlement of a case by order of the Commission or court decision was 323, the average for disposal of a case by withdrawal or compromise being 145 days. The time varies according to the degree of fact-finding; one case in 1963 took seven days, and another took more than 660 days.

118. In the Miike dispute, declares the Government, there was no element of compulsion in the mediation, as alleged. Conciliation and mediation were accepted voluntarily by both parties. When the proposals referred to by the complainants for the settlement of the dismissal case affecting 1,200 men were made, fruitless conciliation had taken place for nearly a year, a new union had been formed whose members wished to resume work and there was a general desire for some settlement to be reached. But the mediation proposal was in no way one which it was obligatory to accept.

119. It is true, says the Government, that on 25 March 1963 the Japan Coal Miners' Union asked for conciliation. On 31 July voluntary conciliation took place, but on 7 August the Company gave notice that it refused further conciliation, and on 8 August the union withdrew its request for conciliation. The Government denies, therefore, that there was ever any question of the Commission shirking its responsibilities.

120. The cardinal points raised by the complainants are that the voluntary conciliation procedure for the settlement of disputes is unduly protracted and that, in the case of unfair labour practice cases, this situation is rendered worse because, if the courts become involved, the resources of no less than three courts and two Labour Commissions may have to be exhausted before a decision is reached. The proceedings are expensive for the unions and workers concerned. There is some difference between the parties as to how long it takes for a case to be determined by a Labour Relations Commission but the Government itself admits that in 1963 an average of 145 days was needed for cases settled by compromise, while cases resulting in an order took 323 days on average.

121. Certain aspects of these allegations appear to call for consideration in the light of the principles enunciated in the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), but it would seem desirable to postpone the formulation of definitive conclusions on this matter until the Committee is ready to submit its recommendations on the case as a whole to the Governing Body.

(c) *Allegations relating to the Use of the Police in the Miike Dispute.*

122. The complainants criticise on various grounds the attitude adopted by the police in the Miike dispute.

123. On 17 June 1959 a mass meeting was held in protest over the dismissal of Mr. Endo, Chairman of the union's Mikawa chapter. Six deputy supervisors attended the meeting on behalf of the management, one carrying a concealed short-wave radio and accompanied, it is alleged, by a police sergeant.

124. It is alleged that when the rival union was formed to break the strike, the police made vicious attacks on members and pickets and arrested them for no reason and, as a measure of provocation, made plans to establish a police encampment near a miners' housing area.

125. The complainants state that during the dispute thousands of police were billeted in the area to prevent the fair development of the dispute and to aid the anti-strike activities of the newly-formed rival union and that, in one instance, the police occupied union premises as housing quarters, in order to prevent the holding of union meetings, and occupied assembly halls normally used by the union with the same object in view. It is alleged also that the police carried on their group training in the area in order to intimidate the workers.

126. The Government declares, with regard to the issues referred to in paragraph 123 above, that already on 20 April 1959 about 70 union members had entered the mine by force and injured two officials and that on 8 May some 300 members had harassed company officials for six hours. According to the Government the police learned that the union intended, when it negotiated with the Company on 17 June 1959, that about a thousand members should be there. The police sergeant present at the protest meeting on that day had gone there to assure himself that the police would be prepared to act in case of emergency.

127. The group training by the police, says the Government, was part of their normal programme and not intended as intimidation (see paragraph 125), although there was certainly fear on the part of the police that acts of violence might occur in the vicinity, as they had occurred previously. But the training in question was held in the routine way at the Wajiro Shooting Range. It was also reasonable that, in September 1959, when violence was feared as the result of tension between members of the Miike Coal Miners' Union and those of the rival union, police reinforcements should be drafted to the area.

128. The Government gives details of various incidents of violence which occurred. It declares that on 28 March 1960 pickets of the old union tried to prevent members of the new union going to work, 51 members of the old union and 150 members of the new union being injured. The Fukuoka District Court issued an order prohibiting interference with men going to work. One thousand seven hundred police were placed in strategic positions to deal with acts of violence. The Government states that at one point on 18 April 1960 some 1,200 members of the old union assaulted police who tried to hold them back from the Mikawa mine main gate and 84 police were injured, six of them seriously. On 20 April 700 pickets of the old union assembled near the main gate of Miyaura mine and 300 more at the rear end set up barbed-wire barricades; the police dispersed some of them and removed the obstacles to let workers enter the mine. The Government accuses members of various acts of violence against the police, including stone-throwing.

129. Quarters were rented for housing the police reinforcements, including premises owned by the Company. The Government denies the allegation that union premises were occupied by the police.

130. Altogether, says the Government, 315 persons were prosecuted in the courts for acts of violence, 285 of them being convicted.

131. From the mass of conflicting evidence before the Committee it is clear that a scene of considerable tension prevailed during the later stages of the Miike dispute by reason of the fact that considerable numbers of members of the old union picketed the mine at a time when some hundreds of members of the new union were attempting to go to work. Because of the violence feared by the authorities unusually large reinforcements of police were drafted to the area concerned. As to the purpose for which and the manner in which the police were used, diametrically opposed views have been expressed by the complainants and the Government. On the basis of the evidence before it, it appears quite impossible for the Committee to express any firm conclusions in full knowledge of all the real circumstances.

132. In these circumstances the Committee recommends the Governing Body to note that it is not possible for it to reach firm conclusions, in full knowledge of all the circumstances, in respect of the allegations relating to the use of the police in the Miike labour dispute.

(d) *Allegations relating to the Labour Standards Inspection Office.*

133. It is alleged that the Fukuoka Labour Standards Office and the Omuta Labour Standards Inspection Office have failed to take action in respect of many violations of the Labour Standards Law by the Company.

134. The complainants state that no measures have been taken in respect of the " divided payment " and delayed payment of wages in 1959 and 1963.

135. The days of the Miike dispute were included in the total working days, the basis for calculating the vacation with pay. In the complainants' view this infringed section 39 of the Labour Standards Law and was contrary to the administrative interpretation given by the Ministry of Labour (*Kijunkyoku Hatsu*, No. 90, 13 February 1958).

136. The complainants contend that the Labour Standards Inspection Office has taken no action with regard to an agreement infringing the Labour Standards Law concluded between the new rival union and the Company on 29 June 1963. This agreement, it is alleged, provides for a 6 per cent. wage decrease and/or postponement of pay days with no interest becoming payable in respect of the suspended remuneration, these clauses infringing section 18 (4) and (5) of the Labour Standards Law.

137. It is alleged that work performance rules were revised illegally by the Company as from 15 July 1963 with regard to wage rules, and as from 1 August 1963 with regard to other conditions, the union's demand for negotiation on the matter being rejected. Although illegal, it is alleged, the revised rules were accepted by the Labour Standards Inspection Office.

138. Reference has already been made to the alleged discrimination in respect of wages paid to members of the Miike Coal Miners' Union and members of the rival union. The Miike Union, it is alleged, asked the Omuta Labour Standards Inspection Office on 19 and 22 April 1961 to investigate this matter, on the ground that such discrimination violated section 3 of the Labour Standards Law, but these demands and also later demands were ignored by the Inspection Office.

139. The Government agrees that, as a result of wages being paid by two or more instalments in the month, delays in wage payment occurred in 1959 and 1963, but states that on each occasion it ordered the management to correct the situation.

140. With regard to the allegations relating to vacation with pay (see paragraph 135 above) the Government makes the following observations. Section 39 of the Labour Standards Law provides for the granting of annual leave with pay of from six to 20 days, according to length of service, to workers who have been employed continuously for a year and

who have been present for over 80 per cent. of the total of working days. In 1960 the strike lasted from 25 January to 29 October. The Law makes no provision as to how annual leave is to be calculated where no work has been performed in the previous year during a strike.

141. The Government acknowledges that the agreement referred to in paragraph 136 above was in fact concluded. However, says the Government, the agreement made no provision for the administration of workers' deposits by the employer and, therefore, is not considered to infringe section 18 of the Labour Standards Law.

142. With regard to the revision of work performance rules (see paragraph 137 above), the Government states that this was undertaken by the employers after asking the opinion of the " trade union which is composed of the majority of the workers " at the workplace, as required by section 90 of the Labour Standards Law. The trade union representing the majority, says the Government, was the Miike Coal Mine Workers' New Union. The Government concludes, therefore, that no illegality occurred and that there was no ground for intervention by the Labour Standards Inspection Office.

143. The Government states that on 19 and 22 April 1961 the Miike Coal Miners' Union did in fact complain that members of the union were discriminated against in respect of wages as compared with members of the new union. Section 3 of the Labour Standards Law—the law in respect of which the Labour Standards Inspection Office is competent—prohibits discrimination in respect of wages or other conditions by reason of " nationality, creed or social status ". Discrimination on the ground of trade union membership is not covered by the Labour Standards Law but constitutes an unfair labour practice under section 7 of the Trade Union Law, in respect of which remedial procedures are provided for under the latter enactment. In the case in question the Omuta and Fukuoka Labour Standards Inspection Offices investigated but found no violation of the Labour Standards Law.

144. The Committee is not concerned in the present context with the question as to whether the Miike Coal Miners' Union, apparently the union in a minority at the material time, should also have been consulted when employment rules were revised. The allegation before the Committee is that the rules were revised in a manner contrary to the Labour Standards Law and that the Labour Standards Inspection Office failed to take action. It appears, however, that there was compliance with this particular Law, so that the said office had no ground for intervention. Nor is the Committee, in the present context, called upon to pronounce on the question of discrimination as regards wages between members of one union and members of another union, which, if proven, would appear to constitute a violation of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Japan. Such discrimination is prohibited by section 7 of the Trade Union Law, but the remedial procedures in that event are not within the competence of the Labour Standards Inspection Office. Allegations relating to discrimination of this kind form part of the allegations relating to discrimination examined in paragraphs 58 to 77 above, in respect of which the Committee has already requested the Government either to furnish observations or to provide information as to the outcome of proceedings pending in accordance with the Trade Union Law. In the present context the allegations before the Committee are that a violation of section 3 of the Labour Standards Law occurred and that the Labour Standards Inspection Office failed to act. In this sense the allegations appear to be unfounded. Nor have the complainants furnished proof that the other points raised in the present allegations constituted infringements of the Labour Standards Law calling for intervention by the Office in question.

145. In these circumstances the Committee considers that, subject to the reservations made in paragraph 144 above, the allegations relating to the Labour Standards Inspection Office do not call for further examination.

(e) *Allegations relating to the Mine Safety Supervision Bureau.*

146. Since the enactment of the Coal Mining Rationalisation Tentative Measure Law in 1959, it is alleged, there has been a tendency to place greater emphasis on production than on

safety and this trend has been intensified since the end of the dispute in 1960, thus leading to a great increase in the number of accidents. According to the complainants the accident rate per 1,000 persons who worked was 0.810 in 1958, 0.917 in 1959, 1.403 in 1961 and 1.317 in 1962. Without consulting the union, it is alleged, the Company unilaterally curtailed the time previously allotted to safety meetings and safety education. The union therefore asked the Safety Supervision Bureau on 18 September 1962 to take action but, it is alleged, the Safety Supervision Bureau took no action on this or subsequent requests for guidance on the promotion of safety in the Miike mine.

147. The complainants allege that the negligence of the Safety Supervision Bureau contributed to the disaster in November 1963 because it had failed to prevent the accumulation of coal dust. It had been the custom, it is alleged, to inform the Company in advance of the visits of mine safety inspectors and of the places they would inspect, so that the Company took care to remove coal dust and ensure the maintenance of safety equipment in those places.

148. When questions were asked in the competent committee of the House of Counsellors, it is alleged, Mr. Tahara, Director of the Mine Safety Supervision Bureau, at first said that inspections were usually made without prior notice but then admitted he did not know what the position was as regards the Miike mine, while Mr. Fukiuda, Minister of International Trade and Industry, who visited the scene of the accident on 14 November 1963, is stated to have declared that " in future surprise inspection will be ensured " and to have been reported in the *Asahi Shinibun* of 21 November as having announced that the authorities " have begun consideration in the direction of making surprise inspection the rule ".

149. A Sohyo-Tanro Study Group investigated the accident of 9 November 1963 during the period 13 to 16 November 1963. According to its findings there were considerable accumulations of coal dust, which were a major element contributing to the accident. Because the Mikawa pit was regarded as a safe pit, it was alleged, the Company neglected safety precautions and coal dust was seldom or never removed, nor were stone-dust barriers and zones set up in accordance with safety regulations, nor was watering practised. After criticising the measures taken by the Company following the disaster, the report of the Study Group alleged that no self-rescue equipment was available to the miners and that, because of the lack of safety education and training, neither the miners nor the overmen even knew what safety routes had to be followed in case of emergency.

150. The Government agrees that the rate of accidents in the Miike mine increased from 1960 onwards but states that a downward trend began in 1964. The Government states that in April 1962 the Fukuoka Mine Safety and Inspection Division was elevated to the status of a Bureau, its personnel was increased and half of them were allotted to the Miike mine, thus strengthening the inspection force to offer aid and service. The Government goes on to give technical details of the measures against accident (watering, cleaning of coal dust, etc.) from 1962 until the disaster in November 1963 and since that time. As regards inspections, states the Government, sometimes prior notice of inspection has to be provided when it is felt necessary to have mine personnel assembled at a given place at a given time to receive instructions with regard to measures to be taken to ensure safety.

151. The Committee observes that it is the custom in many industrialised countries to hold consultations and negotiations with the trade unions representing the workers on such matters as safety education and practical means of ensuring safety and of implementing statutory safety regulations in factories, mines and other workplaces where, by reason of the nature of the work, there exists serious or constant danger of accident. But the question of what technical measures should be taken to ensure safety in a coal mine and the determination of the degree of responsibility of employers, statutory inspection authorities and others in respect of an accident are matters outside the competence of the Committee. The Committee could not pronounce upon matters of this kind unless it had before it evidence to the effect

that the exercise of trade union rights was involved—as might be the case, for instance, if evidence were submitted showing clearly that an accident took place as the result of infringement of the provisions of a collective agreement. In the present case the Committee has no evidence of this nature before it, but is simply asked to deal with allegations relating to the exercise of its functions by the Mine Safety Supervision Bureau, a matter with regard to which it is not competent to express its opinion.

152. In these circumstances the Committee considers that, for the reasons indicated in paragraph 151 above, the allegations relating to the Mine Safety Supervision Bureau do not call for further examination.

* * *

153. With regard to the case as a whole the Committee recommends the Governing Body—

(a) to decide, for the reasons indicated in paragraphs 110, 144 and 151 above, that the allegations relating to the anti-union tendency of the courts, to the Labour Standards Inspection Office and to the Mine Safety Supervision Bureau do not call for further examination;

(b) to note that, for the reasons indicated in paragraph 131 above, it is not possible for the Committee to reach firm conclusions, in full knowledge of all the circumstances, in respect of the allegations relating to the use of the police in the Miike dispute ;

(c) to take note of the present interim report of the Committee with respect to the remaining allegations, it being understood that the Committee will submit a further report to the Governing Body when it has received the additional information and observations which it has requested the Government to be good enough to furnish.

Case No. 439:

Complaint Presented by the International Federation of Christian Trade Unions against the Government of Paraguay

154. The complaint is contained in a communication from the International Federation of Christian Trade Unions dated 7 May 1965. It was transmitted to the Government by a letter dated 19 May 1965. At its meetings in May 1965, November 1965 and February 1966 the Committee repeatedly postponed examination of the case as no observations had been received from the Government.

155. Paraguay has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but not the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Allegations relating to the Registration of the Union of Salary and Wage Earners in Commerce

156. It is alleged in the complaint that the Ministry of Labour has failed to legalise and register the Union of Salary and Wage Earners in Commerce, despite the fact that that organisation has complied with all the conditions required by the Labour Code (sections 291 and 297). The complaining organisation attaches copies of a number of documents relating to the application made by the union in May 1964. These documents reveal that in an instruction dated 15 July 1964 the Ministry's legal adviser opposed registration until such time as the applicants deleted from their statutes the phrase " in its struggle for the protection of the right to organise ", which he considered to be out of keeping with the real situation in the country in the field of freedom of association. The union replied on 31 July 1964 acceding to the request as a demonstration of good will, but pointing out that in its opinion the phrase

in question was in accordance with the lawful objectives of the trade union movement and with the legislation in force. Notwithstanding the acquiescence of the union and the time which has elapsed since then, the Ministry of Labour has not informed the union of its decision in the matter, thus infringing the right of the workers concerned to be protected by the union of their choice.

157. In its communication of 16 February 1966 the Government states that the Union of Salary and Wage Earners in Commerce, though not recognised at the outset, was subsequently recognised by a decision of the Ministry of Labour dated 7 October 1965.

158. The Committee observes that section 291 of the Labour Code [1], cited in the complaint, lists the documents which have to be submitted to the administrative authority for the purposes of conferring corporate status on and registration of a trade union. Under section 297 the said authority must, within two months of production of these documents, proceed either to register the trade union or to make whatever observations it may deem pertinent to the applicants. A copy of such observations must be forwarded to the applicants within six days. Whether or not a copy of the observations is forwarded the decision of the authority on the application must be made within 15 days, and may be appealed against by the administrative procedure for disputes.

159. It should further be mentioned that under the Code registration endows a trade union with legal personality as an industrial association for all legal purposes (section 298), and acts of an unregistered trade union are null and void (section 299).

160. From the evidence submitted to the Committee in the present case it may be inferred that in response to the observations of the administrative authority the union met the only objection made to its application. None the less, no decision whatsoever appears to have been taken until some 14 months later. In its reply the Government gives no explanation for this delay.

161. With respect to the objection made by the administrative authority, which does not appear to be founded on any legal shortcoming of substance or of form, the Committee wishes to draw attention to the provisions of Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by Paraguay, which lays down that workers' organisations shall have the right to draw up their constitutions and rules and to formulate their programmes, and that the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof. Furthermore, under Article 7 of the Convention, the acquisition of legal personality by such organisations may not be made subject to conditions of such character as to restrict the application of the provisions of Article 3.

162. As regards the considerable delay in the Ministry's decision as compared with the time limit allowed under national law, the Committee has stated on more than one occasion [2] that the purpose of the whole procedure for the examination of cases where violation of freedom of association is alleged is to promote respect for trade union rights, both *de jure* and *de facto*, and that the workers' right freely to constitute organisations of their own choice cannot be considered to exist until such time as it is fully recognised and observed both *de facto* and *de jure*. The right in question is established in Article 2 of the Convention.

163. In these circumstances the Committee recommends the Governing Body to take note of the fact that the Union of Salary and Wage Earners in Commerce has been registered since the complaint was submitted, but to draw the Government's attention none the less to the importance which should be attached to the principles referred to in the two preceding paragraphs.

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[1] See I.L.O.: *Legislative Series*, 1961—Par. 1.

[2] See First Report, para. 31; 67th Report, Case No. 305 (Chile), para. 105; 69th Report, Case No. 285 (Peru), para. 58; 84th Report, Case No. 423 (Honduras), para. 70.

Allegations relating to the Presence of Police at Trade Union Meetings

164. It is also alleged in the complaint that to hold a trade union meeting permission must be obtained from the police, who send an agent to attend the meeting and demand a copy of the minutes. In the complainants' opinion this constitutes a grave breach of freedom of association, and in particular of freedom of expression and thought at meetings called by trade unions as part of their normal functions. In support of these allegations a copy is attached of an application made on 12 January 1965 by the Union of Printing Trades Workers of Paraguay to the Chief of Police of Asunción requesting permission to hold its Ordinary General Assembly.

165. The Government does not refer to these allegations in its reply.

166. In these circumstances the Committee recommends the Governing Body to request the Government to be good enough to forward its observations with respect to this aspect of the case.

* * *

167. With regard to the case as a whole the Committee recommends the Governing Body—

(a) in respect of the allegations relating to the registration of the Union of Salary and Wage Earners in Commerce—

(i) to take note of the fact that the organisation in question has been registered since the complaint was submitted;

(ii) to draw the Government's attention none the less to the importance which should be attached to the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by Paraguay, to the effect that workers' organisations shall have the right to draw up their constitutions and rules and to formulate their programmes, and that the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof (Article 3 of the Convention), and to the principle that the right of workers to establish freely organisations of their own choosing (Article 2 of the Convention) cannot be considered to exist until such time as it is fully recognised and observed both *de facto* and *de jure*;

(b) in respect of the allegations relating to the presence of police at trade union meetings, to request the Government to be good enough to forward its observations upon these allegations;

(c) to take note of the present interim report on the understanding that the Committee will report further on receipt of the observations to be requested from the Government under subparagraph *(b)* of this paragraph.

Case No. 448:

Complaint Presented by the Uganda Trades Union Congress against the Government of Uganda

168. The complaint of the Uganda Trades Union Congress is contained in a communication addressed to the I.L.O. on 19 July 1965. The Government furnished its observations on the complaint in a letter dated 5 April 1966.

169. Uganda has ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), but has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

170. The complaint, apart from certain general allegations of intimidation of the trade unions by the Government, relates to various provisions of the Uganda Trade Unions Act,

1965, which, in the view of the complainants, are incompatible with the principles relating to freedom of association which are embodied in both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). In particular the complainants criticise section 5 (1) *(d)* of the Act, which provides that an application for registration of a trade union shall be refused if the Registrar is satisfied that a union already registered is sufficiently representative or is likely to become sufficiently representative of the interests concerned, section 10 relating to the registration of branch unions, section 23 (1) relating to the inspection of minutes of meetings by the Registrar, section 36 (1) prohibiting the payment of fines and penalties out of union funds, section 44 (1) prohibiting picketing in certain circumstances, and sections 53 to 59 relating to investigations into the affairs of trade unions.

171. The Government contends that the provisions of the Act criticised by the complainants are not incompatible with Convention No. 98, which Uganda has ratified, but that, on the contrary, the Act promotes the establishment of machinery appropriate to national conditions for the purpose of ensuring respect for the right to organise which is in complete compliance with Article 3 of that Convention. As Uganda has not ratified Convention No. 87, the Government considers that, by virtue of article 24 of the I.L.O. Constitution, it is not subject to representations or complaints arising out of non-observance of that Convention. The Government, therefore, while giving the assurance that it is its policy to work towards establishing conditions which will permit of legislation complying fully with Convention No. 87, considers that for the reasons set out above the complaint is irreceivable and should be dismissed as groundless.

172. The Committee wishes to make it clear that the complaint does not constitute a representation in accordance with article 24 of the I.L.O. Constitution, which is applicable only in respect of the alleged violation of a ratified Convention. The present complaint is receivable under the entirely separate procedure for safeguarding freedom of association and trade union rights which was set up by agreement between the United Nations and the I.L.O. for the purpose of examining complaints in the light of generally accepted principles relating to freedom of association, irrespective of whether the relevant international labour Conventions have been ratified by the governments concerned or not.

173. While recognising therefore that Uganda has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee considers it appropriate to point out, as it has done in a number of past cases [1] which have come before it under this procedure in which the governments concerned were not specifically bound by the provisions of a ratified Convention directly relevant to the allegations made, that the Declaration of Philadelphia, which now constitutes an integral part of the I.L.O. Constitution and whose aims and purposes are among those for the promotion of which the Organisation exists, as mentioned in article 1 of the Constitution as amended in Montreal in 1946, recognises—

> " the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve . . . the effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency and the collaboration of workers and employers in the preparation and application of social and economic measures ".

In these circumstances the Committee, as it did in the earlier cases cited above, considers it appropriate that it should, in discharging the responsibility to promote those principles which has been entrusted to it, be guided in its task, among other things, by the provisions relating thereto approved by the International Labour Conference and embodied in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which afford a standard of comparison when examining particular allegations. Having

[1] See 15th Report, Case No. 102 (Union of South Africa), paras. 130-131; 28th Report, Case No. 169 (Turkey), para. 292; 45th Report, Case No. 211 (Canada), para. 101; 48th Report, Case No. 191 (Sudan), para. 71; 65th Report, Case No. 266 (Portugal), para. 10; 67th Report, Case No. 303 (Ghana), para. 252; 74th Report, Case No. 332 (Brazil), para. 111.

regard to the above considerations, therefore, and while recognising that Uganda is not bound by the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee considers that its non-ratification is not a sufficient reason to cause the Committee to refrain from examining the substance of allegations based wholly or partly on the provisions of that instrument or principles proceeding from it, with a view to ascertaining the facts and reporting them to the Governing Body.

174. The Committee considers also that it should recommend the Governing Body to draw the attention of the Government of Uganda to the resolution concerning freedom of association and protection of the right to organise adopted by the First African Regional Conference of the International Labour Organisation (Lagos, December 1960), which, in paragraph 7, " Requests the Governing Body of the International Labour Organisation to invite governments in respect of whose countries complaints may be made to the Governing Body Committee on Freedom of Association to give their wholehearted co-operation to that Committee, in particular by replying to requests for observations made to them and by taking the fullest possible account of any recommendations which may be made to them by the Governing Body following examination of such complaints " and, in paragraph 8, " Requests the Governing Body to accelerate as far as possible the procedure of its Committee on Freedom of Association and to give greater publicity to the conclusions of the Committee, particularly when certain governments refuse to co-operate loyally in the consideration of complaints submitted against them."

175. In these circumstances the Committee, having regard to the considerations set forth in paragraphs 172 and 173 above, recommends the Governing Body to draw the attention of the Government of Uganda to the terms of the resolution concerning freedom of association and protection of the right to organise adopted by the First African Regional Conference of the International Labour Organisation (Lagos, December 1960) referred to in paragraph 174 above, and to request the Government to be good enough to co-operate with the Committee, in the spirit of that resolution, by furnishing its observations on the different specific matters raised in the allegations.

Case No. 454:

Complaint Presented by the Central Federation of Unions of Free Workers of Honduras against the Government of Honduras

176. The complaint from the Central Federation of Unions of Free Workers of Honduras (FECESITLIH) is contained in a direct communication to the I.L.O. dated 20 September 1965. It was transmitted by a letter dated 4 October 1965 to the Government, which sent its observations by a communication dated 26 January 1966.

177. Honduras has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Allegations relating to the Strike by the Río Lindo Textile Mill Workers' Union

178. The complainants allege that the Río Lindo Textile Mill Workers' Union, an affiliate of FECESITLIH, had submitted a draft collective agreement for discussion and signature to the undertaking in January 1963, but that in the subsequent period of over two years the undertaking had prevented the signature of the agreement, and that all the successive procedures for direct negotiation, mediation and conciliation provided for in the Labour Code had been exhausted. In the absence of a satisfactory settlement the union decided on strike action, which began on 11 May 1965. According to the complaint, the undertaking brought pressure to bear upon the authorities to declare the stoppage of work illegal two

months later. The complainants enclose copies of various documents, including a communication dated 29 April 1965 notifying the employer of the union's intention to strike. They also attach a copy of the government decision declaring the strike to be illegal and a copy of the appeal against the decision. In the appeal the union maintained that the strike was voted on in accordance with the provisions of the Labour Code, that no collective agreement existed, since the three copies required under section 58 of the Code had not been signed and filed for registration, and that the conciliation procedure had been exhausted before the strike was declared. As to the regularity of the voting procedure, this was attested by a certificate from a notary public duly submitted to the Ministry.

179. In reply to these allegations the Government states in its communication of 26 January 1966 that the negotiations between the union and the undertaking did not produce positive results at the direct negotiation and mediation stages. The following stage, namely conciliation, did not take place because this was impossible on legal grounds: the union having asked that a conciliation board be set up, for which it had proposed its own representatives, the Ministry required the undertaking to name its representatives. The undertaking entered a statutory appeal for protection before the High Court of Justice against the ministerial decisions establishing the special conciliation board, and the court, by a judgment dated 22 December 1964 (a copy of which the Government enclosed), declared the appeal to be well founded and granted on the basis of section 663 of the Labour Code. This section provides that workers' and employers' representatives on conciliation boards must be appointed at assemblies of workers and employers respectively.

180. The Government adds that, on the basis of the High Court's decision, it promoted conciliation discussions during January and February 1965 with the consent of the parties and without any proceedings whatever. As a result of the informal talks the entire contents of the draft collective agreement were set out, in 17 separate sections, including a clause giving the duration of the agreement as five years, the initial date being given as 15 February 1965 and, later, at the request of the union, being postponed to 1 March 1965. However, in view of the trade union's opposition, section 58 of the Labour Code was not complied with, i.e. the three copies of the agreement were not signed. On 25 April 1965 the union voted for a strike, and on 30 April it notified the Ministry, which in turn notified the undertaking. On 22 July 1965, by ministerial decision (text of which the Government appends), the collective suspension of work was declared unlawful.

181. According to the preamble to the decision the minutes of the relevant general meeting held by the union contain no statement as to a secret ballot having been held, or any result of such a ballot; a collective agreement was negotiated and signed, it being impossible to refute the validity in law of the terms of the said collective agreement on the grounds that the copies required by law had not been signed or a copy of the agreement filed with the General Directorate of Labour; and the stoppage of work was declared without the conciliation procedure provided for under the Labour Code having previously been followed as laid down by law.

182. The Government also annexes a copy of a decision by the High Court of Justice rejecting the appeal by the union against the declaration of illegality. The preamble to the judgment states that, in accordance with section 570 of the Labour Code, " only the appropriate proceedings before the Labour Courts shall be valid " against an administrative decision, and that the recourse of appeal is not valid in cases in which the law allows the parties action of other kinds.

183. Finally, the Government states that, in order to avoid repetition of such a situation in future, it has presented to Congress a proposal for the amendment of sections 650 and 651 of the Labour Code (relating to the establishment of conciliation and arbitration boards). This was approved by Decree No. 62 of 31 October 1965. The text of the decree, which the Government announced that it was sending, was not received with the texts appended to its communication of 26 January 1966.

184. The Committee has always applied the principle that allegations relating to the exercise of the right to strike are within its competence in so far—but only in so far—as they affect the exercise of trade union rights [1], and on many occasions [2] has pointed out that the right to strike of workers and workers' organisations constitutes a legitimate means of defending their occupational interests.

185. As the Committee has noted on previous occasions [3], the mere fact that a strike is regarded as unlawful in any country would not be sufficient to cause the Committee to refrain from examining the merits of a case; it would also be necessary for the conditions that had to be fulfilled under the law in order to render a strike lawful to be reasonable conditions and in any event not such as to place a substantial limitation on the means of action open to trade union organisations. In this connection the Committee has recognised in a number of cases [4], for example, that prior notification to the administrative authority and utilisation of compulsory conciliation and arbitration in industrial disputes before a strike is called are provided for in the laws or regulations of a considerable number of countries, and that reasonable provisions of this type cannot be regarded as an infringement of freedom of association.

186. The Committee has also emphasised that, in exercising the right to strike, workers and their organisations must have due regard to temporary restrictions placed thereon, e.g. cessation of strikes during conciliation and arbitration proceedings in which the parties can take part at every stage.[5] In doing so, however, the Committee has stressed [6] that when restrictions of this kind are placed on the exercise of the right to strike the ensuing conciliation and arbitration proceedings should be " adequate, impartial and speedy ".

187. Section 569, subsection 3, of the Honduras Labour Code [7] lays down that a strike is unlawful when the preliminary procedure for a direct settlement or for mediation, conciliation and arbitration has not been followed as laid down by law. Nevertheless, in the case to which the complaint refers, the possibility of having recourse to conciliation procedure does not seem to have existed, since a conciliation and arbitration board competent to hear the case was not established.

188. As regards the proof of whether the union's decision was taken in accordance with the law, the Committee feels it necessary to recall, as it did in a previous case relating to Honduras [8], the opinion of the Committee of Experts on the Application of Conventions and

[1] See 28th Report, Case No. 143 (Spain), para. 109; Cases Nos. 141, 153 and 154 (Chile), para. 202, and Case No. 169 (Turkey), para. 297; 47th Report, Case No. 143 (Spain), para. 66; 66th Report, Case No. 298 (United Kingdom-Southern Rhodesia), para. 542; 87th Report, Case No. 363 (Colombia), para. 89.

[2] See 28th Report, Case No. 143 (Spain), para. 109; Cases Nos. 141, 153 and 154 (Chile), para. 202, and Case No. 169 (Turkey), para. 297; 47th Report, Case No. 143 (Spain), para. 66; 58th Report, Case No. 221 (United Kingdom-Aden), para. 109; 65th Report, Case No. 266 (Portugal), para. 77; 66th Report, Case No. 294 (Spain), para. 481; 71st Report, Case No. 173 (Argentina), para. 67; 72nd Report, Case No. 211 (Canada), para. 27; 78th Report, Case No. 364 (Ecuador), para. 79; 87th Report, Case No. 463 (Colombia), para. 89.

[3] See 37th Report, Case No. 170 (France-Madagascar), para. 41; 41st Report, Case No. 172 (Argentina), para. 157.

[4] See Sixth Report, Case No. 47 (India), paras. 704-736; Case No. 50 (Turkey), paras. 814-867; 25th Report, Case No. 151 (Dominican Republic), para. 309; 37th Report, Case No. 170 (France-Madagascar), para. 41; 41st Report, Case No. 172 (Argentina), para. 157.

[5] See First Report, Case No. 32 (United Kingdom-Uganda), paras. 87-92; Fourth Report, Case No. 29 (United Kingdom-Kenya), paras. 137-139; Sixth Report, Case No. 11 (Brazil), paras. 39-131, Case No. 40 (France-Tunisia), paras. 384-564, Case No. 47 (India), paras. 704-736, and Case No. 50 (Turkey), paras. 814-860; 12th Report, Case No. 60 (Japan), paras. 10-83; 22nd Report, Case No. 148 (Poland), para. 100; 23rd Report, Case No. 111 (U.S.S.R.), para. 226; 25th Report, Case No. 151 (Dominican Republic), para. 305; 30th Report, Case No. 172 (Argentina), para. 179; 45th Report, Case No. 212 (United States), para. 80; 58th Report, Case No. 221 (United Kingdom-Aden), para. 111.

[6] See 25th Report, Case No. 151 (Dominican Republic), para. 305; 58th Report, Case No. 221 (United Kingdom-Aden), para. 111; 66th Report, Case No. 294 (Spain), para. 481.

[7] See I.L.O.: *Legislative Series*, 1959—Hon. 1.

[8] See 79th Report, para. 181, and 87th Report, Case No. 408 (Honduras), para. 258.

Recommendations [1] that the provision in the Labour Code of Honduras, which requires a two-thirds majority vote of the total membership of a union or branch for strike action to be declared lawful, constitutes an intervention by the public authorities in the activities of trade unions which is of a nature to restrict the rights of such organisations, contrary to Article 3 of Convention No. 87.

189. As regards the question as to whether or not there existed in this particular case voluntary agreement between the parties as regards the signature of the collective agreement, the Committee notes that the statements of the Government and those of the complainants are contradictory. This point does not in itself appear to relate to the exercise of trade union rights, but relates rather to the legal validity of a contract, a matter which should in any case be dealt with by the competent judicial authorities.

190. In these circumstances the Committee recommends the Governing Body—

(a) to draw the attention of the Government once again to the importance which it attaches to the opinion expressed by the Committee of Experts on the Application of Conventions and Recommendations mentioned in paragraph 188 above;

(b) to draw the attention of the Government to the importance which it has always attached to the principle that, when temporary restrictions are placed on the right to strike such as, for example, refraining from strikes during conciliation and arbitration proceedings, such proceedings should be adequate, impartial and speedy, and to request the Government to be good enough to furnish the text of the amendments to sections 650 and 651 of the Labour Code relating to the establishment of conciliation and arbitration boards.

Allegations relating to a Strike Called by the Central Federation of Unions of Free Workers of Honduras

191. The complaint states that, as a result of the strike of the Río Lindo Textile Mill Workers' Union having been declared illegal, the workers' organisations of Honduras, especially those affiliated to FECESITLIH, called a general strike, which began on 27 July 1965 but was broken up after 14 hours by government armed pickets. It is alleged that the Government then proceeded to destroy various unions almost completely, in particular that of the employees of the Central District Council, who were all dismissed, including a number of members of the union's executive. Bodies such as the National Autonomous Public Water Mains and Sewage Service, the National Electric Power Company and the National Children's Guardianship Board also began to dismiss trade unionists and members of the executives of trade unions. Similar action is alleged to have been taken by private undertakings. The complainants add that the Government has so far done nothing to remedy these grave abuses.

192. With respect to these allegations the Government states that the general solidarity strike called by FECESITLIH in the capital was unlawful under the Labour Code and that it was broken up by groups of civilians, who removed from their posts workers guarding the entrances to workplaces, which they had padlocked and hung with the national flag. Because of these disturbances the Government, exercising its legal powers, declared a state of siege in the capital. Certain persons, among them Julio César Villalta Matamoros and Carlos Alberto Reyes Pineda, were arrested, and a direct prosecution was made by the Attorney-General before the First Criminal Court of Justice; the reason for arrest was an inquiry into offences against the safety of the State, under the appropriate judicial procedure which safeguards the right of the persons concerned to defence. The arrested men are now at liberty on bail.

[1] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 45th Session, Geneva, 1961 (Geneva, I.L.O., 1961), p. 70.

193. Although the Government does not state on what provisions of the Labour Code the unlawfulness of the strike called by FECESITLIH is founded, the Committee observes that under section 537 of the Code federations and confederations of trade unions may not call strikes. In this respect the Committee refers to the view expressed by the Committee of Experts on the Application of Conventions and Recommendations when examining the application by Honduras of Convention No. 87. The Committee pointed out [1] that the provisions of section 537 were not compatible with Article 6 of the Convention, which applies Article 3 of the Convention with respect to the functioning of federations and confederations. According to Article 3, trade union organisations shall have the right " to organise their administration and activities and to formulate their programmes ", while the public authorities shall refrain " from any interference which would restrict this right or impede the lawful exercise thereof ".

194. As regards the removal of strikers guarding the entrances to workplaces, of which the complainants accuse the Government and which the Government states was carried out by groups of private individuals, the Committee would be grateful if the Government would let it know whether the inquiry referred to in paragraph 192 above is intended also to clarify the facts in question and establish responsibilities, and if it would communicate the results of such inquiry.

195. As regards the arrest and trial of the persons to whom the Government's reply refers, a point to which the complaint does not expressly allude, the Committee would be grateful if the Government would inform it whether the persons mentioned are trade unionists and, if so, would request it to be good enough to let it know the precise reasons for their arrest and to communicate the text of the judgments given in their case, together with the grounds therefor.

196. Finally, the Government's reply contains no reference to the allegations mentioned in paragraph 191 above, according to which a number of trade unions were destroyed and trade unionists dismissed from public bodies and private industry because of their participation in the strike called by FECESITLIH.

197. In these circumstances the Committee recommends the Governing Body to draw the Government's attention to the importance which it attaches to the opinion expressed by the Committee of Experts on the Application of Conventions and Recommendations mentioned in paragraph 193 above, and to request the Government to be good enough to supply the additional information mentioned in paragraphs 194 and 195 above and to reply to the allegations mentioned in paragraph 196.

Allegations relating to the Annulment of the Resolutions of a Trade Union Assembly

198. The complainants allege that the Government has pronounced the Seventh Federal General Assembly of FECESITLIH, held in May 1965, to be null and void, declaring the whole of its proceedings invalid and leaving the Federation without leadership.

199. In its reply the Government states that from 29 to 31 May 1965 the Seventh Ordinary General Assembly of the complainant federation elected its Federal Executive Committee, the list being headed by Mr. Carlos H. Reyes. Objections to the registration of the elected members of the Federal Elective Committee were made before the General Directorate of Labour by two workers. By a decision dated 11 August 1965 the Directorate declared null and void the election of the Executive Committee and other bodies elected by the assembly, refused registration and ordered the unions belonging to the Federation to convene a new assembly.

[1] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 47th Session, Geneva, 1963 (Geneva, I.L.O., 1963), p. 93.

200. According to the text of the decision, which is appended to the Government's reply, it was found that the meeting had been attended—and votes cast—by representatives of two associations, the Association of National Lottery Ticket Sellers and the Association of Merchants of the San Isidro Market—civil organisations which have legal personality granted by the Ministry of Home Affairs and Justice but have been refused registration as trade union organisations because their members are not covered by the provisions of the Labour Code. Mr. Roberto Félix Ruiz, the representative of the first of the organisations mentioned, had been elected Vice-President of the Executive Committee by the assembly. Although under a previous decision of the Secretariat for Labour and Social Welfare the regulations of FECESITLIH were amended by a clause according to which " there may belong to the Federation associations of workers with legal personality recognised by the Ministry of Home Affairs and Justice, which pursue the same ends as trade union organisations but which by their nature cannot be constituted as trade unions ", the General Directorate of Labour, in settling the matter, considered that the amendment to the regulations was unlawful in that it infringed provisions of the Constitution and the Labour Code, and that it should be disregarded.

201. Still according to the information supplied by the Government, FECESITLIH appealed against the Directorate's decision, but the High Court of Justice, in a decision dated 8 October 1965, rejected the appeal on the grounds that the resources normally available under the Code of Administrative Procedure against decisions of the General Directorate of Labour—the implementing body or authority for labour laws in the first instance, as far as administration is concerned—had not been exhausted. From 15 to 17 October 1965 an extraordinary general meeting of FECESITLIH was held, and new elections took place. As a result two separate lists were presented to the General Directorate of Labour for registration as the Executive Committee of the Federation, and the General Directorate received objections to both. These objections were settled, and the procedure began for the registration of the Executive Committee presided over by Mr. Eulalio López Amaya.

202. Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), provides that workers' and employers' organisations shall have the right to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes, and that the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof. As already mentioned, the provisions of Article 3 of the Convention are applied to federations and confederations by Article 6.

203. In a previous case of a similar nature [1], also relating to Honduras, in which allegations were made regarding the executive committee elected by a trade union, the Committee observed that by reason of the measures of an administrative nature adopted by the General Directorate of Labour the union was for some time deprived of ruling bodies and of representatives of the organisation. The Committee referred to the opinion that it had already expressed on other occasions, namely that the removal by an administrative authority of a person from his office in a trade union is a procedure that might lead to abuses or to the violation of the generally recognised right which organisations possess of electing their representatives in full freedom and organising their own administration and activities. Since the suspension of the results of an election procedure may have similar effects to the suspension of the organisation itself, the Committee referred to what it had already pointed out previously [2], namely that when the measures of suspension are adopted by the administrative authority there is a risk that they may appear arbitrary even when they are provisional and temporary and even when they are followed by judicial action. The Committee considered that the principles established in Article 3 of Convention No. 87 did not prevent supervision or control of the internal acts of a trade union if those internal acts did not violate legal provisions or rules, but nevertheless considered that, in order to guarantee

[1] See 73rd Report, Case No. 348 (Honduras), paras. 113 and 114.

[2] See 58th Report, Case No. 234 (Greece), para. 570; 65th Report, Case No. 266 (Portugal), para. 49.

an impartial and objective procedure, control should be exercised by the relevant judicial authority.

204. On the other hand, in view of the fact that the results of the new election held by the complainant federation in October 1965 had also been challenged and that the Executive Committee had not been registered by the date of the communication from the Government, the Committee, before continuing its examination of this aspect of the case, would be grateful if the Government would inform it as soon as possible as to the present situation.

205. In these circumstances, while again drawing the Government's attention to the principle that, when it is necessary to control the internal acts of a trade union, it is of maximum importance that, in order to guarantee an impartial and objective procedure, such control should be exercised by the relevant judicial authority, the Committee recommends the Governing Body to request the Government to inform it as soon as possible as to the present situation with regard to the procedure for the registration of the Executive Committee of FECESITLIH, and to enclose the text of any decisions which may have been issued, together with the grounds therefor.

Appointment of a Commission of Inquiry

206. Finally, the complainants request the I.L.O. to appoint a commission of inquiry to visit Honduras and verify the facts complained of, with the aim of securing respect for the national and international standards which it considers to have been violated.

207. Taking into account the considerations set forth in paragraphs 178 to 205 of the present report, the Committee feels it would be premature to discuss this matter at the present stage of examination of the case.

* * *

208. With regard to the case as a whole the Committee recommends the Governing Body—

(a) in respect of the allegations relating to the strike by the Río Lindo Textile Mill Workers' Union—

(i) to draw the attention of the Government once again to the importance which it attaches to the opinion expressed by the Committee of Experts on the Application of Conventions and Recommendations mentioned in paragraph 188 above;

(ii) to draw the attention of the Government to the importance which it has always attached to the principle that, when temporary restrictions are placed on the right to strike such as, for example, refraining from strikes during conciliation and arbitration proceedings, such proceedings should be adequate, impartial and speedy, and to request the Government to be good enough to furnish the text of the amendments to sections 650 and 651 of the Labour Code relating to the establishment of conciliation and arbitration boards;

(b) in respect of the allegations relating to the strike called by FECESITLIH, to draw the Government's attention to the importance which it attaches to the opinion expressed by the Committee of Experts on the Application of Conventions and Recommendations, namely that the provision of the Labour Code denying the right to strike to federations and confederations is not compatible with Article 6 of Convention No. 87, and to request the Government to be good enough to supply the additional information mentioned in paragraphs 194 and 195 above and to reply to the allegations mentioned in paragraph 196;

(c) in respect of the allegations relating to the annulment of the resolutions of a trade union assembly, while again drawing the Government's attention to the principle that, when it is necessary to control the internal acts of a trade union, it is of maximum importance

that, in order to guarantee an impartial and objective procedure, such control should be exercised by the relevant judicial authority, the Committee recommends the Governing Body to request the Government to inform it as soon as possible as to the present situation with regard to the procedure for the registration of the Executive Committee of FECESITLIH, and to enclose the text of any decisions which may have been issued, together with the grounds therefor;

(d) to take note of the present interim report, it being understood that the Committee will submit a further report when it has received the information requested of the Government in subparagraphs *(a)* (ii), *(b)* and *(c)* above.

Case No. 455:

Complaint Presented by the Irish Telephonists' Association against the Government of Ireland

209. The complaint of the Irish Telephonists' Association is contained in two communications addressed directly to the I.L.O. on 7 October and 10 November 1965 respectively and in two cables addressed on 26 and 30 October 1965 to the Secretary-General of the United Nations and transmitted by him to the I.L.O. The Government of Ireland forwarded its observations on the complaint by a communication dated 20 April 1966.

210. Ireland has ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

Allegations relating to the Non-Recognition of the Complaining Organisation

211. The complaining organisation alleges that the Government has refused to recognise it for the purpose of negotiation although it represents a majority of the full-time male telephonists employed in the telephone exchanges of the Department of Posts and Telegraphs. In September 1963 the Male Night Telephonists Branch of the Post Office Workers' Union seceded from the union *en bloc*, as they considered that the union was persistently inadequate in its representation of their grade, and formed the Irish Telephonists' Association. In February 1964 the association applied formally to the Minister for Finance for recognition as a negotiating body, but this has not been granted. Consequently, the association resorted to strike action in March 1965 and again in September 1965.

212. The demand for recognition of the new association, it is alleged, arose from the fact that the Post Office Workers' Union had failed to obtain redress for the grievances of male night telephonists. Only 15 per cent. of them are established staff, although many of them have long service and, it is contended, their applications to sit for examinations have been rejected and they have no scope for promotion. The complainants also criticise the hours of work, changes of duty periods without notification or consultation, and failure to pay allowances for compulsory attendance at weekends.

213. The Government states that the Post Office Workers' Union is recognised under the scheme of conciliation and arbitration for the civil service as representing about 9,000 post office employees, including 1,570 female telephonists, 290 male night telephonists and 200 male night and Sunday telephone attendants. The said scheme constitutes the negotiating machinery agreed upon between the Minister for Finance and the various civil service staff organisations for dealing with claims relating to pay and conditions of service of civil servants. Only civil service staff associations recognised by the Minister for the purposes of conciliation and arbitration are eligible to participate in the scheme. The staff associations parties to the scheme are represented by the Civil Service General Council Staff Panel and the Minister consults the panel before granting recognition to any new staff association.

214. According to the Government the breakaway Irish Telephonists' Association has as members about 170 male telephonists, other male telephonists having remained in the Post Office Workers' Union. When the Minister consulted the General Council Staff Panel regarding the association's request for recognition, the panel recommended refusal, for the reasons indicated in a letter which it addressed to the Minister on 29 January 1965.

215. The Government furnishes a copy of the panel's letter. In that letter the panel said that it considered that the interests of the male night telephonists were " ably and effectively " represented by the Post Office Workers' Union through the machinery of the scheme of conciliation and arbitration for the civil service and expressed the view that " the granting of official recognition in such circumstances to a breakaway group such as is the Irish Telephonists' Association would be disruptive of the orderly operation of the scheme of conciliation and arbitration and could consequently be a most serious impediment to the realisation of the declared objective of the scheme ".

216. On receipt of that letter the Minister informed the association of its contents, stating that he and the Minister for Posts and Telegraphs wished that matters affecting staff representation should be settled by agreement between the parties themselves, and that the Post Office Workers' Union still represented the larger proportion of telephone operating staff. He suggested that the association should try to hold talks with the other parties to resolve the difficulty and, in the meantime, deferred his decision on the application for recognition. But the association, declares the Government, called a one-night strike in March 1965, and then pressed for a decision on recognition. In May 1965 the Department of Posts and Telegraphs wrote to the association stating that, while the decision as to recognition lay with the Minister for Finance, he preferred the parties to resolve the difference between themselves rather than place him in the invidious position of having to decide between one group and another, each of which desired to have the exclusive right to represent male night telephonists. The association was urged to arrange a meeting with the Post Office Workers' Union under a mutually agreed chairman but it did not do so. In September 1965 the Minister for Posts and Telegraphs agreed to a request for an interview by the association, but then deferred it because the press carried reports of strike threats by the association and the latter failed to confirm that the reports were made without its approval. A strike was called by the association on 24 September 1965, and in the course of it various incidents took place.[1]

217. The dispute, says the Government, was a dispute between a recognised union and a dissident union. In a statement published on 3 November 1965 the Irish Congress of Trade Unions declared that the Post Office Workers' Union and the Post Office Engineering Union had offered to join in talks with the association and that this offer should be accepted, and pointed out that the Congress itself could investigate the dispute. But, says the Government, the association did not seek the help of the Congress to settle the dispute, and also refused to accept any of the proposals put forward by the Civil Service General Council Staff Panel—representing virtually the whole civil service below the administrative ranks—for an independent assessment of the association's claim for recognition. The strike ended on 10 November 1965 and all the members of the association who presented themselves for duty have been re-engaged.

218. With regard to the alleged inadequacy of the representation of male night telephonists by the Post Office Workers' Union, the Government states that this union, since the beginning of 1964, has negotiated two wage increases for them, amounting in some cases to 29.6 per cent., and an extra night's leave per week.

219. The issue in this case is purely one of union recognition. It has not been suggested that any workers were refused the right to join the complaining organisation. While the question of recognition is in fact decided by the Minister it appears to be quite clear that he allows himself to be guided essentially by the advice of the Civil Service General Council

[1] See below, paras. 222-226.

Staff Panel side of the permanent joint negotiating machinery in which virtually all executive civil servants are represented. The Post Office Workers' Union represents post office employees in general and the very large majority of telephone operators of both sexes. One grade of such operators—male night telephonists—is now represented in part by the union and in part by the complaining organisation, and both of these organisations are, in fact, engaged in an inter-union dispute over the right of exclusive representation of the grade in question. While it would seem, at least in the latter stages of the dispute, that the Post Office Workers' Union has been ready to discuss the subject of the dispute with the association, the latter does not appear to have been willing to discuss it with the union. The existing Civil Service General Council Staff Panel, of which the Post Office Workers' Union is a member, is in fact the medium through which virtually all the civil servants' associations are benefiting from what amount in practice to union security arrangements, although sufficient flexibility appears to exist to permit of discussion as to the admission of a new association to the machinery if it is manifestly representative and does not appear likely to disrupt the existing negotiating machinery as a whole.

220. As the Committee has observed in certain earlier cases [1], it has taken the view, in accordance with that of the International Labour Conference itself, that the question of union security arrangements is a matter for regulation in accordance with national practice. In this connection the Committee has referred to the statement of the Committee on Industrial Relations set up by the Conference, which examined this matter *inter alia* when the text of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (ratified by Ireland), was under discussion; in that statement the Conference Committee declared: " The Committee finally agreed to express in the report that the Convention could in no way be interpreted as authorising or prohibiting union security arrangements, such questions being matters for regulation in accordance with national practice." This view was accepted by the Conference when it adopted the report.

221. In these circumstances the Committee recommends the Governing Body to decide that these allegations do not call for further examination.

Allegations relating to Arrests of Strike Pickets

222. It is alleged that on 25 September 1965, in the course of the strike called by the complaining organisation, an interim injunction was granted restraining the chairman of the association and certain named members, their servants and agents from picketing post office premises. On 8 October an interlocutory injunction was made and on 21 October the High Court made a committal order against three defendants. Two members were gaoled on 26 October for " picketing their places of employment in furtherance of a trade dispute ". They went on hunger strike and then the Government applied to the High Court for their release, which, say the complainants, was granted unconditionally. It is alleged that 20 members of the association were imprisoned for peaceful picketing at the National Parliament, as were four female telephonists who supported them, the Government invoking the provisions of section 28 (1) of the Offences against the State Act, which provides that " it shall not be lawful for any public meeting to be held in or any procession to pass along or through any public street or enclosed place which or any part of which is situated within one-half of a mile from any building in which both Houses or either House of the Oireachtas are or is sitting or about to sit ". To invoke an Act designed for political offences against citizens picketing in furtherance of a trade dispute is, in the complainant's view, an " unwarranted trespass on the freedom of labour ". The complaining organisation declares that it has a trade dispute, through its employer, the Minister for Posts and Telegraphs, with the Government, and that, under the Trade Disputes Act, 1906, it may " attend at or near a house where a person resides or works or carries on business or happens to be ".

[1] See 13th Report, Case No. 96 (United Kingdom), paras, 115-139; 15th Report, Case No. 114 (United States), paras. 36-64; 17th Report, Case No. 120 (France), paras. 78-98.

223. The Government states that pickets were placed on telephone exchanges in Dublin, Cork, Limerick, Shannon Airport and elsewhere. The High Court granted an interim injunction restraining members of the association from picketing post office premises pending the hearing of the proceedings instituted. It continued to picket post office premises, and proceedings were instituted for contempt of the High Court order, and two persons who refused to give an undertaking to obey the High Court were committed to prison. They went on hunger strike and were released after eight days by order of the High Court on the application of the Attorney-General. The Government emphasises that they were not imprisoned for picketing but for refusing to obey an order of the High Court; they could have appealed to the Supreme Court but did not do so. Picketing of post office premises continued but no further proceedings for contempt were taken. But some members of the association were convicted of offences such as assault, intimidation, etc.

224. With respect to the alleged picketing of the Houses of Parliament, the Government states that article 40 of the Constitution guarantees the right of citizens to assemble peaceably without arms, subject to laws regulating meetings in the vicinity of either House of Parliament, and that section 28 of the Offences against the State Act, 1939, is based on that provision. No one, however, according to the Government, was imprisoned for picketing under that Act. Some of those arrested under the said section 28 refused to accept bail and were for that reason held in custody, generally for a day or two, pending the hearing of prosecution proceedings. They were subsequently fined by the summary court.

225. The Committee has always applied the principle that allegations relating to the right to strike are not outside its competence in so far as they affect the exercise of trade union rights.[1] It has pointed out that the right of workers and their organisations to strike as a legitimate means of defending their occupational interests is generally recognised.[2] The Committee has also emphasised the importance that it attaches to the principle that pickets acting in accordance with the law should not be subject to interference by the public authorities.[3]

226. From the evidence furnished by the Government it appears that a number of persons were arrested for assault, intimidation, etc., or for offences committed in the vicinity of Parliament. The Committee does not consider that these particular points, therefore, call for further consideration. One point, however, remains difficult to appreciate, in spite of the information furnished by the Government. The Government has not made clear its attitude to the contention of the complaining organisation that its members were in dispute with their employer, the Minister for Posts and Telegraphs, and that in connection with such dispute they were entitled to picket peacefully their places of employment pursuant to the Trade Disputes Act, 1906. In these circumstances it is not clear to the Committee on what grounds application was made to the High Court for an injunction restraining them from picketing their places of employment—post offices at Dublin, Limerick, Cork, Shannon Airport, etc.—or on what grounds an injunction in this respect was granted. The Committee, therefore, before submitting its recommendations on this aspect of the case to the Governing Body, requests the Government to be good enough to furnish fuller information on this particular point.

* * *

[1] See 28th Report, Case No. 143 (Spain), para. 109, Cases Nos. 141, 153 and 154 (Chile), para. 202, and Case No. 169 (Turkey), para. 297; 47th Report, Case No. 143 (Spain), para. 66; 58th Report, Case No. 221 (United Kingdom-Aden), para. 109; 65th Report, Case No. 266 (Portugal), para. 77; 66th Report, Case No. 294 (Spain), para. 481; 71st Report, Case No. 173 (Argentina), para. 67; 72nd Report, Case No. 211 (Canada), para. 27; 78th Report, Case No. 364 (Ecuador), para. 79; 83rd Report, Case No. 399 (Argentina), para. 293; 86th Report, Case No. 430 (United States-Puerto Rico), para. 48.

[2] See Fourth Report, Case No. 5 (India), paras. 18-51; 12th Report, Case No. 60 (Japan), paras. 10-83; 28th Report, Cases Nos. 141, 153 and 154 (Chile), para. 202; 30th Report, Case No. 167 (Honduras), para. 76, Case No. 181 (Ecuador), para. 94, Case No. 143 (Spain), para. 130 and Case No. 172 (Argentina), para. 778; 58th Report, Case No. 192 (Argentina), para. 447; 65th Report, Case No. 266 (Portugal), para. 77; 68th Report, Case No. 294 (Spain), para. 137; 78th Report, Case No. 364 (Ecuador), para. 79; 83rd Report, Case No. 399 (Argentina), para. 293; 86th Report, Case No. 430 (United States-Puerto Rico), para. 48.

[3] See 25th Report, Case No. 136 (United Kingdom-Cyprus), para. 170; 86th Report, Case No. 430 (United States-Puerto Rico), para. 48.

227. In all the circumstances the Committee recommends the Governing Body—

(a) to decide that the allegations relating to the non-recognition of the Irish Telephonists' Association do not call for further examination;

(b) to take note of the present interim report of the Committee with respect to the remaining allegations, it being understood that the Committee will report further thereon to the Governing Body when it receives the additional information which it has decided to request the Government to be good enough to furnish.

Geneva, 25 May 1966.

(Signed) Roberto AGO,
Chairman.

INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

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INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

SUPPLEMENT I

Vol. XLIX, No. 3 *July 1966*

Conventions and Recommendations Adopted by the International Labour Conference at Its 50th Session

(Geneva, 1966)

Convention 125

Convention concerning Fishermen's Certificates of Competency [1]

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fiftieth Session on 1 June 1966, and

Having decided upon the adoption of certain proposals with regard to fishermen's certificates of competency, which is included in the sixth item on the agenda of the session, and

Noting the provisions of the Officers' Competency Certificates Convention, 1936, which provides that no person shall be engaged to perform or shall perform on board any vessel to which it applies the duties of master or skipper, navigating officer in charge of a watch, chief engineer, or engineer officer in charge of a watch, unless he holds a certificate of competency to perform such duties issued or approved by the public authority of the territory where the vessel is registered, and

Considering that experience has shown that further international standards specifying minimum requirements for certificates of competency for service in fishing vessels are desirable, and

Having determined that these standards shall take the form of an international Convention,

adopts this twenty-first day of June of the year one thousand nine hundred and sixty-six the following Convention, which may be cited as the Fishermen's Competency Certificates Convention, 1966 :

[1] Adopted on 21 June 1966 by 284 votes to 0, with 14 abstentions.

Part I. Scope and Definitions

Article 1

For the purposes of this Convention, the term "fishing vessel" includes all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters and are registered in a territory for which the Convention is in force, with the exception of—

(a) ships and boats of less than 25 gross registered tons ;

(b) ships and boats engaged in whaling or similar pursuits ;

(c) ships and boats engaged in fishing for sport or recreation ;

(d) fishery research and fishery protection vessels.

Article 2

The competent authority may, after consultation with the fishing vessel owners' and fishermen's organisations where such exist, exempt from this Convention fishing vessels engaged in inshore fishing, as defined by national laws and regulations.

Article 3

For the purpose of this Convention, the following terms have the meanings hereby assigned to them:

(a) skipper : any person having command or charge of a fishing vessel ;

(b) mate : any person exercising subordinate command of a fishing vessel, including any person, other than a pilot, liable at any time to be in charge of the navigation of such a vessel ;

(c) engineer : any person permanently responsible for the mechanical propulsion of a fishing vessel.

Part II. Certification

Article 4

Each Member which ratifies this Convention shall establish standards of qualification for certificates of competency entitling a person to perform the duties of skipper, mate or engineer on board a fishing vessel.

Article 5

1. All fishing vessels to which this Convention applies shall be required to carry a certificated skipper.

2. All fishing vessels over 100 gross registered tons engaged in operations and areas to be defined by national laws or regulations shall be required to carry a certificated mate.

3. All fishing vessels with an engine power above a level to be determined by the competent authority, after consultation with the fishing

vessel owners' and fishermen's organisations where such exist, shall be required to carry a certificated engineer : Provided that the skipper or mate of a fishing vessel may act as engineer in appropriate cases and on condition that he also holds an engineer's certificate.

4. The certificates of skippers, mates or engineers may be full or limited, according to the size, type, and nature and area of operations of the fishing vessel, as determined by national laws or regulations.

5. The competent authority may in individual cases permit a fishing vessel to put to sea without the full complement of certificated personnel if it is satisfied that no suitable substitutes are available and that, having regard to all the circumstances of the case, it is safe to allow the vessel to put to sea.

Article 6

1. The minimum age prescribed by national laws or regulations for the issue of a certificate of competency shall be not less than—

(a) 20 years in the case of a skipper ;

(b) 19 years in the case of a mate ;

(c) 20 years in the case of an engineer.

2. For the purpose of service as a skipper or mate in a fishing vessel engaged in inshore fishing and for the purpose of service as an engineer in small fishing vessels with an engine power below a level to be determined by the competent authority after consultation with the fishing vessel owners' and fishermen's organisations, where such exist, the minimum age may be fixed at 18 years.

Article 7

The minimum professional experience prescribed by national laws or regulations for the issue of a mate's certificate of competency shall be not less than three years' sea service engaged in deck duties.

Article 8

1. The minimum professional experience prescribed by national laws or regulations for the issue of a skipper's certificate of competency shall be not less than four years' sea service engaged in deck duties.

2. The competent authority may, after consultation with the fishing vessel owners' and fishermen's organisations where such exist, require a part of this period to be served as a certificated mate ; where national laws or regulations provide for the issue of different grades of certificates of competency, full and limited, to skippers of fishing vessels, the nature of the qualifying service as a certificated mate or the type of certificate held while performing such qualifying service may vary accordingly.

Article 9

1. The minimum professional experience prescribed by national laws or regulations for the issue of an engineer's certificate of competency shall be not less than three years' sea service in the engine-room.

2. In the case of a certificated skipper or mate a shorter qualifying period of sea service may be prescribed.

3. In the case of the small fishing vessels referred to in Article 6, paragraph 2, of this Convention, the competent authority may, after consultation with the fishing vessel owners' and fishermen's organisations where such exist, prescribe a qualifying period of sea service of 12 months.

4. Work in an engineering workshop may be regarded as equivalent to sea service for part of the qualifying periods provided for in paragraphs 1 to 3 of this Article.

Article 10

In respect of persons who have successfully completed an approved training course, the periods of sea service required in virtue of Articles 7, 8 and 9 of this Convention may be reduced by the period of training, but in no case by more than 12 months.

Part III. Examinations

Article 11

In the examinations organised and supervised by the competent authority for the purpose of testing whether candidates for competency certificates possess the qualifications necessary for performing the corresponding duties, the candidates shall be required to show knowledge, appropriate to the categories and grades of certificates, of such subjects as—

(a) in the case of skippers and mates—

(i) general nautical subjects, including seamanship, shiphandling and safety of life at sea, and a proper knowledge of the international Regulations for Preventing Collisions at Sea;

(ii) practical navigation, including the use of electronic and mechanical aids to navigation;

(iii) safe working practices, including safety in the handling of fishing gear;

(b) in the case of engineers—

(i) theory, operation, maintenance and repair of steam or internal combustion engines and related auxiliary equipment;

(ii) operation, maintenance and repair of refrigeration systems, pumps, deck winches and other mechanical equipment of fishing vessels, including the effects on stability;

(iii) principles of shipboard electric power installations, and maintenance and repair of the electrical machinery and equipment of fishing vessels; and

(iv) engineering safety precautions and emergency procedures, including the use of life-saving and fire-fighting appliances.

Article 12

The examinations for certificates of skippers and mates referred to in Article 11, sub-paragraph *(a)*, of this Convention may also cover the following subjects :

(a) fishing techniques, including where appropriate the operation of electronic fish-finding devices, and the operation, maintenance and repair of fishing-gear ; and

(b) stowage, cleaning and processing of fish on board.

Article 13

During a period of three years from the date of the coming into force of national laws or regulations giving effect to the provisions of this Convention, competency certificates may be issued to persons who have not passed an examination referred to in Articles 11 and 12 of this Convention, but who have in fact had sufficient practical experience of the duties corresponding to the certificate in question and have no record of any serious technical error against them.

Part IV. Enforcement Measures

Article 14

1. Each Member shall ensure the enforcement of national laws or regulations giving effect to the provisions of this Convention by an efficient system of inspection.

2. National laws or regulations giving effect to the provisions of this Convention shall provide for the cases in which the authorities of a Member may detain vessels registered in its territory on account of a breach of these laws or regulations.

Article 15

1. National laws or regulations giving effect to the provisions of this Convention shall prescribe penalties or disciplinary measures for cases in which these laws or regulations are not respected.

2. In particular, such penalties or disciplinary measures shall be prescribed for cases in which—

(a) a fishing vessel owner or his agent, or a skipper, has engaged a person not certificated as required ;

(b) a person has obtained by fraud or forged documents an engagement to perform duties requiring certification without holding the requisite certificate.

Part V. Final Provisions

Article 16

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

Article 17

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 18

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 19

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications 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 20

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 and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 21

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 22

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 18 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 23

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

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Fiftieth Session which was held at Geneva and declared closed the twenty-second day of June 1966.

IN FAITH WHEREOF we have appended our signatures this twenty-fourth day of June 1966.

The President of the Conference,

L. CHAJN.

The Director-General of the International Labour Office,

DAVID A. MORSE.

Convention concerning Accommodation on Board Fishing Vessels[1]

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fiftieth Session on 1 June 1966, and

Having decided upon the adoption of certain proposals with regard to accommodation on board fishing vessels, which is included in the sixth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this twenty-first day of June of the year one thousand nine hundred and sixty-six the following Convention, which may be cited as the Accommodation of Crews (Fishermen) Convention, 1966 :

Part I. General Provisions

Article 1

1. This Convention applies to all sea-going mechanically propelled ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters and are registered in a territory for which this Convention is in force.

2. National laws or regulations shall determine when ships and boats are to be regarded as sea-going for the purpose of this Convention.

3. This Convention does not apply to ships and boats of less than 75 tons : Provided that the Convention shall be applied to ships and boats of between 25 and 75 tons where the competent authority determines, after consultation with the fishing-vessel owners' and fishermen's organisations where such exist, that this is reasonable and practicable.

4. The competent authority may, after consultation with the fishing-vessel owners' and fishermen's organisations where such exist, use length instead of tonnage as a parameter for the purposes of this Convention, in which event the Convention does not apply to ships and boats of less than 80 feet (24.4 metres) in length : Provided that the Convention shall be applied to ships and boats of between 45 and 80 feet (13.7 and 24.4 metres) in length where the competent authority determines, after consultation with the fishing-vessel owners' and fishermen's organisations where such exist, that this is reasonable and practicable.

5. This Convention does not apply to—

(a) ships and boats normally employed in fishing for sport or recreation;

(b) ships and boats primarily propelled by sail but having auxiliary engines;

[1] Adopted on 21 June 1966 by 303 votes to 0, with 16 abstentions.

(c) ships and boats engaged in whaling or similar pursuits;

(d) fishery research and fishery protection vessels.

6. The following provisions of this Convention do not apply to vessels which normally remain away from their home ports for periods of less than 36 hours and in which the crew does not live permanently on board when in port:

(a) Article 9, paragraph 4;

(b) Article 10;

(c) Article 11;

(d) Article 12;

(e) Article 13, paragraph 1;

(f) Article 14;

(g) Article 16:

Provided that in such vessels adequate sanitary installations as well as messing and cooking facilities and accommodation for resting shall be provided.

7. The provisions of Part III of this Convention may be varied in the case of any vessel if the competent authority is satisfied, after consultation with the fishing-vessel owners' and fishermen's organisations where such exist, that the variations to be made provide corresponding advantages as a result of which the over-all conditions are no less favourable than those that would result from the full application of the provisions of the Convention; particulars of all such variations shall be communicated by the Member to the Director-General of the International Labour Office, who shall notify the Members of the International Labour Organisation.

Article 2

In this Convention—

(a) the term " fishing vessel " or " vessel " means a ship or boat to which the Convention applies;

(b) the term " tons " means gross registered tons;

(c) the term " length " means the length measured from the fore part of the stem on the line of the forecastle deck to the after side of the head of the sternpost, or to the foreside of the rudderstock where no sternpost exists;

(d) the term " officer " means a person other than a skipper ranked as an officer by national laws or regulations or, in the absence of any relevant laws or regulations, by collective agreement or custom;

(e) the term " rating " means a member of the crew other than an officer;

(f) the term " crew accommodation " includes such sleeping rooms, mess rooms and sanitary accommodation as are provided for the use of the crew;

(g) the term " prescribed " means prescribed by national laws or regulations, or by the competent authority;

(h) the term " approved " means approved by the competent authority ;

(i) the term " re-registered " means re-registered on the occasion of a simultaneous change in the territory of registration and in the ownership of the vessel.

Article 3

1. Each Member for which this Convention is in force undertakes to maintain in force laws or regulations which ensure the application of the provisions of Parts II, III and IV of this Convention.

2. The laws or regulations shall—

(a) require the competent authority to bring them to the notice of all persons concerned ;

(b) define the persons responsible for compliance therewith ;

(c) provide for the maintenance of a system of inspection adequate to ensure effective enforcement ;

(d) prescribe adequate penalties for any violation thereof ;

(e) require the competent authority to consult periodically the fishing-vessel owners' and fishermen's organisations, where such exist, in regard to the framing of regulations, and to collaborate so far as practicable with such parties in the administration thereof.

Part II. Planning and Control of Crew Accommodation

Article 4

Before the construction of a fishing vessel is begun, and before the crew accommodation of an existing vessel is substantially altered or reconstructed, detailed plans of, and information concerning, the accommodation shall be submitted to the competent authority for approval.

Article 5

1. On every occasion when—

(a) a fishing vessel is registered or re-registered,

(b) the crew accommodation of a vessel has been substantially altered or reconstructed, or

(c) complaint that the crew accommodation is not in compliance with the terms of this Convention has been made to the competent authority, in the prescribed manner and in time to prevent any delay to the vessel, by a recognised fishermen's organisation representing all or part of the crew or by a prescribed number or proportion of the members of the crew of the vessel,

the competent authority shall inspect the vessel and satisfy itself that the crew accommodation complies with the requirements of the laws and regulations.

2. Periodical inspections may be held at the discretion of the competent authority.

Part III. Crew Accommodation Requirements

Article 6

1. The location, means of access, structure and arrangement of crew accommodation in relation to other spaces shall be such as to ensure adequate security, protection against weather and sea and insulation from heat or cold, undue noise or effluvia from other spaces.

2. Emergency escapes shall be provided from all crew accommodation spaces as necessary.

3. Every effort shall be made to exclude direct openings into sleeping rooms from fish holds and fish meal rooms, from spaces for machinery, from galleys, lamp and paint rooms or from engine, deck and other bulk store rooms, drying rooms, communal wash places or water closets. That part of the bulkhead separating such places from sleeping rooms and external bulkheads shall be efficiently constructed of steel or other approved substance and shall be watertight and gastight.

4. External bulkheads of sleeping rooms and mess rooms shall be adequately insulated. All machinery casings and all boundary bulkheads of galleys and other spaces in which heat is produced shall be adequately insulated when there is a possibility of resulting heat effects in adjoining accommodation or passageways. Care shall also be taken to provide protection from heat effects of steam and/or hot-water service pipes.

5. Internal bulkheads shall be of approved material which is not likely to harbour vermin.

6. Sleeping rooms, mess rooms, recreation rooms and passageways in the crew accommodation space shall be adequately insulated to prevent condensation or over-heating.

7. Main steam and exhaust pipes for winches and similar gear shall, whenever technically possible, not pass through crew accommodation or through passageways leading to crew accommodation ; where they do pass through such accommodation or passageways they shall be adequately insulated and encased.

8. Inside panelling or sheeting shall be of material with a surface easily kept clean. Tongued and grooved boarding or any other form of construction likely to harbour vermin shall not be used.

9. The competent authority shall decide to what extent fire prevention or fire retarding measures shall be required to be taken in the construction of the accommodation.

10. The wall surface and deckheads in sleeping rooms and mess rooms shall be easily kept clean and, if painted, shall be light in colour ; lime wash must not be used.

11. The wall surfaces shall be renewed or restored as necessary.

12. The decks in all crew accommodation shall be of approved material and construction and shall provide a surface impervious to damp and easily kept clean.

13. Overhead exposed decks over crew accommodation shall be sheathed with wood or equivalent insulation.

14. Where the floorings are of composition the joinings with sides shall be rounded to avoid crevices.

15. Sufficient drainage shall be provided.

16. All practicable measures shall be taken to protect crew accommodation against the admission of flies and other insects.

Article 7

1. Sleeping rooms and mess rooms shall be adequately ventilated.

2. The system of ventilation shall be controlled so as to maintain the air in a satisfactory condition and to ensure a sufficiency of air movement in all conditions of weather and climate.

3. Vessels regularly engaged on voyages in the tropics and other areas with similar climatic conditions shall, as required by such conditions, be equipped both with mechanical means of ventilation and with electric fans : Provided that one only of these means need be adopted in spaces where this ensures satisfactory ventilation.

4. Vessels engaged elsewhere shall be equipped either with mechanical means of ventilation or with electric fans. The competent authority may exempt vessels normally employed in the cold waters of the northern or southern hemispheres from this requirement.

5. Power for the operation of the aids to ventilation required by paragraphs 3 and 4 of this Article shall, when practicable, be available at all times when the crew is living or working on board and conditions so require.

Article 8

1. An adequate system of heating the crew accommodation shall be provided as required by climatic conditions.

2. The heating system shall, when practicable, be in operation at all times when the crew is living or working on board and conditions so require.

3. Heating by means of open fires shall be prohibited.

4. The heating system shall be capable of maintaining the temperature in crew accommodation at a satisfactory level under normal conditions of weather and climate likely to be met with on service; the competent authority shall prescribe the standard to be provided.

5. Radiators and other heating apparatus shall be so placed and, where necessary, shielded and fitted with safety devices as to avoid risk of fire or danger or discomfort to the occupants.

Article 9

1. All crew spaces shall be adequately lighted. The minimum standard for natural lighting in living rooms shall be such as to permit a person

with normal vision to read on a clear day an ordinary newspaper in any part of the space available for free movement. When it is not possible to provide adequate natural lighting, artificial lighting of the above minimum standard shall be provided.

2. In all vessels electric lights shall, as far as practicable, be provided in the crew accommodation. If there are not two independent sources of electricity for lighting, additional lighting shall be provided by properly constructed lamps or lighting apparatus for emergency use.

3. Artificial lighting shall be so disposed as to give maximum benefit to the occupants of the room.

4. Adequate reading light shall be provided for every berth in addition to the normal lighting of the cabin.

5. A permanent blue light shall, in addition, be provided in the sleeping room during the night.

Article 10

1. Sleeping rooms shall be situated amidships or aft ; the competent authority may, in particular cases, if the size, type or intended service of the vessel renders any other location unreasonable or impracticable, permit the location of sleeping rooms in the fore part of the vessel, but in no case forward of the collision bulkhead.

2. The floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than—

(a) in vessels of 25 tons but below 50 tons . .	5.4 sq.ft. (0.5 sq.m.)
(b) in vessels of 50 tons but below 100 tons .	8.1 sq.ft. (0.75 sq.m.)
(c) in vessels of 100 tons but below 250 tons .	9.7 sq.ft. (0.9 sq.m.)
(d) in vessels of 250 tons or over	10.8 sq.ft. (1.0 sq.m.)

3. Where the competent authority decides, as provided for in Article 1, paragraph 4, of this Convention, that length shall be the parameter for this Convention, the floor area per person of sleeping rooms, excluding space occupied by berths and lockers, shall not be less than—

(a) in vessels of 45 feet (13.7 m.) but below 65 feet (19.8 m.) in length	5.4 sq.ft. (0.5 sq.m.)
(b) in vessels of 65 feet (19.8 m.) but below 88 feet (26.8 m.) in length	8.1 sq.ft. (0.75 sq.m.)
(c) in vessels of 88 feet (26.8 m.) but below 115 feet (35.1 m.) in length	9.7 sq.ft. (0.9 sq.m.)
(d) in vessels of 115 feet (35.1 m.) in length or over	10.8 sq.ft. (1.0 sq.m.)

4. The clear head room in the crew sleeping room shall, wherever possible, be not less than 6 feet 3 inches (1.90 metres).

5. There shall be a sufficient number of sleeping rooms to provide a separate room or rooms for each department : Provided that the competent authority may relax this requirement in the case of small vessels.

6. The number of persons allowed to occupy sleeping rooms shall not exceed the following maxima :

(a) officers : one person per room wherever possible, and in no case more than two ;

(b) ratings : two or three persons per room wherever possible, and in no case more than the following :

(i) in vessels of 250 tons and over, four persons ;

(ii) in vessels under 250 tons, six persons.

7. Where the competent authority decides, as provided for in Article 1, paragraph 4, of this Convention, that length shall be the parameter for this Convention, the number of ratings allowed to occupy sleeping rooms shall in no case be more than the following :

(a) in vessels of 115 feet (35.1 m.) in length and over, four persons ;

(b) in vessels under 115 feet (35.1 m.) in length, six persons.

8. The competent authority may permit exceptions to the requirements of paragraphs 6 and 7 of this Article in particular cases if the size, type or intended service of the vessel make these requirements unreasonable or impracticable.

9. The maximum number of persons to be accommodated in any sleeping room shall be legibly and indelibly marked in some place in the room where it can conveniently be seen.

10. Members of the crew shall be provided with individual berths.

11. Berths shall not be placed side by side in such a way that access to one berth can be obtained only over another.

12. Berths shall not be arranged in tiers of more than two ; in the case of berths placed along the vessel's side, there shall be only a single tier where a sidelight is situated above a berth.

13. The lower berth in a double tier shall not be less than 12 inches (0.30 metre) above the floor ; the upper berth shall be placed approximately midway between the bottom of the lower berth and the lower side of the deckhead beams.

14. The minimum inside dimensions of a berth shall wherever practicable be 6 feet 3 inches by 2 feet 3 inches (1.90 metres by 0.68 metre).

15. The framework and the lee-board, if any, of a berth shall be of approved material, hard, smooth and not likely to corrode or to harbour vermin.

16. If tubular frames are used for the construction of berths, they shall be completely sealed and without perforations which would give access to vermin.

17. Each berth shall be fitted with a spring mattress of approved material or with a spring bottom and a mattress of approved material. Stuffing of straw or other material likely to harbour vermin shall not be used.

18. When one berth is placed over another a dust-proof bottom of wood, canvas or other suitable material shall be fitted beneath the upper berth.

19. Sleeping rooms shall be so planned and equipped as to ensure reasonable comfort for the occupants and to facilitate tidiness.

20. The furniture shall include a clothes locker for each occupant, fitted with a hasp for a padlock and a rod for holding clothes on hangers. The competent authority shall ensure that the locker is as commodious as practicable.

21. Each sleeping room shall be provided with a table or desk, which may be of the fixed, dropleaf or slide-out type, and with comfortable seating accommodation as necessary.

22. The furniture shall be of smooth, hard material not liable to warp or corrode, or to harbour vermin.

23. The furniture shall include a drawer or equivalent space for each occupant which shall, wherever practicable, be not less than 2 cubic feet (0.056 cubic metre).

24. Sleeping rooms shall be fitted with curtains for the sidelights.

25. Sleeping rooms shall be fitted with a mirror, small cabinets for toilet requisites, a book rack and a sufficient number of coat hooks.

26. As far as practicable, berthing of crew members shall be so arranged that watches are separated and that no day-men share a room with watch-keepers.

Article 11

1. Mess room accommodation separate from sleeping quarters shall be provided in all vessels carrying a crew of more than ten persons. Wherever possible it shall be provided also in vessels carrying a smaller crew ; if, however, this is impracticable, the mess room may be combined with the sleeping accommodation.

2. In vessels engaged in fishing on the high seas and carrying a crew of more than 20, separate mess room accommodation may be provided for the skipper and officers.

3. The dimensions and equipment of each mess room shall be sufficient for the number of persons likely to use it at any one time.

4. Mess rooms shall be equipped with tables and approved seats sufficient for the number of persons likely to use them at any one time.

5. Mess rooms shall be as close as practicable to the galley.

6. Where pantries are not accessible to mess rooms, adequate lockers for mess utensils and proper facilities for washing them shall be provided.

7. The tops of tables and seats shall be of damp-resisting material, without cracks and easily kept clean.

8. Wherever practicable mess rooms shall be planned, furnished and equipped to give recreational facilities.

Article 12

1. Sufficient sanitary accommodation, including washbasins and tub and/or shower baths, shall be provided in all vessels.

2. Sanitary facilities for all members of the crew who do not occupy rooms to which private facilities are attached shall, wherever practicable, be provided for each department of the crew on the following scale :

(a) one tub and/or shower bath for every eight persons or less ;

(b) one water closet for every eight persons or less ;

(c) one wash basin for every six persons or less ;

Provided that when the number of persons in a department exceeds an even multiple of the specified number by less than one-half of the specified number, this surplus may be ignored for the purpose of this paragraph.

3. Cold fresh water and hot fresh water or means of heating water shall be available in all communal wash places. The competent authority, in consultation with the fishing-vessel owners' and fishermen's organisations where such exist, may fix the minimum amount of fresh water which shall be supplied per man per day.

4. Wash basins and tub baths shall be of adequate size and constructed of approved material with a smooth surface not liable to crack, flake or corrode.

5. All water closets shall have ventilation to the open air, independently of any other part of the accommodation.

6. The sanitary equipment to be placed in water closets shall be of an approved pattern and provided with an ample flush of water, available at all times and independently controllable.

7. Soil pipes and waste pipes shall be of adequate dimensions and shall be so constructed as to minimise the risk of obstruction and to facilitate cleaning. They shall not pass through fresh water or drinking water tanks ; neither shall they, if practicable, pass overhead in mess rooms or sleeping accommodation.

8. Sanitary accommodation intended for the use of more than one person shall comply with the following requirements :

(a) floors shall be of approved durable material, easily cleaned and impervious to damp, and shall be properly drained ;

(b) bulkheads shall be of steel or other approved material and shall be water-tight up to at least 9 inches (0.23 metre) above the level of the deck ;

(c) the accommodation shall be sufficiently lighted, heated and ventilated ;

(d) water closets shall be situated convenient to, but separate from, sleeping rooms and washrooms, without direct access from the sleeping rooms or from a passage between sleeping rooms and water closets to which there is no other access : Provided that this requirement shall not apply where a water closet is located between two sleeping rooms having a total of not more than four persons ;

(e) where there is more than one water closet in a compartment, they shall be sufficiently screened to ensure privacy.

9. Facilities for washing and drying clothes shall be provided on a scale appropriate to the size of the crew and the normal duration of the voyage.

10. The facilities for washing clothes shall include suitable sinks equipped with drainage which may be installed in washrooms if separate laundry accommodation is not reasonably practicable. The sinks shall be provided with an adequate supply of cold fresh water and hot fresh water or means of heating water.

11. The facilities for drying clothes shall be provided in a compartment separate from sleeping rooms, mess rooms and water closets, adequately ventilated and heated and equipped with lines or other fittings for hanging clothes.

Article 13

1. Wherever possible, an isolated cabin shall be provided for a member of the crew who suffers from illness or injury. On vessels of 500 tons or over there shall be a sick bay. Where the competent authority decides, as provided for in Article 1, paragraph 4, of this Convention, that length shall be the parameter for this Convention, there shall be a sick bay on vessels of 150 ft (45.7 metres) in length or over.

2. An approved medicine chest with readily understandable instructions shall be carried in every vessel which does not carry a doctor. In this connection the competent authority shall give consideration to the Ships' Medicine Chests Recommendation, 1958, and the Medical Advice at Sea Recommendation, 1958.

Article 14

Sufficient and adequately ventilated accommodation for the hanging of oilskins shall be provided outside but convenient to the sleeping rooms.

Article 15

Crew accommodation shall be maintained in a clean and decently habitable condition and shall be kept free of goods and stores which are not the personal property of the occupants.

Article 16

1. Satisfactory cooking equipment shall be provided on board and shall, wherever practicable, be fitted in a separate galley.

2. The galley shall be of adequate dimensions for the purpose and shall be well lighted and ventilated.

3. The galley shall be equipped with cooking utensils, the necessary number of cupboards and shelves, and sinks and dish racks of rust-proof material and with satisfactory drainage. Drinking water shall be supplied to the galley by means of pipes ; where it is supplied under pressure, the

system shall contain protection against backflow. Where hot water is not supplied to the galley, an apparatus for heating water shall be provided.

4. The galley shall be provided with suitable facilities for the preparation of hot drinks for the crew at all times.

5. A provision storeroom of adequate capacity shall be provided which can be kept dry, cool and well ventilated in order to avoid deterioration of the stores. Where necessary, refrigerators or other low-temperature storage space shall be provided.

6. Where butane or propane gas is used for cooking purposes in the galley the gas containers shall be kept on the open deck.

Part IV. Application to Existing Ships

Article 17

1. Subject to the provisions of paragraphs 2, 3 and 4 of this Article, this Convention applies to vessels the keels of which are laid down subsequent to the coming into force of the Convention for the territory of registration.

2. In the case of a vessel which is fully complete on the date of the coming into force of this Convention for the territory of registration and which is below the standard set by Part III of this Convention, the competent authority may, after consultation with the fishing-vessel owners' and fishermen's organisations where such exist, require such alterations for the purpose of bringing the vessel into conformity with the requirements of the Convention as it deems possible having regard to the practical problems involved, to be made when—

(a) the vessel is re-registered ;

(b) substantial structural alterations or major repairs are made to the vessel as a result of long-range plans and not as a result of an accident or an emergency.

3. In the case of a vessel in the process of building and/or reconversion on the date of the coming into force of this Convention for the territory of registration, the competent authority may, after consultation with the fishing-vessel owners' and fishermen's organisations where such exist, require such alterations for the purpose of bringing the vessel into conformity with the requirements of the Convention as it deems possible having regard to the practical problems involved ; such alterations shall constitute final compliance with the terms of this Convention, unless and until the vessel be re-registered.

4. In the case of a vessel, other than such a vessel as is referred to in paragraphs 2 and 3 of this Article or a vessel to which the provisions of this Convention were applicable while she was under construction, being re-registered in a territory after the date of the coming into force of this Convention for that territory, the competent authority may, after consultation with the fishing-vessel owners' and fishermen's organisations where such exist, require such alterations for the purpose of bringing the vessel into conformity with the requirements of the Convention as it

deems possible having regard to the practical problems involved ; such alterations shall constitute final compliance with the terms of this Convention, unless and until the vessel is again re-registered.

Part V. Final Provisions

Article 18

Nothing in this Convention shall affect any law, award, custom or agreement between fishing vessel owners and fishermen which ensures more favourable conditions than those provided for by this Convention.

Article 19

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

Article 20

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 21

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 22

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications 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 23

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 and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

Article 24

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 25

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 21 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 26

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

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the International Labour Organisation during its Fiftieth Session which was held at Geneva and declared closed the twenty-second day of June 1966.

IN FAITH WHEREOF we have appended our signatures this twenty-fourth day of June 1966.

The President of the Conference,

L. CHAJN.

The Director-General of the International Labour Office,

DAVID A. MORSE.

Recommendation 126

Recommendation concerning the Vocational Training of Fishermen [1]

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fiftieth Session on 1 June 1966, and

Noting the terms of the Vocational Training Recommendation, 1962, and

Considering that, in application of that instrument, the vocational training of fishermen should be of a standard equivalent to that provided for other trades, occupations and industries, and

Considering further that the basic objectives of the vocational training of fishermen should be—

- to improve the efficiency of the fishing industry and to secure general recognition of the economic and social significance of fishing to the national economy ;
- to encourage the entry into the fishing industry of a sufficient number of suitable persons ;
- to provide training and retraining facilities commensurate with the current and projected manpower needs of the fishing industry for all the various fishing occupations ;
- to assist the entry into employment of all trainees after completion of their courses ;
- to assist trainees in reaching their highest productive and earning capacity ; and
- to improve the standards of safety on board fishing vessels,

Having decided upon the adoption of certain proposals regarding the vocational training of fishermen, which is included in the sixth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts this twenty-first day of June of the year one thousand nine hundred and sixty-six the following Recommendation, which may be cited as the Vocational Training (Fishermen) Recommendation, 1966 :

I. Scope and Definitions

1. (1) For the purposes of this Recommendation, the term " fishing vessel " includes all ships and boats, of any nature whatsoever, whether publicly or privately owned, which are engaged in maritime fishing in salt waters, with the exception of ships and boats engaged in whaling or similar pursuits and fishery research and fishery protection vessels.

(2) This Recommendation applies to all training for work on board fishing vessels.

[1] Adopted on 21 June 1966 by 330 votes to 0, with 6 abstentions.

(3) This Recommendation does not apply to persons fishing for sport or recreation.

2. For the purpose of this Recommendation, the following terms have the meanings hereby assigned to them:

(a) skipper : any person having command or charge of a fishing vessel ;

(b) mate : any person exercising subordinate command of a fishing vessel, including any person, other than a pilot, liable at any time to be in charge of the navigation of such a vessel ;

(c) engineer : any person permanently responsible for the mechanical propulsion of a fishing vessel, as well as any other person liable at any time to operate and maintain the engines and mechanical equipment of such a vessel ;

(d) skilled fisherman : any experienced member of the deck crew working on board a fishing vessel, participating in the operation of the vessel, preparing gear for fishing, catching fish, loading catch and processing it, and maintaining and repairing nets or other fishing equipment.

II. National Planning and Administration

Planning and Co-ordination

3. In planning a national education and training policy, the competent authorities in the countries possessing or intending to develop a fishing industry should ensure that adequate provision is made in the general network of training facilities for the training of fishermen.

4. Where national circumstances do not permit the development of facilities for the training of fishermen at all levels of skill required, collaboration with other countries, as well as with international organisations, in the development of common fishery training schemes for such skills and occupations as cannot be covered by national programmes should be considered.

5. (1) The activities of all public and private institutions in each country engaged in the training of fishermen should be co-ordinated and developed on the basis of a national programme.

(2) Such a programme should be drawn up by the competent authorities in co-operation with fishing vessel owners' and fishermen's organisations, with educational and fishery research institutions, and with other bodies or individuals having an intimate knowledge of the vocational training of fishermen. In developing countries in which specialised fishery research or development institutes are established in co-operation with other countries or international organisations, such institutes should play a leading part in the establishment of the national programme.

(3) To facilitate the planning, development, co-ordination and administration of fishermen's training schemes, joint advisory policy and administrative bodies should whenever possible be set up at the national level and, where appropriate, also at the regional and local levels.

6. The competent authorities should ensure that the various agencies and institutions responsible for the dissemination of information on

training and employment opportunities, such as primary and secondary schools, vocational guidance and employment counselling services, public employment services, vocational and technical training institutions and fishing vessel owners' and fishermen's organisations, are supplied with complete information on public and private training schemes for fishermen and on conditions of entry into fishing.

7. The competent authorities should ensure that fishermen's vocational training schemes are fully co-ordinated with any other programmes and activities, public or private, related to the fishing industry. In particular, they should make certain that—

(a) fishery research institutions make information on their latest discoveries of practical interest to fishing readily available to training centres and other interested bodies, and through these to working fishermen ; where possible, the research institutions should contribute to the advanced training of fishermen, and fishermen's training centres should, as appropriate, assist these institutions in their work ;

(b) measures are taken, through the provision of general education prior to or simultaneously with vocational training, to advance the general level of education in fishing communities, to promote greater satisfaction among fishermen and to facilitate the assimilation of technical and vocational training ;

(c) arrangements are made, with the co-operation of fishing vessel owners' and fishermen's organisations, in order that, other things being equal, preference may be given in employment placement to persons who have completed a public or private training course ;

(d) arrangements are made, with the co-operation of fishing vessel owners' and fishermen's organisations, particularly in developing countries, for trainees completing public and private courses either to enter employment on fishing vessels or, alternatively, to acquire and operate suitably equipped fishing vessels, either individually, or by forming co-operatives for the joint purchase and use of fishing boats, or by any other appropriate means ;

(e) the number of trained fishermen corresponds to the number of boats and the equipment available or planned to be available in the country.

Financing

8. (1) Fishermen's training schemes should be systematically organised ; financing should be on a regular and adequate basis and should have regard to the present and planned requirements and development of the fishing industry.

(2) Where required, the government should make financial contributions to training schemes carried on by local government or private bodies. These contributions may take the form of general subsidies, grants of land and buildings or of demonstration material such as boats, engines, navigational equipment and fishing gear, provision of instructors free of charge, or payment of fees for trainees.

(3) Training in publicly operated training centres for fishermen should be given without charge to the trainee. In addition, the training

of adults and young persons in need should be facilitated by financial and economic assistance of the kind envisaged in Paragraph 7, subparagraphs (3) and (5), of the Vocational Training Recommendation, 1962.

Training Standards

9. (1) The competent authorities, in co-operation with the joint bodies mentioned in Paragraph 5, subparagraph (3), of this Recommendation, should define and establish general standards for fishermen's training applicable throughout the territory of the country. These standards should be in conformity with the national requirements for obtaining the various fishermen's certificates of competency and should lay down—

(a) the minimum age of entry into fishermen's training schemes ;

(b) the nature of medical examinations, including chest X-rays and hearing and sight tests, required for persons entering training schemes ; the examinations, particularly the hearing and sight tests, may differ for persons entering deck and persons entering engine courses ;

(c) the level of general education which is required for admission to fishermen's training schemes ;

(d) the fishing, navigation and seamanship, safety, engineering, catering and other subject-matter which should be included in the training curricula ;

(e) the amount of practical training, including time spent in engineering shops and at sea, which trainees should undergo ;

(f) the duration of the training courses for the various fishing occupations and the different levels of competency ;

(g) the nature of any examinations following the completion of the training courses ; and

(h) the experience and qualifications of the teaching staff of training institutions.

(2) Where it is not possible to lay down standards applicable throughout the country, recommended standards should be drawn up by the competent authorities, in co-operation with the joint bodies mentioned in Paragraph 5, subparagraph (3), of this Recommendation, to serve as a guide to the setting of standards which are as uniform as possible throughout the country.

III. Training Programmes

10. The curricula of the various training programmes for fishermen should be based on a systematic analysis of the work required in fishing and should be established in co-operation with the joint bodies mentioned in Paragraph 5, subparagraph (3), of this Recommendation. They should be periodically reviewed and kept up to date with technical developments and should, as appropriate for the functions to be exercised, include training in—

(a) fishing techniques, including where appropriate the operation and care of electronic fish-finding devices, and operation, maintenance and repair of fishing gear ;

(b) navigation, seamanship and ship handling appropriate to the sea area and to the type of fishing for which the course is designed, including a proper knowledge of the international Regulations for Preventing Collisions at Sea ;

(c) stowage, cleaning and processing of fish on board ;

(d) vessel maintenance and other related matters ;

(e) operation, maintenance and repair of steam or internal combustion (gasoline or diesel) engines or other equipment which the trainee may be called upon to use ;

(f) operation and care of radio and radar installations which the trainee may be called upon to use ;

(g) safety at sea and safety in handling fishing gear, including such matters as stability, effects of icing, fire fighting, water-tight integrity, personal safety, gear and machinery safeguards, rigging safety measures, engine-room safety, lifeboat handling, use of inflatable life rafts, first aid and medical care and other related matters ;

(h) theoretical subjects relevant to fishing, including marine biology and oceanography, which will enable trainees to gain a broad foundation for further instruction and training leading to promotion or to transfer to another fishing occupation or another type of fishing ;

(i) general education subjects, although this may be provided for to a more limited extent in short courses ;

(j) operation, maintenance and repair of refrigeration systems, fire-fighting equipment, deck and trawling winches and other mechanical equipment of fishing vessels ;

(k) principles of shipboard electrical power installations, and maintenance and repair of the electrical machinery and equipment of fishing vessels ;

(l) health and physical education, especially swimming, where training facilities permit ;

(m) specialised courses in deck, engine and other subjects after an introductory period of general fishing instruction.

11. (1) National standards should, where practicable and appropriate, be established for certificates of competency or diplomas qualifying a person to act as skipper (various grades); mate (various grades) ; engineer (various grades) ; fishery technician (various grades) ; boatswain ; skilled fisherman (various grades) ; cook ; or other deck or engine-room personnel.

(2) Training programmes should be chiefly designed to prepare trainees for certification and should be directly related to national certification standards ; they should take account of the minimum ages and minimum professional experience laid down by the competent authorities in respect of the various grades of certificates of competency.

(3) Where national certification examinations do not exist or do not exist for the particular duty in question, training courses should nevertheless prepare trainees for particular duties such as those listed above. All trainees successfully completing such training courses should receive a diploma concerning the course followed.

12. (1) Programmes should be available to train fishermen to perform duties as skippers and engineers of all types of vessels in use in the fishing fleet of the country concerned, including larger distant-water vessels.

(2) Where appropriate to the vessels in use, college-level fishing and navigation courses should be established which are of the same level as merchant navy officers' training programmes but which provide training in subject-matters appropriate to fishing.

13. The duration of the various training programmes should be sufficient to enable trainees to assimilate the instruction given, and should be determined with reference to such matters as—

(a) the level of training required for the occupation for which the course is designed ;

(b) the general educational level and age required of trainees entering the course ;

(c) the trainees' previous practical experience ; and

(d) the urgency of turning out trained fishermen in the country, subject to the maintenance of adequate standards of training.

14. (1) The teaching staff should consist of persons possessing a broad general education, a theoretical technical education and satisfactory relevant practical fishing experience.

(2) Where it is not possible to recruit a teaching staff with these qualifications, persons with practical experience in fishing and holding appropriate certificates of competency should be employed.

(3) Where it is not possible to recruit a full-time teaching staff with practical fishing experience, persons with satisfactory relevant practical fishing experience should be employed on a part-time basis.

(4) All teaching staff should have an aptitude for teaching and should be given appropriate teacher training by the competent educational authorities.

Pre-Vocational Training

15. In fishing communities, measures consistent with the Minimum Age (Fishermen) Convention, 1959, should be taken to provide pre-vocational training to schoolchildren, including training in elementary practical seamanship, basic commercial fishing techniques and navigational principles, in so far as this is appropriate to the general conditions in the particular country.

Short Courses for Working Fishermen

16. Training courses should be available for working fishermen to enable them to increase their technical skills and knowledge, to keep abreast of improved fishing and navigation techniques, and to qualify for promotion.

17. (1) Training courses for working fishermen should be specifically designed for the purposes of—

(a) complementing the basic long-term courses by providing advanced specialised training for promotion ;

(b) providing training in fishing techniques new to the area ; in operating, maintaining and repairing new types of engines or gear ; and in making gear where appropriate ;

(c) providing all levels of training for fishermen who were unable to participate in a basic long-term training course ;

(d) providing accelerated training in developing countries.

(2) The courses should be of short duration and should be considered to be complementary to and not substitutes for basic long-term training programmes.

18. The courses, which may take the form of mobile courses bringing instructors and demonstration equipment to fishing centres, should in particular consist of programmes involving—

(a) evening courses ;

(b) seasonal courses offered during stormy months or slack fishing periods ; or

(c) daytime courses for which fishermen temporarily leave their work for short periods.

19. (1) All appropriate measures should be taken to enable working fishermen to attend short courses ashore.

(2) Working fishermen should receive adequate financial compensation for the periods in which they attend short training courses.

20. Where long-term courses and short courses for working fishermen do not meet training needs, particularly in isolated areas, these courses may be supplemented by—

(a) special radio and television courses and programmes providing fishing information ;

(b) correspondence courses specially adapted to the needs of working fishermen and arranged for use by study groups with occasional lectures or attendance at training schools ;

(c) periodic visits of research workers and extension officers to fishing communities.

IV. Methods of Training

21. The training methods adopted by fishermen's training schemes should be the most effective possible, having regard to the nature of the courses, the trainees' experience, general education and age, and the demonstration equipment and financial support available.

22. Practical training, in which the students themselves participate, should be an important part of all fishermen's training programmes.

23. (1) Fishing training vessels should be used by all training institutions with programmes for persons entering fishing to provide instruction in fishing techniques, navigation and seamanship, engine operation and other matters. These vessels should conduct actual fishing operations.

(2) Training vessels should, whenever possible, be attached to technical schools providing advanced training.

24. (1) Demonstration equipment such as engines, gear, fishing-boat models, workshop equipment and navigational aids should be used in training programmes.

(2) Such equipment should be prepared in collaboration with fishery research institutions and should include, whenever possible, the latest gear and navigational aids.

(3) Such equipment should be selected with reference to the gear, boats and engines which the trainees may be called upon to use.

(4) Films and other audio-visual aids, although they may be useful in some cases, should not be a substitute for demonstration equipment in the use of which trainees themselves take an active part.

(5) Visits should be organised for trainees to fishing vessels equipped with modern or special installations, to fishery research institutions, or to fishing centres away from the area in which the school is located.

25. Practical training may also be provided by periods of fishing at sea on board commercial fishing vessels.

26. Theoretical training, including general education, given as part of a training course should be directly related to the knowledge and skills required by fishermen and should, wherever possible, be integrated with the practical training offered.

V. International Co-operation

27. (1) Countries should co-operate in promoting fishermen's vocational training, particularly in developing countries.

(2) This co-operation, as appropriate, may include such matters as—

(a) with the help of international organisations or other countries, obtaining and training teaching staff to establish and improve fishermen's training facilities ;

(b) establishing joint training facilities or joint fishery research institutions with other countries ;

(c) making training facilities available to selected trainees or instructor trainees from other countries, and sending trainees or instructor trainees to training facilities in other countries ;

(d) arranging international exchanges of personnel and international seminars and working parties ;

(e) providing instructors for fishermen's training schools in other countries.

The foregoing is the authentic text of the Recommendation duly adopted by the General Conference of the International Labour Organisation during its Fiftieth Session which was held at Geneva and declared closed the twenty-second day of June 1966.

IN FAITH WHEREOF we have appended our signatures this twenty-fourth day of June 1966.

The President of the Conference,
L. CHAJN.

The Director-General of the International Labour Office,
DAVID A. MORSE.

Recommendation 127

Recommendation concerning the Role of Co-operatives in the Economic and Social Development of Developing Countries [1]

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Fiftieth Session on 1 June 1966, and

Having decided upon the adoption of certain proposals with regard to the role of co-operatives in the economic and social development of developing countries, which is the fourth item on the agenda of the session, and

Having determined that these proposals shall take the form of a Recommendation,

adopts this twenty-first day of June of the year one thousand nine hundred and sixty-six the following Recommendation, which may be cited as the Co-operatives (Developing Countries) Recommendation, 1966:

I. Scope

1. This Recommendation applies to all categories of co-operatives, including consumer co-operatives, land improvement co-operatives, agricultural productive and processing co-operatives, rural supply co-operatives, agricultural marketing co-operatives, fishery co-operatives, service co-operatives, handicrafts co-operatives, workers' productive co-operatives, labour contracting co-operatives, co-operative thrift and credit societies and banks, housing co-operatives, transport co-operatives, insurance co-operatives and health co-operatives.

II. Objectives of Policy concerning Co-operatives

2. The establishment and growth of co-operatives should be regarded as one of the important instruments for economic, social and cultural development as well as human advancement in developing countries.

3. In particular, co-operatives should be established and developed as a means of—

(a) improving the economic, social and cultural situation of persons of limited resources and opportunities as well as encouraging their spirit of initiative ;

(b) increasing personal and national capital resources by the encouragement of thrift, by eliminating usury and by the sound use of credit;

(c) contributing to the economy an increased measure of democratic control of economic activity and of equitable distribution of surplus;

[1] Adopted on 21 June 1966 by 317 votes to 0, with 6 abstentions.

(d) increasing national income, export revenues and employment by a fuller utilisation of resources, for instance in the implementation of systems of agrarian reform and of land settlement aimed at bringing fresh areas into productive use and in the development of modern industries, preferably scattered, processing local raw materials;

(e) improving social conditions, and supplementing social services in such fields as housing and, where appropriate, health, education and communications ;

(f) helping to raise the level of general and technical knowledge of their members.

4. Governments of developing countries should formulate and carry out a policy under which co-operatives receive aid and encouragement, of an economic, financial, technical, legislative or other character, without effect on their independence.

5. (1) In elaborating such a policy, regard should be had to economic and social conditions, to available resources and to the role which co-operatives can play in the development of the country concerned.

(2) The policy should be integrated in development plans in so far as this is consistent with the essential features of co-operatives.

6. The policy should be kept under review and adapted to changes in social and economic needs and to technological progress.

7. Existing co-operatives should be associated with the formulation and, where possible, application of the policy.

8. The co-operative movement should be encouraged to seek the collaboration in the formulation and, where appropriate, application of the policy, of organisations with common objectives.

9. (1) The governments concerned should associate co-operatives on the same basis as other undertakings with the formulation of national economic plans and other general economic measures, at least whenever such plans and measures are liable to affect their activities. Co-operatives should also be associated with the application of such plans and measures in so far as this is consistent with their essential characteristics.

(2) For the purposes provided for in Paragraph 7 and Paragraph 9, subparagraph (1), of this Recommendation, federations of co-operatives should be empowered to represent their member societies at the local, regional and national levels.

III. Methods of Implementation of Policy concerning Co-operatives

A. Legislation

10. All appropriate measures, including the consultation of existing co-operatives, should be taken—

(a) to detect and eliminate provisions contained in laws and regulations which may have the effect of unduly restricting the development

of co-operatives through discrimination, for instance in regard to taxation or the allocation of licences and quotas, or through failure to take account of the special character of co-operatives or of the particular rules of operation of co-operatives;

(b) to avoid the inclusion of such provisions in future laws and regulations;

(c) to adapt fiscal laws and regulations to the special conditions of co-operatives.

11. There should be laws or regulations specifically concerned with the establishment and functioning of co-operatives, and with the protection of their right to operate on not less than equal terms with other forms of enterprise. These laws or regulations should preferably be applicable to all categories of co-operatives.

12. (1) Such laws and regulations should in any case include provisions on the following matters:

(a) a definition or description of a co-operative bringing out its essential characteristics, namely that it is an association of persons who have voluntarily joined together to achieve a common end through the formation of a democratically controlled organisation, making equitable contributions to the capital required and accepting a fair share of the risks and benefits of the undertaking in which the members actively participate;

(b) a description of the objects of a co-operative, and procedures for its establishment and registration, the amendment of its statutes, and its dissolution;

(c) the conditions of membership, such as the maximum amount of each share and, where appropriate, the proportion of the share due at the moment of subscription and the time allowed for full payment, as well as the rights and duties of members, which would be laid down in greater detail in the by-laws of co-operatives;

(d) methods of administration, management and internal audit, and procedures for the establishment and functioning of competent organs;

(e) the protection of the name " co-operative ";

(f) machinery for the external audit and guidance of co-operatives and for the enforcement of the laws and regulations.

(2) The procedures provided for in such laws or regulations, in particular the procedures for registration, should be as simple and practical as possible, so as not to hinder the creation and development of co-operatives.

13. Laws and regulations concerning co-operatives should authorise co-operatives to federate.

B. Education and Training

14. Measures should be taken to disseminate a knowledge of the principles, methods, possibilities and limitations of co-operatives as widely as possible among the peoples of developing countries.

15. Appropriate instruction on the subject should be given not only in co-operative schools, colleges and other specialised centres but also in educational institutions such as—

(a) universities and centres of higher education;

(b) teachers' training colleges;

(c) agricultural schools and other vocational educational establishments and workers' education centres;

(d) secondary schools;

(e) primary schools.

16. (1) With a view to promoting practical experience in co-operative principles and methods, the formation and operation of student co-operatives in schools and colleges should be encouraged.

(2) Similarly, workers' organisations and craftsmen's associations should be encouraged and helped in the implementation of plans for the promotion of co-operatives.

17. Steps should be taken, in the first place at the local level, to familiarise the adult population with the principles, methods and possibilities of co-operatives.

18. Full use should be made of such media of instruction as text-books, lectures, seminars, study and discussion groups, mobile instructors, guided tours of co-operative undertakings, the press, films, radio and television and other media of mass communication. These should be adapted to the particular conditions of each country.

19. (1) Provision should be made both for appropriate technical training and for training in co-operative principles and methods of persons who will be—and, where necessary, of persons who are—office-bearers or members of the staffs of co-operatives, as well as of their advisers and publicists.

(2) Where existing facilities are inadequate, specialised colleges or schools should be established to provide such training, which should be given by specialised teachers or leaders of the co-operative movement with teaching materials adapted to the requirements of the country; if such specialised institutions cannot be established, special courses on co-operation should be given either by correspondence or in such establishments as schools of accountancy, schools of administration and schools of commerce.

(3) The use of special programmes of practical training should be one of the means of contributing to the education and basic and further training of members of co-operatives; these programmes should take into account local cultural conditions, and the need to disseminate literacy and knowledge of elementary arithmetic.

C. Aid to Co-operatives

Financial Aid

20. (1) Where necessary, financial aid from outside should be given to co-operatives when they initiate their activities or encounter financial obstacles to growth or transformation.

(2) Such aid should not entail any obligations contrary to the independence or interests of co-operatives, and should be designed to encourage rather than replace the initiative and effort of the members of co-operatives.

21. (1) Such aid should take the form of loans or credit guarantees.

(2) Grants and reductions in or exemptions from taxes may also be provided, in particular, to help finance—

(a) publicity, promotional and educational campaigns ;

(b) certain clearly defined tasks in the public interest.

22. Where such aid cannot be provided by the co-operative movement, it should preferably be given by the State or other public bodies, although it may, if necessary, come from private institutions. Such aid should be co-ordinated so as to avoid overlapping and dispersal of resources.

23. (1) Grants and tax exemptions or reductions should be subject to conditions prescribed by national laws or regulations and relating in particular to the use to be made of the aid and the amount thereof ; the conditions of loans and credit guarantees may be determined in each case.

(2) The competent authority should ensure that the use of financial aid and, in the case of a loan, its repayment, are adequately supervised.

24. (1) Financial aid from public or semi-public sources should be channelled through a national co-operative bank or, failing that, another central co-operative institution capable of assuming responsibility for its use and, where appropriate, repayment ; pending the establishment of such institutions the aid may be given directly to individual co-operatives.

(2) Subject to the provisions of Paragraph 20, subparagraph (2), of this Recommendation, financial aid from private institutions may be given directly to individual co-operatives.

Administrative Aid

25. While it is essential that the management and administration of a co-operative be, from the outset, the responsibility of the members and persons elected by them, the competent authority should, in appropriate cases and normally for an initial period only—

(a) assist the co-operative in obtaining and remunerating competent staff ;

(b) place at the disposal of the co-operative persons competent to give guidance and advice.

26. (1) Generally, co-operatives should be able to obtain guidance and advice, which respect their autonomy and the responsibilities of their members, their organs and their staff, on matters relating to management and administration, as well as on technical matters.

(2) Such guidance and advice should preferably be given by a federation of co-operatives or by the competent authority.

D. Supervision and Responsibility for Implementation

27. (1) Co-operatives should be subject to a form of supervision designed to ensure that they carry on their activities in conformity with the objects for which they were established and in accordance with the law.

(2) Supervision should preferably be the responsibility of a federation of co-operatives or of the competent authority.

28. Auditing of the accounts of co-operatives affiliated to a federation of co-operatives should be the responsibility of that federation ; pending the establishment of such a federation, or where a federation is unable to provide this service, the competent authority or a qualified independent body should assume the task.

29. The measures referred to in Paragraphs 27 and 28 of this Recommendation should be so planned and carried out as to—

(a) ensure good management and administration of co-operatives ;

(b) protect third parties ;

(c) provide an opportunity of completing the education and training of the office-bearers and members of the staff of co-operatives through practice and through critical examination of mistakes.

30. (1) The functions of promoting co-operatives, providing for education concerning co-operatives and for the training of office-bearers and members of the staff of co-operatives, and giving aid in their organisation and functioning, should preferably be performed by one central body so as to ensure coherent action.

(2) The performance of these functions should preferably be the responsibility of a federation of co-operatives ; pending the establishment of such a body the competent authority or, where appropriate, other qualified bodies, should assume the task.

31. (1) The functions referred to in Paragraph 30 of this Recommendation should, wherever possible, be discharged as full-time work.

(2) They should be performed by persons who have received training specifically directed towards the exercise of such functions ; such training should be provided by specialised institutions or, wherever suitable, through specialised courses in schools and colleges referred to in Paragraph 19 of this Recommendation.

32. The competent authority should collect and publish at least once a year a report and statistics relating to the operations and growth of co-operatives in the national economy.

33. Where the services of federations of co-operatives or of other existing institutions cannot adequately meet the need for research, exchanges of experience and publications, special institutions, serving the entire country or several regions, should, if possible, be established.

IV. International Collaboration

34. (1) Members should, to the greatest extent possible, collaborate in providing aid and encouragement to co-operatives in developing countries.

(2) Such collaboration should be envisaged—

(a) between developing countries ;

(b) between countries of a particular region, especially within the framework of regional organisations, where such exist ; and

(c) between countries with an old-established co-operative movement and developing countries.

(3) As appropriate, the help of national co-operative organisations should be enlisted for such collaboration, and use should be made, particularly with a view to the co-ordination of international effort, of international co-operative organisations and other interested international bodies.

(1) The collaboration should extend to such measures as—

(a) the increased provision of technical assistance to the co-operative movement of developing countries, wherever possible in the form of co-ordinated programmes involving different agencies, both intergovernmental and non-governmental ;

(b) the preparation and supply of information, textbooks, audio-visual aids and analogous material to assist in the drafting of legislation, in instruction on co-operation and in the training of office-bearers and qualified staffs of co-operatives ;

(c) the exchange of qualified personnel ;

(d) the grant of fellowships ;

(e) the organisation of international seminars and discussion groups ;

(f) the inter-co-operative exchange of goods and services ;

(g) the initiation of systematic research into the structure, working methods and problems of co-operative movements in developing countries.

V. Special Provisions concerning the Role of Co-operatives in Dealing with Particular Problems

35. It should be recognised that co-operatives may, in certain circumstances, have a special role to play in dealing with particular problems of developing countries.

36. Suggestions illustrating the use which may be made of various forms of co-operatives in the successful implementation of agrarian reform and in the improvement in the level of living of the beneficiaries are set forth in the Annex to this Recommendation.

ANNEX

1. In view of their importance as a means of promoting general economic and social progress and as a means of directly associating the rural population with the development process, as well as in view of their educational and cultural value, co-operatives should be considered as having a vital role to play in programmes of agrarian reform.

2. Co-operatives should be used as a means of assessing the problems and interests of the rural population in the planning and preparation of agrarian reform measures. They should also serve for channelling information among agriculturists and making the purposes, principles and methods of such reforms understood.

3. Particular attention should be paid to the development of appropriate forms of co-operatives adapted to the various patterns and phases of agrarian reform. They should enable cultivators to operate holdings efficiently and productively and allow for the greatest possible initiative and participation of the membership.

4. Where appropriate, suitable voluntary forms of co-operative land use should be encouraged. These forms may range from the organisation of certain services and farming operations in common to the complete pooling of land, labour and equipment.

5. Wherever appropriate the voluntary consolidation of fragmentary holdings through co-operatives should be encouraged.

6. In cases where measures are being envisaged for the transfer of ownership or division of large estates, due consideration should be given to the organisation by the beneficiaries of co-operative systems of holding or cultivation.

7. The establishment of co-operatives should also be considered in connection with land settlement schemes, especially as regards land reclamation and improvement measures and the organisation of joint services and joint farming operations for settlers.

8. Development of co-operative thrift and credit societies and co-operative banks should be encouraged among the beneficiaries of agrarian reforms as well as among other small farmers for the purpose of—

(a) providing loans to cultivators for the purchase of equipment and other farm requisites;

(b) encouraging and assisting cultivators to save and accumulate capital;

(c) advancing loans to, and promoting thrift among, agricultural families, including those of hired workers, who normally would not have access to established sources of credit;

(d) facilitating the implementation of special governmental credit schemes through an efficient channelling of loans to beneficiaries and appropriate supervision of the use made of such loans and of their timely reimbursement.

9. The development of supply, marketing or multi-purpose co-operatives should be encouraged for the purpose of—

(a) the joint purchase and supply of farm requisites of good quality on favourable terms;

(b) the supply of basic domestic requirements for all categories of agricultural workers;

(c) the joint conditioning, processing and marketing of agricultural products.

10. Encouragement should be given to the development of co-operatives providing farmers with other services such as the joint use of farm machinery, electrification, livestock breeding, the provision of veterinary and pest control services, facilities for irrigation, and crop and livestock insurance.

11. With a view to improving employment opportunities, working conditions and income, landless agricultural workers should be assisted, where appropriate, to organise themselves voluntarily into labour contracting co-operatives.

12. Agricultural co-operatives of different localities in areas in which agrarian reforms are being implemented should be encouraged to combine their activities where this is economically advantageous.

13. Due consideration should also be given to the encouragement and development of other types of co-operative activities providing full- or part-time non-agricultural employment for members of farmers' families (for instance, crafts, home or cottage industries) adequate distribution of consumer goods, and social services which the State may not always be in a position to provide (for instance, health, education, culture, recreation or transport).

14. The interchange and dissemination of information on the methods, possibilities and limitations of co-operatives in relation to agrarian reform should be encouraged by all possible means so that the experience acquired may be made available to the largest possible number of countries.

The foregoing is the authentic text of the Recommendation duly adopted by the General Conference of the International Labour Organisation during its Fiftieth Session which was held at Geneva and declared closed the twenty-second day of June 1966.

IN FAITH WHEREOF we have appended our signatures this twenty-fourth day of June 1966.

The President of the Conference,

L. CHAJN.

The Director-General of the International Labour Office,

DAVID A. MORSE.

Resolutions Adopted by the International Labour Conference at Its 50th Session

(Geneva, 1966)

I

Resolution concerning the Admission of Guyana to the International Labour Organisation [1]

The General Conference of the International Labour Organisation,

Having been seized of an application from the Government of Guyana for admission to membership of the International Labour Organisation,

Decides to admit Guyana to membership of the International Labour Organisation with the same rights and obligations as the other Members of the Organisation.

The Conference takes note of the fact that the Government of Guyana recognises that Guyana remains bound by the obligations of the international labour Conventions the provisions of which had formerly been declared applicable by the United Kingdom to the territory of Guyana.

The Conference also takes note of the fact that the Government of Guyana undertakes to ratify immediately the Freedom of Association and Protection of the Right to Organise Convention, 1948, and to examine a number of other Conventions with a view to ratification, and that it also undertakes to continue to apply the non-metropolitan Conventions which the United Kingdom had applied hitherto until it has been able to ratify the corresponding " metropolitan " Conventions.

The Conference authorises the Governing Body of the International Labour Office to make the necessary arrangements with the Government of Guyana with regard to its financial contributions.

The Conference takes note of the fact that the Government of Guyana has already communicated to the Director-General of the International Labour Office its formal acceptance of the obligations of the Constitution of the International Labour Organisation and that accordingly the admission of Guyana to membership of the International Labour Organisation will take effect on the adoption of this resolution by the Conference.

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[1] Adopted on 8 June 1966 by 376 votes to 0, with no abstentions.

II

Resolution concerning the Role of the International Labour Organisation in the Industrialisation of Developing Countries [1]

The General Conference of the International Labour Organisation,

Noting the solemn obligation of the International Labour Organisation under the Declaration of Philadelphia to promote a continuous rise in welfare and in the standard of living of mankind,

Recalling resolution 2089 (XX) of the General Assembly of the United Nations concerning the establishment of the United Nations Organisation for Industrial Development, adopted on 20 December 1965,

Considering the essential part played by industrialisation in economic and social development, and its contribution to the improvement of the standard of living of the populations of developing countries,

Recognising that industrialisation is of basic importance for developing countries,

Noting that the industrial progress of the developing countries is one of the basic means for strengthening their independence and, at the same time, is an essential condition for accelerating the rate of growth of their production and consumption in order to reach a high state of economic development in a reasonably short period of time,

Convinced that the planned development of industry is of primary importance for the achievement of economic progress in the developing countries, and recalling the provisions of the resolution concerning the concept of democratic decision-making in programming and planning for economic and social development which was adopted by the International Labour Conference at its 48th Session,

Recognising the urgent need for appropriate action programmes for accelerating industrialisation in developing countries through their own joint action and with the co-operation of industrially more advanced nations, as well as with the assistance of international organisations,

Taking into account the magnitude of such action programmes, the resources which their implementation requires, the need for economising scarce resources, and the concomitant responsibility for co-ordination at all levels, especially in respect of efforts of the competent United Nations specialised agencies,

Considering that the industrialisation of developing countries will require the mobilisation of considerable investment capital,

Conscious of the importance of the role of the International Labour Organisation in the field of industrialisation and of the tasks which not only governments but also workers' and employers' organisations have to perform in this field,

Reaffirming the intention of the International Labour Organisation to contribute to the full in the intensification of the international effort

[1] Adopted on 20 June 1966.

for industrial development so that its resources and experience can be fully utilised in this effort,

Emphasising the importance of the operational experience of the International Labour Organisation in the fields of manpower training and of management development and productivity,

Convinced that the International Labour Organisation must pay the greatest possible attention to the rapid improvement of the standard of living of the peoples of the developing countries,

Believing that the relevant international labour standards have an important part to play in ensuring that industrialisation benefits the whole population,

Welcoming the fact that the Director-General has devoted Part I of his Report to the 50th Session of the Conference to questions relating to industrialisation and labour ;

1. Notes the growing concern of international agencies with problems of industrialisation in developing countries and welcomes the impetus provided by the newly established United Nations Organisation for Industrial Development (U.N.O.I.D.).

2. Confirms the decision of the Governing Body of the International Labour Office—

(a) to maintain and expand its assistance to developing countries in the vocational training within its competence, in particular of skilled workers, technicians and management personnel, in order to accelerate their industrial development ;

(b) to continue to make available to the same countries its special experience by reason of its tripartite structure.

3. Invites the Governing Body to request the Director-General—

(a) to consult member States concerning the work programmes which they consider it appropriate for the International Labour Organisation to undertake with respect to the social, labour and vocational training problems raised by industrialisation in co-ordination with the programmes of the U.N.O.I.D. ;

(b) to co-operate with the U.N.O.I.D., within the field of competence of the International Labour Organisation in connection with the industrial development of the developing countries ;

(c) to submit to the 51st Session of the International Labour Conference plans, considered by the Governing Body taking into account the discussions of the Governing Body at its 165th Session, the discussions of the present session of the Conference, and the results of consultations with member States, for adapting and intensifying the activities of the International Labour Organisation relating to the industrialisation of the developing countries, in full co-operation and co-ordination with the U.N.O.I.D. and the other competent bodies and agencies of the United Nations family—

(i) by contributing to the organisation and implementation of vocational training at the national level ;

(ii) by providing assistance in drawing up social programmes designed to speed up industrialisation and to protect and raise the living standards of the people ;

(iii) by providing assistance in the formulation and implementation of active manpower policies, as well as occupational safety and health policies ;

(iv) by promoting the strict application of the Constitution, principles and relevant basic standards and decisions of the International Labour Organisation.

4. Invites governments and organisations of workers and employers in member States of the International Labour Organisation to co-operate fully in these activities.

5. Decides that at the 51st Session of the General Conference the plans in question shall be discussed in connection with item 8 of the agenda, namely " The International Labour Organisation and technical co-operation " and submitted to the Conference for a decision.

6. Conscious of the need to avoid all unnecessary duplication and wasteful overlapping among the activities of various United Nations agencies, wishes and hopes that the programme of action of the United Nations for the promotion and acceleration of industrial development will take this principle into account, and that the fullest use will be made of the resources and experience of the International Labour Organisation.

7. Reaffirms its resolve to participate fully in the said programme and welcomes the proposal according to which additional consultations should take place with a view to reaching an agreement on a generally acceptable formula for co-operation.

III

Resolution concerning the Contribution of the International Labour Organisation to the International Year for Human Rights in 1968 [1]

The General Conference of the International Labour Organisation,

Considering that the International Labour Organisation has pioneered in the field of human rights and has adopted a number of instruments concerning fundamental principles of human rights, such as the Conventions concerning freedom of association and protection of the right to organise, abolition of forced labour, discrimination in respect of employment and occupation, and equal remuneration for men and women workers for work of equal value,

Considering that the General Assembly of the United Nations in its resolution 1961 (XVIII) of 12 December 1963 designated 1968 as the International Year for Human Rights and in its resolution 2081 (XX) of

[1] Adopted on 20 June 1966 by 232 votes to 4, with no abstentions.

20 December 1965 called upon member States of the United Nations and Members of the specialised agencies, regional intergovernmental organisations, the specialised agencies and the national and international organisations concerned to devote the year 1968 to intensifying efforts and undertakings in the field of human rights, including an international review of achievements in this field,

Considering that the protection and advancement of human rights, as proclaimed by the Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948, are of fundamental importance for the fulfilment of the objectives of the International Labour Organisation,

Considering that the International Labour Organisation should pursue its standard-setting activities in conformity with the relevant articles of the Universal Declaration of Human Rights lying within its competence and should meet the new challenge of rapidly changing conditions in all parts of the world,

Considering the urgent need for concerted and increased efforts at the international level, including increased allocations for technical co-operation projects as well as staff and financial resources for the implementation of the objectives of International Labour Organisation and United Nations instruments of human rights, so as to ensure respect for these fundamental rights everywhere ;

1. Welcomes the decision of the United Nations General Assembly to designate the year 1968 as the International Year for Human Rights.

2. Notes with satisfaction the intention of the Director-General to make the human rights programme and action of the International Labour Organisation the central theme of his Report to the 1968 Session of the International Labour Conference.

3. Pledges the continued co-operation of the International Labour Organisation with the United Nations in the advancement of universal respect for and observance of human rights everywhere.

4. Appeals to member States which have ratified or will ratify the international labour Conventions concerning human rights to implement these Conventions fully, and invites those which have not ratified these Conventions to do so before 1968.

5. Calls on employers' and workers' organisations in member States to intensify their efforts during the International Year for Human Rights to achieve the implementation of the objectives of the Universal Declaration of Human Rights.

6. Invites the Governing Body of the International Labour Office to request the Director-General to make the necessary arrangements for close co-operation with the United Nations in the preparation of and participation in the International Year for Human Rights in 1968.

7. Invites the Governing Body of the International Labour Office to take the following action with respect to human rights questions falling within the competence of the International Labour Organisation:

(a) to promote the observance of fundamental human rights in all member States ;

(b) to review and assess the role, objectives and activities of the International Labour Organisation in the field of human rights, including the possibilities of extending standard-setting activities in this field ;

(c) to encourage technical co-operation projects and advisory missions designed to promote human rights objectives everywhere ;

(d) to consider the possibility of co-ordinating research, publicity, technical co-operation projects, advisory missions and standard-setting activities into a significant concerted programme, and of allocating adequate financial resources and staff to carry it out.

IV

Resolution concerning the Development of Human Resources [1]

The General Conference of the International Labour Organisation,

Considering that the development and utilisation of human resources constitute an essential element in economic growth and social progress,

Having regard to the fact that an ever-increasing number of States are drawing up plans for the development of human resources which are an integral part of their economic and social development programmes,

Considering that the International Labour Organisation has a special part to play at the international level in efforts relating to vocational preparation of manpower and better utilisation of human resources for economic and social development,

Recalling the objectives and content of the programme of the International Labour Organisation in the field of human resources, as defined in the first report of the Working Party on the Programme and Structure of the International Labour Organisation to the International Labour Conference, which was submitted to, and noted by, the Conference at its 49th Session,

Considering the provisions of the existing international Conventions and Recommendations which relate directly to the development and utilisation of human resources, especially the Vocational Training Recommendation, 1962, and the Employment Policy Convention and Recommendation, 1964,

Noting that the Economic and Social Council of the United Nations, at its 39th Session, and the General Assembly of the United Nations, at its 20th Session, adopted resolutions concerning the development and utilisation of human resources which call on the competent organisations in the United Nations family, including the International Labour Organisation, to take concerted steps to prepare programmes of action for promoting training and utilisation of human resources in the developing countries,

Considering that it is necessary to ensure the closest co-ordination between the organisations in the United Nations system, with a view to

[1] Adopted on 20 June 1966.

giving the maximum effectiveness to aid in the development of human resources ;

1. Expresses a desire for closer co-operation between the organisations in the United Nations family with a view to intensifying steps to develop and make better use of human resources and to train national personnel at all levels systematically and on the basis of long-term plans or programmes.

2. Invites the Governing Body of the International Labour Office to request the Director-General—

(a) to give his full support to these steps, bearing in mind that the International Labour Organisation has a special responsibility to promote human fulfilment and ensure that a policy for the development and utilisation of human resources is based on the right of each person to obtain employment, to enjoy the fruits of the production to which he has contributed, and to develop his faculties to the fullest extent ;

(b) to give high priority to the preparation by the International Labour Office of studies on the training, development and utilisation of human resources ;

(c) to undertake and give support to regional, area and national projects in the development of human resources by training schemes and other programmes designed to meet special needs and requirements.

3. Invites member States—

(a) when drawing up their plans and programmes for economic and social development, to take fully into account the requirements of a long-term policy for the development and utilisation of human resources ;

(b) to collaborate with the International Labour Organisation and the other organisations in the United Nations system, as appropriate, with a view to preparing and putting into effect concerted steps to promote the development and utilisation of human resources, especially in the developing countries ;

(c) to ratify and apply the I.L.O. standards relating to the development of human resources, especially the Employment Policy Convention and Recommendation, 1964.

V

Resolution concerning National Labour Departments and Other Public Institutions Responsible for the Administration of Labour Matters [1]

The General Conference of the International Labour Organisation,

Recognising the important role of national labour departments in the framing and implementation of labour policy and in the economic and social development of member States, particularly in relation to the

[1] Adopted on 20 June 1966 by 203 votes to 1, with 3 abstentions.

development and utilisation of human resources adequate in number and skills for industrial development,

Considering the vital role of labour ministries and other public institutions responsible for the administration of labour matters in contributing to the stability and effectiveness of governments of member States through the establishment of good labour relations and the active participation of employers' and workers' organisations in the formulation and implementation of programmes and plans for industrial development,

Recalling that at its 36th Session the International Labour Conference held an extensive exchange of views on the organisation and working of national labour departments and adopted guidelines in the form of " Observations and Conclusions regarding the Organisation and Working of National Labour Departments " and recognised the usefulness of further study of the subject ;

Invites the Governing Body of the International Labour Office—

(a) to call the special attention of governments of member States to the importance of strong labour departments to assist in the framing and implementation of governmental programmes of economic and social development, utilisation of human resources, labour law and labour relations, occupational safety and health and—in certain countries—social security ;

(b) to intensify efforts through technical co-operation and other appropriate means to encourage member States to develop and strengthen their labour departments ;

(c) to consider the desirability of again placing an item on the agenda of a future session of the Conference for general discussion to examine the organisation and working of national labour departments and other public institutions responsible for the administration of labour matters in the light of developments since 1953.

VI

Resolution concerning Special Youth Training and Employment Programmes [1]

The General Conference of the International Labour Organisation,

Considering the importance of the problems of employment for youth and the need to search for adequate means of ensuring that young people will become involved in economic and social development in all countries, especially in developing countries,

Recognising that in a number of member States, both developed and developing, young persons are faced with many problems stemming primarily from lack of adequate general education and vocational training and consequent unemployment or underemployment,

Considering that continual technological progress is constantly changing the nature of the need for workers and that there is therefore an urgent need to relate more accurately the education and training of

[1] Adopted on 20 June 1966 by 211 votes to 4, with no abstentions.

young people to the estimated future requirements for varying skills and abilities in each country,

Noting also the utilisation in various member States of special youth programmes aimed at complementing the results achieved through conventional educational and training programmes and at orienting youth training and activities towards socially and economically desirable goals,

Considering the special problems of the relationship between economic and social activities involving young persons in such programmes,

Noting the suggestions made in this connection by the Director-General to the 164th and 165th Sessions of the Governing Body of the International Labour Office and in Part II of his Report to the 50th Session of the International Labour Conference and the positive results achieved by certain countries in that regard,

Recognising that the International Labour Organisation has special competence to contribute to international efforts to find appropriate solutions to such problems ;

Invites the Governing Body of the International Labour Office—

(a) as a matter of priority, to take all measures as appropriate to assemble and analyse the relevant experience of member States on the problem of young persons with particular reference to training and employment programmes, including national service programmes, and to make this report available to member States ;

(b) to consider the desirability, within the limits of the possibilities afforded by I.L.O. programmes, of placing on the agenda of future regional conferences the problem of youth employment and training within national civic service programmes, if any, or of convening regional meetings to consider the problem in the light of the present position ;

(c) to consider the inclusion of an item concerning the special problems pertaining to the training and employment of youth in the agenda of an early session of the Conference ; and

(d) to take a new approach to all measures likely to assist the governments of member States to solve the problem of youth employment.

VII

Resolution concerning Workers' Participation in Undertakings [1]

The General Conference of the International Labour Organisation,

Pointing out that the Constitution of the International Labour Organisation states, in its Annex entitled " Declaration concerning the Aims and Purposes of the International Labour Organisation ", that " The Conference recognises the solemn obligation of the International Labour Organisation to further among the nations of the world programmes which will achieve: ... *(e)* the effective recognition of the right of collective bargaining, the co-operation of management and labour in the continuous improvement of productive efficiency, and the colla-

[1] Adopted on 20 June 1966.

boration of workers and employers in the preparation and application of social and economic measures ",

Recalling the provisions of the Co-operation at the Level of the Undertaking Recommendation (No. 94), adopted by the International Labour Conference in 1952, and of the Employment Policy Convention and Recommendation (No. 122), adopted by the International Labour Conference in 1964, and other relevant decisions of the International Labour Organisation,

Noting that technological progress and economic expansion have an increasingly important influence on conditions of life and work,

Noting that in various countries with different economic and social structures efforts and experiments have been made and are being made to enable workers to participate in the decisions taken in their undertakings, especially when such decisions affect their employment and their conditions of life and work ;

Invites the Governing Body of the International Labour Office to request the Director-General—

(a) to undertake a study of the various methods currently used throughout the world to enable workers to participate in decisions within undertakings ;

(b) to consider, within the framework of the workers' education programme, the convening of international seminars to discuss the problems involved and exchange views and experience ; and

(c) to consider the placing of this question on the agenda of a future session of the Conference.

VIII

Resolution concerning the Role of Co-operatives in Economic and Social Development [1]

The General Conference of the International Labour Organisation,

Considering the primordial importance of co-operatives in economic and social development,

Considering the adoption by the International Labour Conference at its 50th Session of a Recommendation concerning the role of co-operatives in the economic and social development of developing countries,

Taking into consideration the necessity of concerted and co-ordinated international action in order to raise standards of living and employment as a result of co-operative action ;

Invites member States—

1. To provide periodically information to the interested national and international organisations concerning co-operative action in their respective countries;

[1] Adopted on 20 June 1966 by 212 votes to 0, with 5 abstentions.

2. To give due consideration to the idea of international co-operative banking with a view to increasing the availability of financial aid from international sources for co-operative development. In collaboration with the appropriate international organisations and taking into account the existing institutions working in the field, Members should accordingly undertake a survey of needs and possibilities, including the feasibility of establishing an international banking institution for this particular purpose.

IX

Resolution concerning the Role of Co-operatives in the Economic and Social Development of Developing Countries [1]

The General Conference of the International Labour Organisation,

Considering the primordial importance of co-operatives in economic and social development,

Considering the adoption by the International Labour Conference at its 50th Session of a Recommendation concerning the role of co-operatives in the economic and social development of developing countries,

Taking into consideration the necessity of concerted and co-ordinated international action in order to raise standards of living and employment by co-operative action ;

Invites the international bodies concerned, to the greatest possible extent, to collaborate amongst themselves and with the member States in aiding and encouraging the promotion of co-operatives in developing countries.

X

Resolution concerning the Placing on the Agenda of the Next Ordinary Session of the Conference of the Question of the Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning Old-Age, Invalidity and Survivors' Pensions [2]

The General Conference of the International Labour Organisation,

Having adopted the report of the Committee appointed to consider the fifth item on the agenda, and

Having in particular approved as general conclusions, with a view to the consultation of governments, proposals for a Convention and a Recommendation concerning old-age, invalidity and survivors' pensions ;

Decides that an item entitled " Revision of Conventions Nos. 35, 36, 37, 38, 39 and 40 concerning old-age, invalidity and survivors' pensions " shall be included in the agenda of its next ordinary session for a second discussion, with a view to the adoption of a Convention and a Recommendation.

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[1] Adopted on 20 June 1966 by 216 votes to 0, with 4 abstentions.

[2] Adopted on 22 June 1966 by 313 votes to 0, with no abstentions.

XI

Resolution concerning the Code of Practice on Safety on Board Fishing Vessels [1]

The General Conference of the International Labour Organisation,

Recording its appreciation of the attention which has been given by the International Labour Office to the drafting of an international code of practice on safety on board fishing vessels for joint consideration by the International Labour Organisation, the Intergovernmental Maritime Consultative Organisation and the Food and Agriculture Organisation of the United Nations ;

Urges that this code of practice should now be finalised and adopted at the earliest possible date.

XII

Resolution concerning the Future Work of the International Labour Organisation on Fishermen's Questions [1]

The General Conference of the International Labour Organisation,

Welcoming the progress being made within the International Labour Organisation towards the solution of questions of importance to fishermen and particularly the drawing up of international instruments dealing with accommodation on board fishing vessels, vocational training for fishermen, and fishermen's certificates of competency ;

Recalls that the Committee on Conditions of Work in the Fishing Industry, at its meeting in Geneva from 10 to 18 December 1962, unanimously adopted a resolution in which it expressed the opinion that a number of other important questions concerned with fishermen's conditions of employment should be considered as soon as possible ;

Therefore requests the Governing Body of the International Labour Office to consider the convening of further meetings of the Committee on Conditions of Work in the Fishing Industry, taking into account the needs, different conditions and circumstances in member countries, for the purpose of studying in particular the stabilisation of fishermen's employment and earnings ; working hours of fishermen ; manning standards ; fishermen's pensions ; sickness insurance ; holidays with pay ; medical care on board ; and repatriation.

XIII

Resolution concerning the Placing on the Agenda of the Next Ordinary Session of the Conference of the Question of Examination of Grievances and Communications within the Undertaking [2]

The General Conference of the International Labour Organisation,

Having adopted the report of the Committee appointed to consider the seventh item on the agenda,

[1] Adopted on 20 June 1966.

[2] Adopted on 21 June 1966 by 283 votes to 0, with 1 abstention.

Having in particular approved as general conclusions, with a view to the consultation of governments, proposals for a Recommendation concerning the examination of grievances within the undertaking with a view to their settlement and for a Recommendation concerning communications within the undertaking,

Decides that the question of examination of grievances and communications within the undertaking shall be included in the agenda of its next ordinary session for second discussion, with a view to the adoption of two Recommendations.

XIV

Resolution concerning the Adoption of the Budget for the 49th Financial Period (1967) and the Allocation of Expenses among Member States for 1967 [1]

The General Conference of the International Labour Organisation,

In virtue of the Financial Regulations, passes for the 49th financial period, ending 31 December 1967, the net budget of expenditure of the International Labour Organisation amounting to $22,472,398 and the net budget of income amounting to $22,472,398 and resolves that the budget of income from member States shall be allocated among them in accordance with the scale of contributions recommended by the Finance Committee of Government Representatives.

XV

Resolution concerning the Contributions Payable to the I.L.O. Staff Pensions Fund in 1967 [2]

The General Conference of the International Labour Organisation—

Decides that the contribution of the International Labour Organisation to the Pensions Fund for 1967 under article 7, paragraph *(a)*, of the Staff Pensions Regulations shall be 14 per cent. of the pensionable emoluments of the members of the Fund ;

Decides that, for the year 1967, the officials mentioned in article 4, paragraph *(a)* (i), of the I.L.O. Staff Pensions Regulations shall continue to pay an additional 1 per cent. of their pensionable emoluments (making a total of 7 ½ per cent.), and those mentioned in article 4, paragraph *(a)* (ii), an additional ½ per cent. (making a total of 5 ½ per cent.) if their pensionable emoluments exceed the equivalent of Swiss francs 6,500 per annum, and an additional ¼ per cent. (making a total of 5 ¼ per cent.) if their emoluments are the equivalent of Swiss francs 6,500 or less ;

Resolves that, in continuation of the arrangement approved in previous years, the whole budgetary vote for 1967 in respect of the contributions of the Organisation to the I.L.O. Staff Pensions Fund should be paid to the Fund.

[1] Adopted on 14 June 1966 by 333 votes to 3, with 23 abstentions.

[2] Adopted on 14 June 1966.

XVI

Resolution concerning Amendments to the Regulations of the I.L.O. Staff Pensions Fund [1]

The General Conference of the International Labour Organisation—

Decides to amend the Regulations of the I.L.O. Staff Pensions Fund in accordance with the texts which appear on pages II and III of the *Provisional Record*, No. 9.

(These texts are reproduced below. The new text is in italic type; brackets denote passages to be deleted.)

AMENDMENTS TO THE REGULATIONS OF THE I.L.O. STAFF PENSIONS FUND

Article 7

The International Labour Organisation shall contribute to the Pensions Fund—

. . . . . .

(b) [on 1 July 1961 and thereafter annually] *Annually*, on 1 January, [through 1 January 1974,] the [sum] *sums* necessary to provide for the amortisation [over a period of 14 years] of [the] *any* amount by which the actuarial reserve of the Pensions Fund requires to be increased to meet [the] *its* obligations under these Regulations [as amended with effect from 1 April 1961], *each such amount being amortised over a period not exceeding fifteen years in accordance with arrangements to be decided by the International Labour Conference on the proposal of the Governing Body of the International Labour Office.* [; and, annually, from 1 January 1967 through 1 January 1974, the additional sum necessary to provide for the amortisation over a period of eight years of the amount by which the actuarial reserve requires to be increased to meet the obligations under these Regulations as amended with effect from 1 March 1965.]

Article 9

. . . . . .

(f) with effect from 1 March 1965 the retiring pension of an official whose contract of employment expired prior to 1 April 1961 shall not, *before the application of the provisions of article 34 of these Regulations*, in any case exceed 45,080 Swiss francs or the equivalent of that amount in the currency of the pension at the effective date of its award.

XII. PROVISIONS CONCERNING COST-OF-LIVING ADJUSTMENTS OF PENSIONS

Article 34

*Notwithstanding the provisions of articles 9, 10, 11, 12, 12*bis *and 32—*

(a) *with effect from 1 March 1965 all pensions which were in payment on that date shall be adjusted upwards in accordance with the following schedule of percentage rates determined by reference to the date of separation from service of the official in respect of whom the pension was awarded, the percentage adjustment being calculated, where appropriate, on the amount of the pension as increased by virtue of article 32;*

[1] Adopted on 14 June 1966.

Date of separation from service	*Percentage of upward adjustment*
Prior to 1 January 1960	*8.0*
1 January to 31 December 1960 .	*6.9*
1 January to 31 December 1961 .	*5.9*
1 January to 31 December 1962 .	*4.9*
1 January to 31 December 1963 .	*2.9*
1 January to 31 December 1964 .	*0.9*

(b) *with effect from 1 January 1966 all pensions which were in payment on that date, including the pensions in respect of officials who separated from service in the period from 1 January to 31 December 1965, shall be adjusted upwards by 1.9 per cent. of their amount including, where appropriate, the adjustment made in accordance with paragraph* (a) *of this article ;*

(c) *with effect from such subsequent date or dates as may be determined by the Governing Body of the International Labour Office, the pensions shall be adjusted by such percentage rates as may be decided from time to time by the Governing Body, provided that pensions shall not be decreased below the amounts at which they were established before the application of any adjustment under this article.*

XVII

Resolution concerning the Pensions Fund of the Judges of the Former Permanent Court of International Justice [1]

The General Conference of the International Labour Organisation—

Decides that, with effect from 1 March 1965, the pensions payable by the Pensions Fund of the Judges of the former Permanent Court of International Justice shall be adjusted upwards by 8 per cent. ;

Decides that, with effect from 1 January 1966, these same pensions shall be adjusted upwards by 1.9 per cent., this adjustment being applicable to the amounts of the pensions as adjusted from 1 March 1965 ;

Decides that the cost of the adjustment of pensions as provided for above shall be financed from the accumulated assets of the Fund ; it being understood that in the event of the accumulated assets later proving insufficient to cover the payment of all outstanding pensions the Director-General would submit proposals for consideration.

XVIII

Resolution concerning an Appointment to the Administrative Tribunal of the International Labour Organisation [1]

The General Conference of the International Labour Organisation,

In accordance with article III of the Statute of the Administrative Tribunal ;

[1] Adopted on 14 June 1966.

Extends the term of office of Mr. André GRISEL *(Switzerland)* as a judge of the Administrative Tribunal of the International Labour Organisation for a further period of three years.

XIX

Resolution concerning the Proposed Loan to Finance the Construction of the New Headquarters Building [1]

The General Conference of the International Labour Organisation—

Decides that, subject to approval by the Governing Body of the overall plan and the related cost estimates for the new I.L.O. headquarters building, the Director-General be authorised, in accordance with the terms of the contract concluded between the I.L.O. and the Property Foundation for International Organisations, to contract with the said Foundation a loan amounting to not more than 75 (seventy-five) million Swiss francs, for the financing of the construction of the building required for the headquarters of the I.L.O., this sum, however, to be subject to increase to not more than 90 (ninety) million Swiss francs if the cost of construction should exceed the total of 75 million Swiss francs plus the 18 million Swiss francs agreed upon as the selling price to the Foundation of the present I.L.O. building.

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[1] Adopted on 14 June 1966 by 200 votes to 32, with 19 abstentions.

Additional Texts Adopted by the International Labour Conference at Its 50th Session

(Geneva, 1966)

Amendments to the Rules concerning the Powers, Functions and Procedure of Regional Conferences Convened by the International Labour Organisation

The Conference had before it the report of its Standing Orders Committee, the relevant passages of which are as follows [1]:

. . . . . .

" 3. The Committee had before it proposed amendments to articles 10 and 13 of the Rules concerning the Powers, Functions and Procedure of Regional Conferences Convened by the International Labour Organisation, relating to the deposit of resolutions on matters not included in an item on the agenda of the conference, and proposals for a number of additional articles for inclusion in these Rules, relating to groups at regional conferences. These various proposals were set forth in the Note concerning Standing Orders Questions placed by the Governing Body of the International Labour Office before the Conference at its 50th Session.

Deposit of Resolutions on Matters Not Included in an Item on the Agenda of a Regional Conference

" 4. The proposed amendments were designed, firstly, to align the time limit applicable in regional conferences for the deposit of resolutions on matters not included in an item on the agenda with that applicable in the General Conference and, secondly, to provide, as in the General Conference, for a parallel time limit for the deposit of credentials.

" 5. Some Government members questioned the usefulness of the proposed amendments. In their view there was some virtue in having more flexible rules for regional conferences than for the General Conference. There was some doubt whether, in view of the different nature of regional conferences and the practical difficulties, for instance, in the way of distribution of texts prior to the opening of such conferences, the advantages hoped for from the proposed amendments would in fact be obtained. It was also possible, particularly at the regional level, that problems would arise at the last moment which the conference should have the possibility to discuss.

[1] The Conference adopted the report of the Standing Orders Committee on 20 June 1966 without discussion.

" 6. Other members of the Committee from all three groups emphasised that the growing role which was devolving on regional conferences within the Organisation made it necessary for the rules applicable to such conferences to be made more strict and more akin to those of the General Conference. The proposals before the Committee were the result of practical experience of regional conferences.

" 7. The Committee recorded its understanding that, in the practice both of the General Conference and of regional conferences, the fact that the credentials of the author of a resolution were received late did not make the resolution irreceivable. The Committee further understood that, while there might be practical difficulties in the way of distributing resolutions to all delegates to regional conferences immediately after the expiry of the time limit for their deposit, resolutions would be made available at the earliest practicable moment to delegates who wished to see them. Finally, the Committee noted that there existed in the Rules for regional conferences provision for a special procedure to deal with resolutions on urgent matters deposited after the expiry of the time limit.

" 8. The Committee recommends to the Conference that it amend article 10, paragraph 1, and article 13, paragraph 1, of the Rules concerning the Powers, Functions and Procedure of Regional Conferences to read as follows :

ARTICLE 10

1. The credentials of delegates and their advisers at regional conferences shall be deposited with the International Labour Office at least 15 days before the date fixed for the opening of the Conference.

ARTICLE 13

1. No resolution relating to a matter not included in an item on the agenda of the Conference shall be moved at any sitting of a regional conference unless a copy of the resolution has been deposited with the Director-General of the International Labour Office, at least 15 days before the opening of the Conference, by a delegate to the Conference.

GROUPS AT REGIONAL CONFERENCES

" 9. The Committee was agreed that it was in the interest of the orderly working of regional conferences that the procedure to be followed with respect to group meetings be made clear. For that purpose the proposed articles submitted to the Committee, which corresponded essentially to the relevant provisions of the General Conference, appeared to it to be satisfactory.

" 10. The Committee accordingly unanimously recommends to the Conference the inclusion of the following articles in the Rules concerning the Powers, Functions and Procedure of Regional Conferences :

ARTICLE 23

Autonomy of Groups

Subject to these Rules each group shall control its own procedure.

ARTICLE 24

Officers of Groups

1. At its first meeting each group shall elect a Chairman, at least one Vice-Chairman and a Secretary.

2. The Chairman and the Vice-Chairman or Vice-Chairmen shall be elected from among the delegates and advisers constituting the group ; the Secretary may be elected from among persons outside the group.

ARTICLE 25

Official Meetings

1. Each group shall hold official meetings for the transaction of the following business :

(a) the nomination of a Vice-President of the Conference ;

(b) the nomination of members of the Selection Committee ;

(c) the nomination of members of other committees ;

(d) any other matters referred to groups by the Selection Committee or by the Conference.

2. At the first official meeting of each group, which shall be held as soon as possible after the Conference meets, a representative of the Secretariat shall be present to inform the group as to procedure and to conduct the business until the Chairman has been elected.

3. At official meetings only delegates shall vote, provided always that a delegate may, by notice in writing to the President, appoint one of his advisers to act as his substitute, if he himself is unable to be present, in accordance with the provisions concerning the meetings of the Conference contained in article 1 (2) of these Rules.

4. The Secretary of each group shall report forthwith to the Officers of the Conference the results of all official meetings.

ARTICLE 26

Procedure of Voting at Elections

The President of the Conference or a person nominated by him shall direct the actual procedure of voting in elections required for the appointment of Vice-Presidents of the Conference and members of committees ; he shall convoke in due time the delegates who have a right to vote, shall see that the votes are regularly counted and shall communicate to the Conference the results of the election.

ARTICLE 27

Non-Official Meetings

Groups may at any time hold non-official meetings for discussion or for the transaction of non-official business.

ARTICLE 28

Procedure for the Nomination of Members of Committees by the Government Group

1. In making nominations for committees, the Government group shall proceed as follows.

2. As soon as the Selection Committee has come to a decision as to the number of committees to be set up, the delegates of each government shall inform the Secretary of the group, in writing, upon which committees their government desires representation and in what order of preference.

3. The Secretary shall thereupon prepare for each committee a list showing what governments desire representation thereon and the order of their preference. These lists shall be communicated to the members of the group.

4. The group shall first make its nominations for that committee for which there are the largest number of candidates. After the members of the first committee have been nominated the same principle shall be followed in respect of the remaining committees."

Tenth Report of the Selection Committee

The Conference had before it the tenth report of the Selection Committee, the text of which is as follows [1]:

" Second Special Report of the Director-General on the Application of the Declaration concerning the Policy of 'Apartheid' of the Republic of South Africa

" The Selection Committee recommends that the Conference take note of the second *Special Report of the Director-General on the Application of the Declaration concerning the Policy of ' Apartheid ' of the Republic of South Africa.*"

[1] The Conference adopted the tenth report of the Selection Committee on 22 June 1966 without discussion.

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INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

SPECIAL SUPPLEMENT

Vol. XLIX, No. 1 *January 1966*

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INTERNATIONAL LABOUR OFFICE

OFFICIAL BULLETIN

SPECIAL SUPPLEMENT

Vol. XLIX, No. 1 *January 1966*

Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning Persons Employed in the Public Sector in Japan

PART I

CHAPTER 1

INTRODUCTION

1. The Fact-Finding and Conciliation Commission on Freedom of Association was established by the International Labour Organisation in agreement with the United Nations in 1950.

2. The function of the Commission is to examine such cases of alleged infringements of trade union rights as may be referred to it, to ascertain the facts, and to discuss the situation with the government concerned with a view to securing the adjustment of difficulties by agreement.

3. In principle, no case may be referred to the Fact-Finding and Conciliation Commission without the consent of the government concerned.[1]

4. The Japanese public employees' case dealt with in the present report is the first case in which the government concerned has given the required consent.

5. Allegations of infringements of trade union rights are examined in the first instance by the Committee on Freedom of Association of the Governing Body of

[1] The only exception is in respect of any complaint relating to the application of a ratified Convention in the case of which the Governing Body may designate the Fact-Finding and Conciliation Commission as a Commission of Inquiry under art. 26 of the Constitution of the International Labour Organisation.

the International Labour Office, which has considered 439 cases since 1951.[1] The Japanese public employees' case (Case No. 179) was submitted to the Governing Body Committee in April 1958 and was the subject of 15 reports by that Committee to the Governing Body during the period from April 1958 to December 1963.

6. The Government of Japan consented to the reference of the case to the Fact-Finding and Conciliation Commission on 21 April 1964.

7. The Panel of the Commission designated by the Governing Body to examine the case consisted of Mr. Erik DREYER (Denmark), former Permanent Secretary to the Danish Ministry of Social Affairs, and former President of the State Mediation Board (Chairman); Mr. David COLE (United States), former Director of the United States Federal Mediation and Conciliation Service (member); and Sir Arthur TYNDALL (New Zealand), Judge, New Zealand Court of Arbitration (member). The Director-General designated Mr. C. Wilfred JENKS, Deputy Director-General, to act as his representative in the proceedings of the Commission.

8. The Commission met in Geneva from 12 to 19 May 1964 to determine its procedure, met again in Geneva from 9 to 26 September 1964 to hear witnesses, visited Japan from 10 to 26 January 1965, met from 27 to 29 January at Honolulu to approve arrangements for the preparation of its report, and reconvened in Geneva from 5 to 16 July 1965 to formulate its conclusions and adopt its report.

9. While in Japan the Commission submitted to the Minister of Labour and the General Secretary of the General Council of Trade Unions of Japan certain proposal-concerning matters which appeared to it to be immediately at issue.

10. These proposals are now briefly summarised.

11. The Freedom of Association and Protection of the Right to Organise Cons vention, 1948 (No. 87), should be ratified without further delay.

12. It should be the general policy of the Government to promote and encourage regular exchanges of views at appropriate intervals between responsible representatives of government, employers and labour on matters of common concern.

13. The Minister of Labour of Japan and the General Secretary of the General Council of Trade Unions of Japan should meet in Geneva with the Chairman of the Commission and the Director-General of the International Labour Office in June 1965

[1] For the First, Second and Third Reports of the Committee on Freedom of Association see International Labour Organisation: *Sixth Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1952), Appendix V; for the Fourth, Fifth and Sixth Reports, see idem: *Seventh Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1953), Appendix V; for the Seventh, Eighth, Ninth, Tenth, 11th and 12th Reports, see idem: *Eighth Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1954), Appendix II; for the 13th and 14th Reports see *Official Bulletin*, Vol. XXXVII, 1954, No. 4; for the 15th and 16th Reports, see ibid., Vol. XXXVIII, 1955, No. 1; for the 17th and 18th Reports, see ibid., Vol. XXXIX, 1956, No. 1; for the 19th, 20th, 21st, 22nd, 23rd and 24th Reports, see ibid., Vol. XXXIX, 1956, No. 4; for the 25th and 26th Reports, see ibid., Vol. XL, 1957, No. 2; for the 27th and 28th Reports, see ibid., Vol. XLI, 1958, No. 3; for the 29th to 45th Reports, and communications relating to the 23rd and 27th Reports, see ibid., Vol. XLIII, 1960, No. 3; for the 46th to 57th Reports, see ibid., Vol. XLIV, 1961, No. 3; for the 58th Report, see ibid., Vol. XLV, No. 1, Jan. 1962, Suppl.; for the 59th and 60th Reports, see ibid., Vol. XLV, No. 2, Apr. 1962, Suppl. I; for the 61st to 65th Reports, see ibid., Vol. XLV, No. 3, July 1962, Suppl. II; for the 66th Report, see ibid., Vol. XLVI, No. 1, Jan. 1963, Suppl.; for the 67th and 68th Reports, see ibid., Vol. XLVI, No. 2, Apr. 1963, Suppl. I; for the 69th, 70th and 71st Reports, see ibid., Vol. XLVI, No. 3, July 1963, Suppl. II; for the 72nd Report, see ibid., Vol. XLVII, No. 1, Jan. 1964, Suppl.; for the 73rd to 77th Reports, see ibid., Vol. XLVII, No. 3, July 1964, Suppl. II; for the 78th Report, see ibid., Vol. XLVIII, No. 1, Jan. 1965, Suppl.; for the 79th to 81st Reports, see ibid., Vol. XLVIII, No. 2, Apr. 1965, Suppl.; and for the 82nd to 84th Reports, see ibid., Vol. XLVIII, No. 3, July 1965, Suppl. II.

to inform them of progress made after the departure of the Commission from Japan.

14. The Commission reserved its view concerning the terms of the Bills providing for ratification and revision of the related laws which had been submitted to the Diet.

15. These proposals were accepted by the Minister of Labour on behalf of the Japanese Government on 25 January 1965; on the same day Mr. Eisaku Sato, Prime Minister of Japan, confirmed this acceptance and indicated his intention of making a new approach to problems of labour-management relations with a view to the creation of the mutual confidence necessary to their solution. At that stage the General Council of Trade Unions of Japan, while agreeing to the proposed meeting in Geneva, reserved its position on other points.

16. When the Commission reconvened in Geneva on 5 July 1965 the following developments had taken place.

17. The instrument of ratification by Japan of the Freedom of Association and Protection of the Right to Organise Convention had been deposited with the Director-General of the International Labour Office on 14 June 1965.

18. The first of a proposed series of regular meetings between the Government and the General Council of Trade Unions of Japan, designed to give effect to the proposal of the Commission for regular exchange of views between responsible representatives of Government, employers and labour, had been held at the Prime Minister's residence on 18 May and attended by nine cabinet ministers.

19. The Minister of Labour of Japan and the General Secretary of the General Council of Trade Unions of Japan had met in Geneva, as suggested by the Commission, with the Chairman of the Commission and the Director-General of the International Labour Office (represented by Mr. C. Wilfred Jenks, Deputy Director-General) on 12 June 1965 to inform them of the progress made.

20. It is in these circumstances that the Commission now submits its final report to the Governing Body.

21. An important part of its task has already been completed as the result of the action taken on the basis of the proposals which it submitted to the Minister of Labour and the General Secretary of the General Council of Trade Unions while in Japan.

22. The proposals made by the Commission on 23 January 1965 were, however, as it clearly indicated at the time, limited to matters which then appeared to call for immediate attention. When making those proposals the Commission, as already indicated, specifically reserved its view concerning the terms of the Bills providing for ratification of the Convention and revision of the related laws which had been submitted to the Diet. When approving these Bills the Diet decided that a number of provisions of the Bills amending the related laws should not be put into effect until they had been further considered by the tripartite Advisory Council on the Public Service Personnel System provided for in the proposed legislation.

23. There therefore remain a substantial number of unsettled questions, potentially of far-reaching importance for the future of industrial relations in Japan, on which the Commission now desires to express some views.

24. A description of the procedure followed by the Commission, analysis of the information available to it and evidence received, and account of the action taken on the basis of its proposals of 23 January 1965, are contained in Chapters 2 to 46 of this report.

25. Chapter 47 consists of the findings and recommendations of the Commission concerning the matters which are still at issue.

26. The Director-General, in response to a request from the Commission, has deposited in the library of the International Labour Office the documents constituting the evidence submitted to the Commission which are cited in this report.[1]

[1] These documents (referred to in footnotes in the text of this reports as "doc. No. ...") comprise all of the communications from the complainants and the Government to the Governing Body Committee on Freedom of Association (Case No. 179); the further statements of the complainants and the Government; the comments of the complainants and the Government on further statements; the comments of the General Council of Trade Unions of Japan and the Government on the draft analysis of Japanese labour legislation; and the *Record of Hearings*.

PART II

CHAPTER 2

ESTABLISHMENT AND OUTLINE OF THE PROCEDURE FOR THE EXAMINATION OF ALLEGATIONS OF INFRINGEMENTS OF TRADE UNION RIGHTS

27. Pursuant to requests formulated by the International Labour Conference at its 30th and 31st Sessions (June 1947 and June 1948) the Governing Body of the International Labour Office, following discussions with the Economic and Social Council of the United Nations, decided in January 1950 to establish a Fact-Finding and Conciliation Commission on Freedom of Association and defined its terms of reference, the general lines of its procedure and criteria for its composition. In February 1950 the Economic and Social Council approved this decision.

28. The Governing Body appointed the nine members of the Commission at its 111th, 112th and 120th Sessions (March and June 1950 and November 1952 respectively). The Governing Body reconstituted the membership of the Commission at its 155th Session (May-June 1963) and made further membership changes at its 161st Session (March 1965) and 162nd Session (May-June 1965).[1]

29. The Governing Body envisaged that arrangements might be made, when appropriate, for the work of the Commission to be done by panels of not less than three or more than five members.[2]

30. It is the function of the Commission to examine cases of alleged infringements of trade union rights which may be referred to it by the Governing Body or the International Labour Conference. The Commission is essentially a fact-finding body, but it is authorised to discuss situations referred to it for investigation with the government concerned with a view to securing the adjustment of difficulties by agreement.[3]

31. The Commission is to report to the Governing Body on the results of its work and it is for the Governing Body to consider in the first instance whether further action should be taken on the basis of the report.[4]

32. Subject to the foregoing, the Fact-Finding and Conciliation Commission is left to work out its own rules of procedure.[5]

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[1] The present members of the Commission are: Mr. Rafael CALDERA (Venezuela), Mr. César CHARLONE (Uruguay), Mr. David COLE (United States), Mr. Erik DREYER (Denmark), Lord FORSTER OF HARRABY, K.B.E., Q.C. (United Kingdom), Mr. Henri FRIOL (France), Mr. Zuheir GARANA (United Arab Republic), Mr. Lamine GUEYE (Senegal), Mr. P. V. RAJAMANNAR (India) and Sir Arthur TYNDALL, C.M.G. (New Zealand).

[2] See First Report, para. 12.

[3] Ibid., para. 13.

[4] Ibid., para. 16.

[5] Ibid., para. 17.

33. It is open to the Governing Body to refer to the Commission for impartial examination any allegations of infringements of trade union rights which the Governing Body, or the Conference acting on the report of its Credentials Committee, considers it appropriate to refer to the Commission for investigation. It is also open to any government against which an allegation of infringement of trade union rights is made to refer such an allegation to the Commission for investigation.[1]

34. With the exception of cases covered by article 26 of the I.L.O. Constitution, which relates to the supervision and application of Conventions ratified by a member State, no case can be referred to the Commission without the consent of the government concerned. If the Governing Body is of the opinion that a complaint should be investigated it must first seek the consent of the government concerned. If such consent is not forthcoming, the Governing Body has to give consideration to such refusal with a view to taking any appropriate alternative action designed to safeguard the rights relating to freedom of association involved in the case, including measures to give full publicity to charges made, together with any comments of the government concerned, and to that government's refusal to co-operate in ascertaining the facts and in any measures of conciliation. It was contemplated that the consent of a government might be given either in an individual case or, more generally, in advance, for certain categories of cases, or for any case which might arise.[2]

35. Pursuant to the procedure agreed upon by the Economic and Social Council and the Governing Body, all allegations regarding infringements of trade union rights received by the United Nations from governments or trade union or employers' organisations against I.L.O. member States are to be forwarded to the Governing Body of the International Labour Office for consideration as to referral to the Commission.[3] Pursuant to a resolution adopted by the Economic and Social Council on 9 April 1953 such complaints concerning I.L.O. member States have, since that time, been transmitted automatically by the Secretary-General of the United Nations to the Governing Body of the I.L.O. without having first been examined, as previously, by the Economic and Social Council.

36. Allegations regarding infringements of trade union rights received by the United Nations from governments or trade union or employers' organisations relating to States Members of the United Nations which are not Members of the I.L.O. are transmitted to the Fact-Finding and Conciliation Commission through the Governing Body of the I.L.O. when the Secretary-General of the United Nations, acting on behalf of the Economic and Social Council, has received the consent of the government concerned, and if the Economic and Social Council considers these allegations suitable for transmission. If such consent of the government is not forthcoming, the Economic and Social Council will give consideration to such refusal with a view to taking any appropriate alternative action designed to safeguard the rights relating to freedom of association involved in the case.[4]

37. If the Governing Body of the I.L.O. has before it allegations regarding infringement of trade union rights against a Member of the United Nations which is not a Member of the I.L.O., it will refer such allegations in the first instance to the Economic and Social Council.[5]

[1] See First Report, para. 13.
[2] Ibid., para. 15.
[3] Ibid., para. 19.
[4] Ibid., para. 20.
[5] Ibid., para. 21.

38. The Commission's reports on cases regarding States Members of the United Nations not Members of the I.L.O. are to be transmitted to the Economic and Social Council by the Director-General of the I.L.O. on behalf of the Governing Body.[1]

39. An account of the work of the Commission is to be included in the annual report of the I.L.O. to the United Nations.[2]

40. For the purpose of making the preliminary examination of complaints received, the Governing Body in 1952 set up a Committee on Freedom of Association, consisting of nine of its own members, together with nine substitute members. Three titular and three substitute members were chosen from each of the three groups of the Governing Body—Government, Workers and Employers.[3]

41. The Governing Body, either at that time or by virtue of revisions to the procedure made subsequently, established rules relating to the qualification of members to participate in the proceedings of the Committee on Freedom of Association [4], the receivability of complaints [5], communication with complainants [6], communication with governments concerned [7], the manner of dealing with cases regarded as urgent [8], the hearing of parties [9], recommendations by the Committee to the Governing Body [10] and the examination of reports of the Committee by the Governing Body.[11]

42. When the Committee, after its preliminary examination, concludes that a case warrants further examination, it reports this conclusion to the Governing Body for a determination as to the desirability of attempting to secure the consent of the government concerned to the reference of the case to the Fact-Finding and Conciliation Commission. The Committee submits to each session of the Governing Body a progress report on all cases which the Governing Body has determined warrant further examination. In every case in which the government against which the complaint is made has refused consent to referral to the Fact-Finding and Conciliation Commission or has not within four months replied to a request for such consent, the Committee may include in its report to the Governing Body recommendations as to the " appropriate alternative action " which the Committee may believe the Governing Body might take.[12] In certain cases the Governing Body itself has discussed the measures to be taken where a government has not consented to a referral to the Fact-Finding and Conciliation Commission.

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[1] See First Report, para. 22.

[2] Ibid., para. 23.

[3] Ibid., para. 24.

[4] Ibid., and also 29th Report, para. 6.

[5] See First Report, paras. 14 and 27; Ninth Report, paras, 20, 21 and 24; 19th Report, para. 13; and 29th Report, para. 9.

[6] See Ninth Report, para. 29; and 19th Report, paras. 11 and 12.

[7] See First Report, para. 24; and Ninth Report, paras. 26 and 28.

[8] See 29th Report, paras. 12 and 13.

[9] See First Report, para. 142.

[10] Ibid., para. 25, and Ninth Report, para. 38.

[11] See 29th Report, para. 12; and 43rd Report, paras. 4 and 5.

[12] See First Report, para. 25.

CHAPTER 3

REFERRAL OF THE CASE RELATING TO JAPAN TO THE FACT-FINDING AND CONCILIATION COMMISSION ON FREEDOM OF ASSOCIATION AND APPOINTMENT OF A PANEL OF THE COMMISSION TO EXAMINE THE CASE

43. It was in accordance with the procedure described in the preceding chapter that, from April 1958 onwards, a series of complaints of alleged infringements of trade union rights in Japan were presented to the I.L.O. by certain international and Japanese national trade union organisations [1], the complaints being submitted for preliminary examination to the Governing Body Committee on Freedom of Association. The case remained pending before that Committee for some five-and-a-half years, during which period the Committee submitted in all 15 separate reports to the Governing Body, after which, in November 1963, the Committee considered that the time had come when it would be appropriate to request the Government of Japan to consent to the case being referred to the Fact-Finding and Conciliation Commission on Freedom of Association.

44. When the Committee on Freedom of Association resumed its examination of the case at its meeting in November 1963, it began, in the report which it drew up for submission to the Governing Body, by referring to the 15 separate reports on the case which it had already submitted, and listed in detail the various allegations covered by those reports.[2]

45. The Committee then recalled that, at its previous meeting in May 1963, it had submitted to the Governing Body the recommendations contained in paragraph 103 of its 70th Report, which reads as follows:

> 103. In these circumstances the Committee, recalling that the Government announced as long ago as 6 November 1958 that it was considering the question of ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and then, in a communication dated 25 February 1959, announced that the Cabinet had decided to ratify the Convention, and to repeal section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law and section 5 (3) of the Local Public Enterprise Labour Relations Law, recommends the Governing Body—
>
> *(a)* to take note of the Government's statement that Bills to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and to amend the related national legislation were submitted to the Diet on 2 March 1963;
>
> *(b)* to note also the Government's further statement that, following the resumption of the current Diet session after the April recess, informal negotiations were reopened between the representatives of the government and opposition parties with regard to the aforesaid Bills, and that agreement was reached on 15 May 1963 to continue the negotiations in an effort to ensure the passage of the Bills during the current Diet session, which has been prolonged until 6 July 1963;

[1] Fuller details relating to these complaints are given below (see Ch. 20).

[2] See 72nd Report, para. 199.

(c) to express its sincere hope that, in accordance with the assurances given by the Government on many previous occasions and with the expectations of the Government as expressed by the Prime Minister, as indicated in the Government's communication dated 13 February 1963, the Bills to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), will be approved by the Diet during its current session;

(d) to request the Government to be good enough to inform the Governing Body as to further developments in this connection, in time for the information to be considered by the Governing Body at its session in late June 1963 immediately following the close of the 47th Session of the International Labour Conference.

46. The Committee's 70th Report having been approved by the Governing Body on 1 June 1963, in the course of its 155th Session, the conclusions cited above were brought to the notice of the Government of Japan by a letter dated 13 June 1963.

47. At its meeting in November 1963 the Committee had before it a letter from the Government dated 26 June 1963, explaining the position at that time. It explained, in particular, that it had been decided on 14 June 1963 to set up a special committee in the House of Representatives and another in the House of Councillors for the purpose of deliberating on the Bills to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and to amend the related legislation. Deliberations by these committees had begun on 24 June 1963 and were expected to continue.[1]

48. In a further communication dated 12 July 1963 the Government stated that the session of the Diet had ended on 6 July. In the absence of a decision by either of the two Houses, the deliberations of the committees could not be continued. The Government explained why it had not been possible for the said committees to conclude their deliberations before the end of the Diet session, and affirmed that there was no diversion from its policy of early ratification of the Convention and that it was ready to make further efforts in conformity with its policy.[2]

49. Finally, the Committee on Freedom of Association had before it a further letter from the Government dated 26 October 1963, in which the Government stated that it had submitted the aforesaid Bills to the extraordinary session of the Diet which had begun on 15 October 1963. As the House of Representatives had been dissolved on 23 October, the Bills had not been approved.[3]

50. The Committee recalled the recommendations which it had submitted to the Governing Body in paragraph 80 of its 68th Report in February 1963 and pointed out that since that time the Bills relating to the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), had been submitted for approval to different sessions of the Diet, on 2 March 1963 and 17 October 1963, without such approval having been obtained.[4] Further, the Committee observed that there still remained at issue a considerable number of questions arising out of allegations relating to very varied aspects of the trade union situation in Japan.[5]

51. The Committee, therefore, submitted its recommendations to the Governing Body in paragraph 208 of its 72nd Report, which reads as follows:

[1] See 72nd Report, para. 203.
[2] Ibid., para. 204.
[3] Ibid., para. 205.
[4] Ibid., para. 206.
[5] Ibid., para. 207.

208. In these circumstances the Committee, having regard to the questions which have thus been at issue for several years and taking into account also the fact that five years have now elapsed since the original assurances concerning the proposal to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), given by the Japanese Government were received, that these assurances have been given on 12 occasions and that the proposal to ratify the Convention has now been submitted to five sessions of the Diet without a satisfactory result being reached, recommends the Governing Body—

(a) to decide to request the Government of Japan, as provided for in subparagraph *(b)* below, to give its consent to the case as a whole being referred to the Fact-Finding and Conciliation Commission on Freedom of Association;

(b) to request the Director-General to submit to the Governing Body, at its session in February-March 1964, more detailed proposals for the reference of the matter to the Commission, on the basis of which the consent of the Government will be requested in accordance with the decision recommended in the preceding subparagraph.

52. The 72nd Report of the Committee on Freedom of Association was approved by the Governing Body at its 157th Session (November 1963) and was brought to the notice of the Government of Japan by a letter dated 22 November 1963.

53. In accordance with this decision of the Governing Body the Director-General submitted proposals to the Governing Body at its 158th Session (February 1964).[1]

54. The Director-General first drew attention to the fact that the Governing Body, when it appointed the Fact-Finding and Conciliation Commission at its 111th and 112th Sessions (March and June 1950), had provided for the possibility of arranging for its work to be done by panels of not less than three or more than five of its members.[2]

55. Pursuant to that principle and having regard to the nature of the case, the Director-General suggested to the Governing Body that a panel of three members of the Commission would, in all the circumstances, be most appropriate for accomplishing effectively and in a relatively short time the task which it was proposed to entrust to the Commission.

56. The Director-General therefore proposed to the Governing Body that the panel in question be composed as follows:

Chairman : Mr. Erik DREYER (Denmark), former Permanent Secretary to the Danish Ministry of Social Affairs; former President of the State Mediation Board.

Members : Mr. David COLE (United States), former Director of the United States Federal Mediation and Conciliation Service;
Sir Arthur TYNDALL (New Zealand), Judge, New Zealand Court of Arbitration.

In the event of any of these persons being unable to serve as a member of the panel, it was proposed that the Director-General be authorised to appoint another member from among the other six members of the Commission.

57. In view of the nature of the functions which they would be called upon to perform, it was suggested that it would be appropriate that the members of the panel should undertake by solemn declaration to perform their duties and exercise their

[1] See *Minutes of the 158th Session of the Governing Body*, Appendix XIV, seventh supplementary report, pp. 92-93.

[2] See First Report, para. 12.

powers " honourably, faithfully, impartially and conscientiously ". A solemn declaration in such terms would be in accordance with the undertaking which Judges of the International Court of Justice must give and with that given by members of commissions appointed pursuant to article 26 of the Constitution of the I.L.O.

58. It was pointed out in the proposals that the procedure in force [1] provides that the Commission " is essentially a fact-finding body, but is authorised to discuss situations referred to it for investigation with the government concerned with a view to securing the adjustment of difficulties by agreement ".

59. It followed from these terms of reference, which were agreed between the Governing Body and the Economic and Social Council in 1949, that, while the Commission would be free to hear evidence from all concerned, any discussions which it might have " with a view to securing the adjustment of difficulties by agreement " would be discussions with the Government; it would not be authorised to undertake any discussions in the nature of negotiation with political parties or industrial organisations.

60. It was suggested that, subject to the consent of the Japanese Government having been secured by that time, the panel should meet in Geneva early in May to take cognisance of the case and determine its future procedure, including the date of and arrangements for the hearing of witnesses in Geneva and the date of and arrangements for a visit by the panel to Japan.

61. If it approved the proposals contained in the foregoing paragraphs, it remained for the Governing Body to ask the Director-General then to request the Government of Japan to give its consent to the referral of the case to the Fact-Finding and Conciliation Commission on Freedom of Association.

62. The above proposals were approved by the Governing Body on 15 February 1964, in the course of its 158th Session.

63. The Director-General of the I.L.O. wrote to the Government of Japan on 17 February 1964, informing it of the proposals approved by the Governing Body and requesting it, in accordance with the decision of the Governing Body, to give its consent to the referral of the case to the Fact-Finding and Conciliation Commission on Freedom of Association on the basis of the above proposals as approved.

64. By a letter dated 21 April 1964 the Government of Japan informed the Director-General of the International Labour Office that it consented to the case being referred to the Commission.

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[1] See First Report, para. 13.

PART III

PROCEDURE FOLLOWED BY THE FACT-FINDING AND CONCILIATION COMMISSION

CHAPTER 4

FIRST SESSION OF THE COMMISSION

65. The Commission held its first session in Geneva from 12 to 19 May 1964. At the opening of this session, the members made a solemn declaration in the presence of Mr. David A. Morse, Director-General of the International Labour Office. In calling upon the members of the Commission to make this declaration the Director-General made the following statement:

Gentlemen, you have been appointed by the Governing Body of the International Labour Office as the Panel of the Fact-Finding and Conciliation Commission on Freedom of Association to which the Governing Body has referred for examination, with the consent of the Government of Japan, the case of alleged infringements of trade union rights in Japan which has been before the Governing Body Committee on Freedom of Association for the past six years.

When the Governing Body, on 15 February 1964, decided to request the Government of Japan to consent to the referral of the case to the Commission, it recalled that the procedure in force for the examination of allegations of infringements of freedom of association provides that the Commission " is essentially a fact-finding body ", but " is authorised to discuss situations referred to it for investigation with the government concerned with a view to securing the adjustment of difficulties by agreement ". It follows from these terms of reference, which were agreed between the Governing Body and the Economic and Social Council in 1949, that, while the Commission is free to hear evidence from all concerned, any discussions which it might have " with a view to securing the adjustment of difficulties by agreement " would be discussions with the Government of Japan; the Commission is not authorised to undertake any discussions in the nature of negotiation with political parties or industrial organisations.

It was on the basis of the above understanding that the Governing Body took the decision on 15 February 1964 to request the Government of Japan to give its consent to the referral of the case to the Commission and that the Government, on 21 April 1964, informed me as Director-General that it consented to such referral.

The task entrusted to you, therefore, is that of ascertaining the facts without fear or favour. You are responsible to your own conscience alone.

The Governing Body has approved a form of solemn declaration whereby members of the Panel undertake to perform their duties and exercise their powers as members of the Panel honourably, faithfully, impartially and conscientiously. This solemn declaration corresponds in its terms to that made by judges of the International Court of Justice.

I shall therefore call upon you to make in turn this solemn declaration.

66. The members of the Commission thereupon made the following declaration:

I solemnly declare that I will honourably, faithfully, impartially and conscientiously perform my duties and exercise my powers as a member of the Panel of the Fact-Finding and Conciliation Commission on Freedom of Association appointed by the Governing Body of the International

Labour Office, in accordance with the procedure in force for the examination of complaints of alleged infringements of freedom of association, to examine the complaints of alleged infringements of trade union rights in Japan which have been referred to the Commission.

67. In the course of its first session the Commission took cognizance of the case and determined the procedure which it would follow in the initial stages of its examination of the case.

Submission of Further Information

68. The Commission decided to afford to the Government of Japan an opportunity to submit, not later than 4 July 1964, any further statement in writing which it might wish the Commission to consider. A similar opportunity was afforded to the 11 organisations which had submitted complaints receivable under the procedure in force, namely the General Council of Trade Unions of Japan, the International Confederation of Free Trade Unions, the International Transport Workers' Federation, the Postal, Telegraph and Telephone International (Berne), the Japan Postal Workers' Union, the Public Services International (London), the Japan Teachers' Union, the International Federation of Free Teachers' Unions, the Japanese Congress of Government Employees' Unions, the Japanese National Railway Workers' Union and the All-Japan Prefectural and Municipal Workers' Union. The Commission informed the Government of Japan and these complainants that all the information which had already been presented by them was before it, and that accordingly any further statements to be submitted should consist not of duplication of such information but of particulars of further developments since the substantive issues of the case had last been examined by the Committee on Freedom of Association of the Governing Body of the International Labour Office in October 1962. The Commission informed the complainants that, as it was competent to investigate only the matters which had been referred to it by the Governing Body, any further information to be submitted should relate to issues raised by the existing complaints, and that it would not consider any matters not included among those referred to it by the Governing Body with the consent of the Government of Japan.

69. The Commission noted that the first complaints in this case had been submitted to the International Labour Office as long ago as April and May 1958. Since that time there had been many new developments in the situation. The Commission accordingly informed the Government of Japan and the complainants that it reserved its view at the present stage concerning the extent to which it would be necessary to enter into all matters raised in the complaints, but that it would welcome any indication which the complainants might be in a position to give concerning the extent to which, in their view, these various matters still raised issues of current and substantial importance calling for full investigation by the Commission.

70. The Commission decided to afford an opportunity to the Japan Federation of Employers' Associations to submit to it, not later than 1 August 1964, any statement that it might wish to make concerning the matters at issue. It also decided to afford a similar opportunity to the international organisations of employers and workers having consultative status with the International Labour Organisation which were not complainants in the case, namely the International Organisation of Employers, the International Federation of Christian Trade Unions and the World Federation of Trade Unions.

71. The Commission informed the complainants and the other organisations which were afforded an opportunity to submit information to it that the function of

the Commission was to ascertain facts which were relevant to its inquiry, that it followed from this that political matters were outside its scope and that the opportunity to furnish statements was given for the purpose of supplying factual information bearing on the matters referred to it. The Commission indicated that it would give those invited to present statements all reasonable latitude to furnish such information, but that it would not be prepared to receive written or oral statements relating to matters not relevant to the issues referred to it.

72. The Commission decided that any further information submitted in accordance with the above-mentioned decisions should be communicated to the Government of Japan and to all of the complainants affected thereby and that they should be afforded an opportunity to present their comments thereon not later than 20 August 1964.

73. The Commission decided to communicate to the Government of Japan and to all of the complainants the draft analysis of the present legislation governing freedom of association and the exercise of trade union rights in Japan, which had been prepared for its use, and requested them to communicate not later than 1 August 1964 any comments which they might wish to make concerning the accuracy or completeness of this analysis. The Commission also requested the Government of Japan to make available to it copies of certain legislative texts and court decisions mentioned in the documentation before the Commission but not at its disposal.

74. The Government of Japan had on a number of occasions furnished information to the Committee on Freedom of Association of the Governing Body of the International Labour Office concerning the consideration by the National Diet of proposals for the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the amendment of the relevant legislation. The Commission requested the Government to communicate to it by 1 August 1964 a statement concerning the position in this connection at that time.

Arrangements for the Hearing of Witnesses

75. The Commission decided to hold its second session in Geneva from 9 September 1964 onwards. It requested the Government of Japan and each of the complainants to designate a representative to act on their behalf before the Commission at that session and to be responsible for the general presentation of the case and for their respective witnesses.

76. The Commission informed the Government of Japan and the complainants that it would be glad to consider applications from them to hear, in the course of its second session, any witnesses who might have important testimony to furnish relevant to the matters at issue. The Commission indicated that the names and descriptions of such witnesses, together in each case with brief indications as to the matters on which it was desired that they be heard, should be furnished to it not later than 1 August 1964, to enable it to decide which of these witnesses it would hear.

77. The Commission informed the Government of Japan that it would wish, as a Commission, to hear evidence from certain witnesses, and requested the Government to make arrangements for their attendance at its second session. These witnesses were the Minister of Labour or his duly authorised representative having full knowledge of the attitude and views of the Government with regard to the allegations in general and also, more particularly, with regard to the ratification of the Freedom

of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the policy of the Government in respect of the recommendations with regard to different aspects of the case which had been addressed to it by the Governing Body of the International Labour Office; the Minister of Justice or the Director of the Cabinet Legislation Bureau or a duly authorised high legal official of the Government able to furnish the Commission with any information that it might need with respect to the relevant legislation and legal aspects of the case; the Minister of Postal Services or his duly authorised representative having full knowledge of the allegations relating to postal workers; the Minister of Education or his duly authorised representative having full knowledge of the allegations relating to matters affecting teachers; the Head of the Ehime Prefectural Education Board or his duly authorised representative having full knowledge of such part of the allegations by the Japan Teachers' Union as related to the Ehime Prefectural Teachers' Union and to the Ehime Educational Research Conference; the Head of the National Railway Authority or his duly authorised representative having full knowledge of the allegations relating to matters affecting railway workers; the Chairman of the Public Corporation and National Enterprise Labour Relations Commission or his duly authorised representative having full knowledge of the examination by that Commission of cases of alleged interference with the National Railway Workers' Union; a duly authorised representative or representatives of the Government having full knowledge of the allegations relating to matters concerning the local public services and local public enterprises; and a duly authorised representative or representatives of the Government having full knowledge of the allegations relating to matters affecting organisations of government employees.

78. The Commission adopted rules of procedure for the hearing of witnesses at its second session [1], and communicated them to the Government of Japan and to the complainants. The Commission also communicated these rules to the Japan Federation of Employers' Associations and informed it that the Commission would be prepared to grant it appropriate facilities to be represented during the hearings, should a request to this effect be made.

79. The Commission requested the Government of Japan to make appropriate arrangements to ensure that no obstacles were placed in the way of the attendance before the Commission of representatives of the complainants or of witnesses whom they might wish to call and that witnesses would enjoy full protection against any kind of discrimination on account of their attendance and testimony before the Commission, and also to satisfy itself that such attendance would not be prevented by reason of financial difficulties and that leave of absence would be granted, where necessary, to enable witnesses to appear before the Commission. The Commission requested the Government to inform it of the arrangements made to these ends.

80. The Commission deferred until its second session decisions concerning the later stages of its proceedings, including a decision on the question of whether it would be necessary for it to visit Japan. It informed the Government of Japan and the complainants accordingly.

81. The Commission authorised its Chairman between sessions to deal on its behalf with any procedural matters that might arise, with the possibility of consulting the other members whenever he might consider this necessary.

[1] See para. 100 below.

82. The Commission's first report was signed on 19 May 1964, and presented to the Governing Body at its 159th Session (June-July 1964). The report read as follows:

1. At its 158th Session the Governing Body of the International Labour Office decided that the Panel of the Fact-Finding and Conciliation Commission on Freedom of Association to examine the complaints of alleged infringements of trade union rights in Japan should be composed as follows:

Chairman: Mr. Erik DREYER (Denmark), former Permanent Secretary to the Danish Ministry of Social Affairs; former President of the State Mediation Board.

Members: Mr. David COLE (United States), former Director of the United States Federal Mediation and Conciliation Service;
Sir Arthur TYNDALL (New Zealand), Judge, New Zealand Court of Arbitration.

2. The Director-General received the consent of the Government of Japan to the reference of the case to the panel on 21 April 1964.

3. The panel was sworn in by the Director-General of the International Labour Office on 12 May 1964, and held its first session at the I.L.O. in Geneva from 12 to 19 May 1964.

4. At this session the Commission took cognizance of the case and determined the procedure which it will follow in the initial stages of its examination of the case. It has afforded to the Government of Japan and to the organisations concerned an opportunity to submit further statements, and has made arrangements for the hearing of evidence at its next session, which it has decided to hold in Geneva in September 1964.

5. The Commission will consider at its next session, in the light of the information and evidence then available to it, the further measures which appear to be called for to enable it to discharge the duties entrusted to it, and will report thereon to the Governing Body in due course.

(Signed) Erik DREYER,
Chairman.
David L. COLE.
A. TYNDALL.

CHAPTER 5

COMMUNICATIONS RECEIVED FOLLOWING THE COMMISSION'S FIRST SESSION

I. Further Information Submitted by the Complainant Organisations and the Government of Japan

83. On 27 June 1964 the Commission received further statements from each of the following complainants: the General Council of Trade Unions of Japan, the National Railway Workers' Union, the Japan Postal Workers' Union, the Japan Teachers' Union, the All-Japan Prefectural and Municipal Workers' Union, the Japanese Congress of Government Employees' Unions and the Nihon National Railway Motive-Power Union, jointly with the General Council of Trade Unions of Japan. Copies of these further statements were sent to the Government and to the other complainants to whom the subject-matter of the various statements was of special interest. Comments from the Government on these further statements of the complainants were received on 21 and 28 August 1964.

84. On 4 July 1964 the Commission received a further statement from the Government, copies of which were sent to the complainants. Comments from the Japan Teachers' Union on this further statement of the Government were received on 21 August 1964 and a copy was sent to the Government.

85. On 7 July 1964 the Commission received a statement from the International Confederation of Free Trade Unions. Copies of it were distributed to the Government and to the other complainants.

86. Copies of legislation and judicial decisions requested of the Government by the Commission [1] were received on 28 August 1964.

87. On 24 July 1964 the General Council of Trade Unions of Japan transmitted to the Commission its comments on the draft analysis of Japanese legislation which had been sent to it in accordance with a decision of the Commission.[1] Inasmuch as these comments also contained certain submissions as to the manner and method of the actual application of the legislation concerned, a copy of these comments was communicated to the Government. On 19 August 1964 the Government transmitted to the Commission its comments on the draft analysis of Japanese legislation which had been sent to it in accordance with this same decision mentioned above.

II. Communications from Non-Complaining Organisations

88. In response to an invitation to submit a statement issued in accordance with a previous decision of the Commission [2] the International Organisation of Employers,

[1] See para. 73 above.
[2] See para. 70 above.

an organisation having consultative status with the International Labour Organisation, on 30 June 1964 replied that, as the matters referred to the Commission solely concerned public service employees, it did not think it appropriate for it to make any statement relating to the case.

89. On 31 July 1964 the Commission received from the Japan Federation of Employers' Associations [1] a communication in which that organisation expressed the view that it was not directly involved in the issues of the case and wished therefore to refrain from making a statement either domestically or internationally.

90. On 14 August 1964 the Japanese Confederation of Labour submitted a statement to the Commission and requested that the Commission afford an opportunity for the representatives of the Japanese Confederation of Labour to express their opinions and give testimony in the case. The Commission in a letter dated 27 August notified the Japanese Confederation of Labour of the Commission's regret that it was not possible to grant the request. The Commission referred to the decision taken at its first session that, apart from international organisations having consultative status with the I.L.O., only those workers' organisations which were complainants in the case referred to the Commission should be invited to participate in the hearings.

III. Communications regarding Witnesses to Be Heard at the Commission's Second Session

91. On 31 July 1964 the Commission received a telegram from the General Council of Trade Unions of Japan requesting that the Commission consider hearing the testimony of certain designated witnesses who would appear on behalf of the various trade union complainants. On 5 August 1964 the Commission informed the General Council of Trade Unions of Japan that it would hear all the persons representing complainants which were listed in the telegram it had received.[2]

92. On 10 and 25 August 1964 the Commission received communications from the Government in which the Government designated the representatives which would act on its behalf and be responsible for the general presentation of the case. These communications also named witnesses who would appear on behalf of the Government to give evidence on specific areas of the case about which the Commission had previously notified the Government that it desired to hear.[3] The Government provided the Commission with all the witnesses for which it was asked.

93. The Commission also received communications designating the representatives who would appear on behalf of the following complainants: the International Confederation of Free Trade Unions, the Public Services International, the International Transport Workers' Federation, the Postal, Telegraph and Telephone International and the International Federation of Free Teachers' Unions.[4]

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[1] See para. 70 above.

[2] For the names of the witnesses appearing on behalf of the complainants see para. 98 below.

[3] For the names of the witnesses appearing on behalf of the Government see para. 99 below.

[4] For the names of the representatives appearing on behalf of the complainants see para. 96 below.

CHAPTER 6

SECOND SESSION OF THE COMMISSION

94. The Commission held its second session in Geneva from 9 to 26 September 1964. During the course of the session the Minister of Labour of Japan, the General Secretary of the General Council of Trade Unions of Japan and the General Secretary of the International Confederation of Free Trade Unions each made statements.

95. The session included 27 sittings held in private, which were attended by the representatives of the Government of Japan, the General Council of Trade Unions of Japan and the International Confederation of Free Trade Unions as follows: for the Government of Japan: Mr. Morio Aoki, Ambassador Extraordinary and Plenipotentiary, Permanent Representative of Japan to the International Organisations in Geneva, Mr. Hideo Hori, Administrative Vice-Minister, Ministry of Labour, and Mr. Masami Takatsuji, Deputy Director-General of the Cabinet Legislation Bureau; for the General Council of Trade Unions of Japan, Mr. Akira Iwai, General Secretary, General Council of Trade Unions of Japan, Mr. Yukitaka Haraguchi, President, All-Japan Federation of Metal Mining Workers' Unions, and, in the absence of Mr. Iwai, Mr. Fumihiko Takaragi, President, Japan Postal Workers' Union; for the International Confederation of Free Trade Unions: Mr. Omer Becu, General Secretary, International Confederation of Free Trade Unions, and, in the absence of Mr. Becu, Mr. Herman Patteet, Head, Administrative Department, International Confederation of Free Trade Unions. In addition, the Commission met a number of times in private deliberations. Apart from examining the written statements submitted by the parties and documents which had been submitted to it, the Commission devoted most of this session to the hearing of statements of representatives of the Government of Japan and the complainant parties and to the hearing of witnesses, in accordance with the arrangements therefor upon which it had decided at its previous session.

I. Representatives and Witnesses Heard

96. The Commission heard opening statements from the following representatives: Mr. Yukitaka Haraguchi, representing the President of the General Council of Trade Unions of Japan, Mr. Omer Becu of the International Confederation of Free Trade Unions, Mr. Pieter de Vries of the International Transport Workers' Federation, Mr. Pierre Reymond of the International Federation of Free Teachers' Unions, Mr. Paul Tofahrn of the Public Services International, Mr. Anton Büning of the Postal, Telegraph and Telephone International, and Mr. Morio Aoki, representing the Government of Japan.

97. At the beginning of the seventh sitting the Commission heard statements from Mr. Akira Iwai, General Secretary of the General Council of Trade Unions of Japan, and Mr. Hirohide Ishida, Minister of Labour of Japan.

98. The following witnesses gave evidence on behalf of the complainants: Mr. Yukitaka Haraguchi, President of the All-Japan Federation of Metal Mining Workers'

Unions, acting on behalf of the President of the General Council of Trade Unions of Japan; Mr. Fumihiko Takaragi, President of the Japan Postal Workers' Union; Mr. Toro Usui, Vice-President of the National Railway Workers' Union; Mr. Kasaji Meguro, Vice-President of the Nihon National Railway Motive-Power Union; Mr. Toshichika Anyoji, General Secretary of the All-Japan Prefectural and Municipal Workers' Union; Mr. Motofumi Makieda, General Secretary of the Japan Teachers' Union; Mr. Toromai Eda, General Secretary of the All Agriculture and Forestry Ministry Workers' Union and Mr. Tsutomu Fujii, President of the All Taxation Offices Employees' Union, the two last-named witnesses both representing the Japanese Congress of Government Employees' Unions.

99. The following witnesses gave evidence on behalf of the Government of Japan: Mr. Hideo Hori, Administrative Vice-Minister of Labour of Japan; Mr. Masami Takatsuji, Deputy Director-General of the Cabinet Legislation Bureau; Mr. Hideharu Kawai, Counsellor of the Criminal Affairs Bureau of the Ministry of Justice; Mr. Shigihisa Habu, Deputy Director of the Personnel Bureau of the Ministry of Posts and Telecommunications; Mr. Kuniyuki Inoue, Director of the Staff Administration Department of the Japanese National Railways; Professor Teruo Minemura, Member of the Public Corporation and National Enterprise Labour Relations Commission, representing the public interest; Mr. Tsutoma Sakuma, Director of the Administrative Bureau of the Ministry of Home Affairs, Mr. Shigeru Fukuda, Director of the Elementary and Secondary Education Bureau of the Ministry of Education; Mr. Hideo Takeba, Head of the Ehime Prefectural Education Board; Mr. Tsugio Hashiguchi, Chief of the Employee Association Section of the National Personnel Authority Bureau of Employee Relations; Mr. Katsuji Okada, Chief of the Public Service System Planning Room in the Prime Minister's Office; Mr. Osamu Toyama, Counsellor of the Directors' Secretariat of the National Tax Administration Agency.

II. General Arrangement of the Hearings during the First Session

100. During its first session the Commission had adopted a decision on various points concerning the arrangement of the hearings about which each of the representatives attending the hearings had been informed. This decision was as follows:

1. The Commission will hear all witnesses in private sittings.

2. The representatives of the Government of Japan, the General Council of Trade Unions of Japan and the International Confederation of Free Trade Unions will be expected to be present throughout the hearing of witnesses. The representatives of the other complainants—namely the International Transport Workers' Federation, the Postal, Telegraph and Telephone International (Berne), the Japan Postal Workers' Union, the Public Services International (London), the Japan Teachers' Union, the International Federation of Free Teachers' Unions, the Japanese Congress of Government Employees' Unions, the Japanese National Railway Workers' Union and the All-Japan Prefectural and Municipal Workers' Union—will be permitted to be present during the parts of the hearings relating to the complaints of their respective organisations.

3. Witnesses may not be present except when giving evidence.

4. The Commission reserves the right to consult the representatives of the Government of Japan and of the complainants in the course of or upon the completion of the hearings in respect of any matter on which it considers their special co-operation to be necessary.

5. The function of the Commission is to ascertain facts which are relevant to its inquiry into the issues which have been referred to it by the Governing Body of the International Labour Office. Political matters are outside its scope, and the opportunity to furnish evidence is given

for the purpose of supplying factual information bearing on the case before the Commission. The Commission will give witnesses all reasonable latitude to furnish such information, but it will not permit statements relating to matters not relevant to the issues referred to it.

6. The Commission will require each witness to make a solemn declaration identical to that provided for in the Rules of Court of the International Court of Justice. This declaration reads: " I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth."

7. Each witness will be given an opportunity to make a statement before questions are put to him. If a witness reads a statement, the Commission would appreciate six copies of the statement being supplied, in English.

8. The Commission or any member of the Commission may put questions to witnesses at any stage.

9. The representative at whose request a witness is being heard will be allowed to put questions to the witness. The other representatives present in accordance with the rules laid down in paragraph 2 above will be permitted to put questions to the witness, in an order to be determined by the Commission. Further questions arising out of the evidence already given by the witness may then be put to him by the representative at whose request he is being heard. Questions by representatives to witnesses appearing at the request of the Commission will be put in the order determined by the Commission.

10. All questioning of witnesses will be subject to control by the Commission. The Chairman will not allow political questions outside the terms of reference of the Commission to be put or answered.

11. Any failure to reply satisfactorily to a question put to a witness will be noted by the Commission.

12. The Commission reserves the right to recall witnesses, if necessary.

101. During the course of the third sitting Mr. Haraguchi, acting on behalf of the President of the General Council of Trade Unions of Japan, in response to a question put to him by the Chairman, expressed his satisfaction at the arrangements made by the Government of Japan in accordance with a request of the Commission made during its first session [1] to ensure that no obstacles would be placed in the way of the attendance of representatives and witnesses of the complainants. Mr. Aoki, representing the Government, assured the Commission that the witnesses would enjoy full protection against any kind of discrimination on account of their attendance and testimony.

102. The Commission first heard witnesses produced by the complainants and then those witnesses for the Government of Japan that the Commission had previously indicated it would wish to hear.

III. Procedure Followed by the Commission in the Hearing of Witnesses

103. Each witness, before giving his evidence, was informed by the Commission of the framework within which his evidence would be heard, in the following terms:

The Panel has been appointed to examine the complaints of alleged infringements of trade union rights in Japan submitted by 11 trade union organisations and referred to the Fact-Finding and Conciliation Commission by the Governing Body of the International Labour Office with the consent of the Government of Japan.

The function of the Commission is to ascertain facts which are relevant to its inquiry into the issues referred to it. Politics are outside its scope, and the opportunity to furnish evidence is being given for the purpose of supplying factual information on the case before the Commission. The Commission will give you all reasonable latitude to furnish such evidence, but it will not permit statements relating to matters not relevant to the issues referred to it.

[1] See para. 79 above.

104. In each case, after the witness had made the solemn declaration provided for in the Rules of Procedure, the Commission put certain preliminary questions to him in order to ascertain his identity and his qualifications to give evidence before the Commission and to enable the Commission to judge the nature and extent of the information possessed by the witness on the matters dealt with in the complaints. In the cases of Mr. Takatsuji and Mr. Kawai, both of whom appeared on behalf of the Government of Japan in their capacities as legal advisers, the preliminary questions put by the Commission concerned identification of the witness and the position he held. In all other cases those questions concerned the position or positions held by the witness during the period covered by the allegations contained in the complaints, the extent to which such position or positions afforded the witness the facts on which his evidence would be based, and the extent to which the witness relied on knowledge not acquired through such position or positions.

105. Almost all the witnesses availed themselves of the opportunity they were given to make a general statement. Thereafter, questions were put to them by the Commission, the representative of the Government of Japan and the representatives of the General Council of Trade Unions of Japan and the International Confederation of Free Trade Unions. A large part of the Commission's work outside the sittings was devoted to the preparation of these questions which, in the case of each individual witness, took into account his position, responsibilities and relationships to one or more of the allegations raised in the complaints. Various documents were submitted to the Commission by witnesses or were communicated to it subsequently in order either to supplement evidence given or in response to specific requests therefor made by the Commission at the sittings.

106. In accordance with rule 12 of its rules for the general arrangement of the hearing (see paragraph 100 above), the Commission recalled certain witnesses who had already given evidence for both the complainants and the Government of Japan, in order to put a number of supplementary questions to them.

IV. Measures Taken by the Commission following the Hearings

107. The Commission's second report was signed on 26 September 1964 and presented to the Governing Body at its 160th Session (November 1964). The report reads as follows:

> 1. The Commission held its second session in Geneva from 9 to 26 September 1964. During this session, which was devoted principally to the hearing of witnesses, the Commission heard general opening statements by the representatives of the General Council of Trade Unions of Japan, the International Confederation of Free Trade Unions, the International Transport Workers' Federation, the International Federation of Free Teachers' Unions, the Public Services International and the Postal, Telegraph and Telephone International, and by the representative of the Government of Japan. In the course of the proceedings the Commission was also addressed by the General Secretary of the General Council of Trade Unions of Japan and by the Minister of Labour of Japan. The Commission took evidence from eight witnesses presented by complainant organisations and from 12 witnesses representing government services, public undertakings or other public bodies whose attendance had been arranged by the Government of Japan at the Commission's request.
>
> 2. The Commission will report further to the Governing Body in due course.
>
> *(Signed)* Erik Dreyer,
> *Chairman.*
> David L. Cole.
> Arthur Tyndall.

CHAPTER 7

THE VISIT BY THE COMMISSION TO JAPAN

General Arrangements for the Visit to Japan

108. In the course of the second session of the Commission, during which the hearings took place [1], the Commission conveyed to the Minister of Labour of Japan its desire to visit Japan. At that time it was agreed that the question of a visit would be further discussed on the occasion of the next session of the Governing Body, and the Commission authorised its Chairman to be present in order to meet with a representative of both the Government of Japan and the complainant Japanese trade unions at that time.

109. On the occasion of his meeting with the Chairman the representative of the Government of Japan reported that he had returned to Japan to consult with Prime Minister Sato and that he had been instructed to inform the Chairman that the Government was prepared to have the Commission visit Japan from 10 to 26 January 1965. Direct contact with the representative of the complainant Japanese trade unions was made, and the Commission received his full agreement to all the plans and arrangements for the visit which had been made with the Government. The trade unions had, however, requested minor changes in connection with the Commission's proposed three-day trips through the country, and all of these had been incorporated into the final agenda of the visit with the concurrence of the Government.

110. The provisional agenda for the visit of the Commission called for the arrival in Japan of the members of the Commission and the secretariat accompanying it between 10 and 12 January 1965, with the first formal meeting of the Commission to take place on 13 January. A series of discussions in Tokyo with representatives of both the complainants and the Government was scheduled between 13 and 18 January.[2] From 19 to 21 January each member of the Commission, accompanied by a member of the secretariat, was to make an individual journey to specific areas of Japan which had been mentioned in the evidence previously submitted to the Commission.[3] Upon its return to Tokyo the Commission had proposed that time be left available between 22 January and the Commission's date of departure, 26 January, for meetings to be held jointly with representatives of the complainants and the Government.[4]

The First Discussions in Tokyo (13-18 January)

111. Subsequent to the Commission's first meeting in Japan on 13 January 1965 the Commission met with representatives of the complaining trade union organisations and representatives of the Government of Japan in closed sessions.

[1] See Chs. 21-41 below.
[2] See Ch. 42 below.
[3] See Ch. 43 below.
[4] See Ch. 44 below.

112. The representatives of the complaining trade union organisations who met with the Commission included the General Secretary of the General Council of Trade Unions of Japan, the Presidents and Vice-Presidents of the National Railway Workers' Union, the Nihon National Railway Motive-Power Union, the Japan Postal Workers' Union, the All-Japan Prefectural and Municipal Workers' Union and the Presidents of the All Agriculture and Forestry Ministry Workers' Union, the All Port Construction Workers' Union and the All Taxation Offices Employees' Union (the last three unions all being members of the Congress of Government Employees' Unions).

113. The representatives of the Government with whom the Commission met included the Minister of Labour, the Minister of Education, the Minister of Home Affairs and the Director-General of the Cabinet Legislation Bureau.

The Visits in the Country

114. From 19 to 21 January each member of the Commission, accompanied by a member of the secretariat, made a visit to several cities in Japan in order both to gain wider first-hand knowledge of prevailing conditions of labour-management relations in the public sector in Japan and to hold discussions with local representatives of trade unions and representatives of public corporations, national enterprises and local public bodies. The members of the Commission received further written information at many of the meetings during which these discussions were held.

115. The Chairman, Mr. Dreyer, on 19 January visited Niigata city, Niigata Prefecture, where, on the afternoon of that day, he met with local representatives of the National Railway Workers' Union, local representatives of the All-Japan Prefectural and Municipal Workers' Union, representatives of the Niigata Railway Operating Division of the Japanese National Railways and public officials of the Niigata Prefectural Government. On the following day, 20 January, before leaving for Ishikawa Prefecture, Mr. Dreyer met briefly with representatives of the Niigata Prefecture New National Railway Union.

116. On 21 January, in Kanazawa city, Ishikawa Prefecture, Mr. Dreyer met with local representatives of both the Japanese National Railway Workers' Union and the Nihon National Railway Motive-Power Union and representatives of the Kanazawa Railway Operating Division of the National Railway Authority.

117. On 19 January Mr. Cole left Tokyo for Fukuoka city, Fukuoka Prefecture, where during that afternoon he met with local representatives of the All-Japan Prefectural and Municipal Workers' Union and representatives of both the Fukuoka Prefectural Government and certain local public bodies located within the Prefecture.

118. On 20 and 21 January, in Gifu city, Gifu Prefecture, Mr. Cole met with representatives of the Gifu Teachers' Union and Gifu prefectural officials connected with the Prefectural Education Board.

119. On 19 January Sir Arthur Tyndall left Tokyo for Matsuyama city, Ehime Prefecture, where that afternoon he met with representatives of the Ehime Prefectural Teachers' Union and Ehime prefectural officials connected with the Prefectural Education Board as well as a representative of the Ehime Prefectural Research Conference.

120. On 20 January Sir Arthur Tyndall travelled to Hiroshima, Hiroshima Prefecture, and met with local representatives of the National Railway Workers' Union and representatives of the Chugoku Railway Operating Region of the National Railway Authority, and also local representatives of the All-Japan Prefectural and Municipal Workers' Union and the Mayor of Shobara city.

121. The Commission and its secretariat reassembled, on 21 January, in Kyoto, and together travelled back to Tokyo on the following day.

The Concluding Discussions in Tokyo (23-26 January)

122. On the morning of 23 January the Commission met with the General Secretary of the General Council of Trade Unions of Japan and the Minister of Labour. On this occasion the Commission submitted certain proposals for the consideration of both parties and invited them to consider the proposals and return together for another joint meeting.[1]

123. On the afternoon of 23 January the Chairman, on behalf of the Commission, met with the Minister of Education.[2]

124. The Commission met with the General Secretary of the General Council of Trade Unions of Japan and the Minister of Labour on the mornings of 25 and 26 January. During these meetings, additional discussions of the proposals submitted previously by the Commission took place.

125. On the afternoon of 25 January the members of the Commission were received by the Prime Minister of Japan.

126. Prior to its departure from Japan on 26 January the Commission met with representatives of the Japanese and foreign press at 8 p.m. in the Imperial Hotel, Tokyo, at which time it made a statement.

127. The Commission and its secretariat left Tokyo on the evening of Tuesday, 26 January 1965 by air for Honolulu, Hawaii. The Commission held private meetings between 27 and 29 January, in facilities provided for it through the co-operation of the Industrial Relations Center and the East-West Center of the University of Hawaii. The Commission's third report was signed on 29 January 1965, at Honolulu, Hawaii, and was submitted to the Governing Body at its 161st Session (March 1965). The report reads as follows:

> 1. The Panel of the Fact-Finding and Conciliation Commission on Freedom of Association, appointed by the Governing Body to consider the case relating to Japan, visited Japan from 10 to 26 January 1965.
>
> 2. Before leaving Japan the Chairman of the Commission made the following statement on its behalf :
>
> > The Panel of the Fact-Finding and Conciliation Commission on Freedom of Association appointed by the Governing Body of the International Labour Office to examine the case relating to Japan has completed the visit to Japan which constitutes the third phase of its work. It now has at its disposal the information necessary to enable it to reach findings of fact concerning the case and to submit its report to the Governing Body. The Commission will reassemble in due course in Geneva to consider the terms of its report.

[1] For the text of the proposals and the discussions relating thereto see para. 2013 below.

[2] For the statement made to the Commission by the Minister of Education see para. 2016 below.

During its visit to Japan from 10 to 26 January the Commission held consultations in Tokyo with the Minister of Labour, the Minister of Education, the Minister of Home Affairs, the Director-General of the Cabinet Legislation Bureau, and representatives of the complaining organisations, including the General Secretary of the General Council of Trade Unions of Japan, the Presidents and Vice-Presidents of the National Railway Workers' Union, Nihon National Railway Motive-Power Union and Japan Postal Workers' Union, the All-Japan Prefectural and Municipal Workers' Union and the All Agriculture and Forestry Ministry Workers' Union and the Presidents of the All Port Construction Workers' Union and the All Taxation Offices Employees' Union.

One or other of the members of the Commission also visited the Aichi, Ehime, Fukuoka, Gifu, Hiroshima, Ishikawa and Niigata Prefectures, where certain of the events complained of in the case are alleged to have taken place. In arranging these consultations and visits the Commission received at every stage the full co-operation of the Japanese Government and the General Council of Trade Unions of Japan.

On 23 January the Commission met with Mr. Hirohide Ishida, Minister of Labour, and Mr. Akira Iwai, General Secretary of the General Council of Trade Unions of Japan, and submitted to them certain proposals concerning the matters which appear to the Commission to be immediately at issue.

The proposals are as follows:

The Freedom of Association and Protection of the Right to Organise Convention, 1948, should be ratified without further delay. In the light of the history of the present case such early ratification has now become an indispensable condition of further progress in dealing with any of the questions which still remain at issue; early ratification is also desirable to give Japan an influence in the I.L.O. commensurate with her status as an advanced industrial power.

The Commission reserves its view at this stage concerning the terms of the Bills providing for ratification and the revision of the related laws which have been submitted to the Diet, but notes that in drafting them account has been taken of certain important points raised by the complainants and the Commission in the course of the proceedings.

The Commission concurs in the view that, in order to expedite ratification, it is desirable to concentrate attention in the first instance on matters directly related to giving full effect to the terms of the Convention, such as the repeal of section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law and section 5 (3) of the Local Public Enterprise Labour Relations Law.

Ratification alone will not, however, create the mutual confidence without which satisfactory labour-management relations cannot be created between public authorities, corporations, and enterprises and their employees. The Commission expresses no view at this stage concerning the degree of responsibility which may rest on various parties for the lack of mutual confidence which at present exists. Its immediate concern is with the steps which should be taken to create such confidence for the future. Important changes of atittude on both sides will be necessary to achieve this result, but the initiative must necessarily come from the Government at the highest level.

It is therefore suggested that the Government should make it clear that it regards the ratification of the Convention as the first, rather than the last, of the steps which it proposes to take for the improvement of relations between public authorities, corporations, and enterprises and their employees.

It would be a great step forward if the Prime Minister found it possible to make it clear that it will be the general policy of the Government to promote and encourage regular exchanges of views at appropriate intervals between responsible representatives of government, employers and labour on matters of common concern. The primary purpose of such exchanges of views should be to create the confidence necessary to the solution by mutual understanding of the problems which remain outstanding and such further problems as may arise.

The Diet should be kept informed from time to time of the progress made by means of such exchanges of views and of any action resulting therefrom.

The Commission further suggests that the Minister of Labour of Japan and the General Secretary of the General Council of Trade Unions of Japan should meet with the Chairman of the Commission and the Director-General of the International Labour Office in Geneva, in the course of the 49th Session of the International Labour Conference to be held in June 1965, to inform them of the progress made.

The Commission is confident that if the situation is approached along these lines with mutual good will solutions can be found for problems which may at present be widely regarded as insoluble.

On 25 January Mr. Ishida, at a meeting of the Commission also attended by Mr. Iwai, accepted the proposals of the Commission on behalf of the Japanese Government. On the same afternoon the Commission met with Mr. Eisaku Sato, Prime Minister of Japan, who confirmed the acceptance of its proposals by the Government and his intention of taking a new initiative concerning problems of labour-management relations with a view to the creation of the mutual confidence necessary to their solution.

At meetings of the Commission held on 25 and 26 January Mr. Iwai asked a number of questions concerning the proposals. At the meeting held on the morning of 26 January the Chairman of the Commission and the Minister of Labour of Japan both confirmed that the exchanges of views contemplated by the Commission were designed to permit all the participants to state their views fully and freely and that no class of workers was excluded from the scope of the proposals. On the afternoon of 26 January Mr. Iwai informed the Chairman of the Commission that, while not in a position to accept the proposals of the Commission at this stage, he accepted the suggestion contained therein that he should, together with the Minister of Labour, meet with the Chairman of the Commission and the Director-General of the International Labour Office in Geneva in June to report the progress made by that time.

The Commission remains at the disposal of the Government of Japan and the General Council of Trade Unions of Japan for any further consultations which may be desirable at any later stage.

We hope that the full report which we will submit in due course to the Governing Body will be of value to both the Government and the trade unions in their efforts to secure a better understanding. We will take fully into account all that we have heard and learned in Japan and spare no effort to make it as useful and helpful as possible for the purpose. But all that we can hope to do is to help the Government and trade unions to proceed together in a direction which should make it possible for them to reach agreement upon a solution. Japan is a sovereign nation. In the final analysis, the responsibility for the future is yours as a people. We hope that our visit may have furnished the occasion for a new departure in the consideration of outstanding problems in the field of labour-management relations but, as we stated when meeting with the Prime Minister yesterday, these problems are essentially the responsibility of the Government, the Diet, the organised employers and workers, and the people, of Japan. The credit for what you achieve by co-operation amongst yourselves as a united nation will be yours.

We have been received throughout our visit to Japan with unfailing courtesy and consideration by all with whom we have come into contact. We have already requested the Prime Minister to convey our gratitude for this reception to all concerned and have had opportunities of conveying it personally to both the Government and the General Council of Trade Unions of Japan. We would, however, like to take this opportunity of expressing our appreciation to you, gentlemen of the press, and to our friends and constant companions, the photographers.

3. The Commission will reassemble in Geneva in due course to prepare its report to the Governing Body.

(Signed) Erik DREYER,
Chairman.

PART IV

128. The following two chapters attempt briefly to provide, first, a résumé of the economic and political development of modern Japan and, second, a more detailed account of the evolution of both the Japanese trade union movement and Japanese legislation relating to freedom of association and the exercise of trade union rights. It is hoped that this will help to indicate those factors which have established the special practices of Japanese labour-management relations in the public sector, as well as those common points which Japan shares with other industrialised countries in this respect. In the preparation of these two chapters the Commission has relied upon published information available to it.

CHAPTER 8

THE ECONOMIC AND POLITICAL BACKGROUND

129. The Meiji Restoration in 1868 is generally regarded as the starting point of the era of modern Japan—the era in which Japan, economically and politically, rose to the status of a Great Power. But the transformation at that time, apart from the actual transfer of authority was, underneath, less sudden than is sometimes supposed. Under the façade of feudalism developments had for a long time been taking place which to a large degree preconditioned the country for the dramatic events of 1867-68. Long before the end of the Shogunate there had emerged " social and economic relationships familiar to a modern economy ".[1] Commercial and financial influences had made inroads into the feudal system and—to varying extents in different regions—the ancient status of the labouring class had been giving way to employment for wages. Firstly, the policy of national seclusion had not prevented the development of a certain degree of industry, notably in the textiles, coal-mining and iron industries. Most important of all there had come into being a large and influential class of merchants and financiers, whose economic power vis-à-vis both the farming population and the feudal lords increased steadily as a commodity economy developed, to such an extent that the feudal system under the Shogunate began to dissolve.[2]

130. Contact with the West in the last ten years of the Shogunate therefore " served merely to hasten what was already inevitable ".[3] The opening of the country to foreigners in 1859 led to increasingly rapid transition as regards already existing economic institutions.[4]

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[1] See G. C. ALLEN: *A Short Economic History of Modern Japan* (New York, Frederic A. Praeger, Inc., 1963), p. 17.

[2] See M. SUMIYA: *Social Impact of Industrialisation in Japan* (1963, Japanese National Commission for U.N.E.S.C.O.), p. 6.

[3] See *A Short Economic History of Modern Japan*, op. cit., p. 21.

[4] See *Social Impact of Industrialisation in Japan*, op. cit., p. 4.

131. After the Restoration in 1868 a period of reconstruction began with a series of measures in 1869 which abolished the feudal system. The control which the guilds, under hereditary heads, had exercised over craftsmen since the middle of the eighteenth century was abolished between 1869 and 1872, restrictions on the choice of crops that farmers might grow were abolished in 1871 and permission to buy and sell farm land was accorded in 1872.[1]

132. Contact with foreigners, both in Japan and abroad, was encouraged as strongly as it had previously been prohibited. Foreign experts were brought in to give technical training of every kind and, at the same time, Japanese subjects in considerable numbers were sent to industrialised countries to learn their methods and benefit from their experience.

133. Industrial development was initiated by the Government and civilians followed its leadership. In the field of commerce and industry it was the Government which took up the leadership from the very beginning, establishing model factories and enacting laws designed for industrial and commercial development.[2] Dr. Harada points out a number of examples: a model factory for silk reeling set up in 1872 under a French expert, one for silk spinning set up in 1874 under a Swiss as well as two more for machine cotton spinning, one for woollen goods manufacture set up in 1877 under a German expert and one for glass manufacture set up in 1879 under an English technician.[3] A cement industry was founded in 1874. In 1880 the Government transferred these ventures to private ownership. In the first ten years of Emperor Meiji's reign posts, telegraphs and steamship passenger services were established, the first railways were constructed and Western-made machinery was introduced in all branches of industry. The lead having been given, private enterprise availed itself of the opportunities afforded to develop new industries and to modernise and expand the old crafts at the same time.

134. The early emphasis of industrial effort was especially in the textile field. The silk industry particularly was taken as a model for industrialisation because advanced techniques could be most quickly adapted to it at a moment when speedy industrialisation was vital.[4] Cotton spinning and shipbuilding were actively sponsored and aided by the Government at a very early stage to enable them to have the capital resources to absorb advanced technology.[5] By 1890 cotton was able to stand firmly on its own feet as a modern industry. The shipbuilding subsidy legislation of 1896 resulted in the existence by 1905 of 216 private shipbuilders and 42 private docks.[6]

135. At the same time, in the last decades of the nineteenth century, Japan was developing a growing export trade, based essentially on raw silk production supported by tea and rice.

136. The Government was enabled initially to finance these early industrial programmes by the revision of the land tax system in 1873. The financial and tax administration systems were completely reformed, but the country nevertheless had to survive, in the first Meiji decade, a period of great financial difficulty and internal

[1] See *Social Impact of Industrialisation in Japan*, op. cit., p. 9.

[2] See Schuichi HARADA: *Labour Conditions in Japan* (New York, Columbia University Press, 1928), pp. 24-25.

[3] Ibid., p. 25.

[4] See *Social Impact of Industrialisation in Japan*, op. cit., p. 12.

[5] Ibid., p. 15.

[6] See *Labour Conditions in Japan*, op. cit., p. 26.

political troubles before these reforms brought real beneficial results. It was not until 1881 that the period of dangerous inflation was checked, and from then until the First World War measures could be taken to stabilise the currency and develop an efficient banking system.

137. By the beginning of the First World War the greatest over-all advances had been made in agriculture, the progressive modernisation and development of which was also fostered by the Government, and in textiles. In 1913 the textile industries formed by far the most important section of Japan's manufacturing activity, accounting for 45 per cent. of the total of all manufactured products.[1] The modernisation of heavy industry, mining, metallurgical industries, oil and engineering had been steady, but slow, so that by 1913 they had not yet assumed significant world importance. And hundreds of smaller trades at domestic or home level continued as before.

138. An important element in the manufacturing advancement achieved by 1913 was the co-operation of the *Zaibatsu*—the great financial houses—with the State in developing what the State had originally initiated and encouraged. As an instance, the building of railways through the coal-mining districts in the 1890s transformed the industry, and the participation of the *Zaibatsu* followed immediately, in view of the need for coal in developing industry, a trend which was furthered by the legislation of 1890 which facilitated the private acquisition of mining areas.[2]

139. The First World War had a far-reaching impact on the economy of Japan. Munitions and shipbuilding especially grew to supply home and foreign needs. Manufacturing production increased 412.5 per cent. from 1914 to 1925.[3] Visible and invisible exports achieved a surplus over imports. By 1918 Japan had a very large gold reserve. One outstanding feature of this period was the dominating position reached by the big business corporations of the *Zaibatsu*, particularly in the chemicals and heavy industries.[4]

140. The industrial advance thus far achieved had of course been marked by a great shift of agricultural population to the towns. From 1895 to 1920 the population of the cities increased by 160 per cent. although the population of the country as a whole increased only 28 per cent.; an investigation in 1923 showed that 35.35 per cent. of the workers in the four main arsenals had previously been engaged in farming.[5]

141. Despite the industrial prosperity and eminence of 1918 the economic position was soon to change. Prices of commodities had risen and caused much social unrest, as was demonstrated by the " rice riots " of 1919. From 1920 to 1922 came the depression after the war boom. Prices fell substantially. The devastation caused by the 1923 earthquake aggravated the situation. After a further period of partial recovery came the financial crisis of 1927, leading to a general rationalisation of the industrial system and a period of financial consolidation. Trade and export figures rose again, as did prices, but then came the American depression of 1929 with its world-wide repercussions, including a fall in raw silk prices which was a disaster for the Japanese economy and for the farmers also—at that time textiles accounted for 65 per cent. of the total exports (raw silk alone for 37 per cent.).[6] In this post-war period, up to

[1] See *A Short Economic History of Modern Japan*, op. cit., p. 76.

[2] See *Social Impact of Industrialisation in Japan*, op. cit., p. 14.

[3] See *Labour Conditions in Japan*, op. cit., p. 30.

[4] See *Social Impact of Industrialisation in Japan*, op. cit., pp. 103 and 106.

[5] See *Labour Conditions in Japan*, op. cit., pp. 99-100.

[6] See *A Short Economic History of Modern Japan*, op. cit., p. 111.

1929, the metallurgical, coal-mining and shipbuilding industries had not further developed comparably with textiles. Agriculture and fishing had made considerable progress.

142. The years 1930 and 1931 were bad years for the economy. In those years employed labour declined by 20 per cent., unemployment being particularly high among manual day workers. Official figures at the time did not tell the whole story as they did not reveal the extent of underemployment; Professor Sumiya estimates the real unemployment figure at over 2 million.[1] By 1931, as compared with 1929, business activity (as indicated in terms of wholesale prices, mining and manufacturing output and transport services) had declined by 30 per cent., exports by 40 per cent., and agriculture was the hardest hit of all.[1]

143. Then, in 1931, the Manchurian campaign began, with the prospect of the opening up of a source of supply of raw materials and a new market for manufactured products. The period 1931 to 1937 was a period of all-round economic recovery, accompanied by marked changes in the basis of industry.

144. Textiles in this period continued to do well and exports increased, cotton products replacing raw silk as the major export commodity of Japan. But even from 1931 there began a general shift from agriculture, which continued to suffer depression, to war industry. The war demands led to great advances in mining and manufacturing production, whereas agriculture, forestry, fishery and light industries serving domestic needs progressively declined. Even textiles, while prospering when viewed as a single industry, were completely outstripped by the rise in the metal, engineering and chemical industries and shipbuilding, which were further aided by improvements in technical methods and industrial equipment. And, while real wages advanced in heavy industry, they declined in light industry and in the textile industry.

145. In 1937 the beginning of the Sino-Japanese war led to the nation's resources being mobilised further to serve the war industries, a process continued by Japan's entry into the Second World War in 1941. Armament production in fact continued to increase until 1942-43, as did related industries such as coal mining, metals, chemicals and heavy industry in general, a trend further influenced by the industrial and economic controls applied at that time.[2] But agriculture, fisheries, light industry and now also textiles declined very sharply from 1937. In 1931 spinning and weaving represented well over 30 per cent. of gross national production, metal, machinery and chemicals accounting for less than 34 per cent.; in 1942 chemicals and heavy industry represented 70 per cent. of the whole.[3]

146. But 1942 marked the end of this advance. The foregoing period had been accompanied by increasing inflation and in 1944 the real wages of workers were only 66 per cent. of the 1937 level. Productivity also dropped. Even in steel individual productivity fell from 54 tons in 1941 to 21 in 1944 and coal from 164 to 119: " the labour supply system had come to the stage at which it could no longer bear the burden coming from continuation of the war."[4]

147. When the war ended in 1945 Japan had lost her colonies, her investments on the mainland of Asia and her sphere of commercial dominance. Apart from physical and material war damage, the economy was in ruins and the means of production

[1] See *Social Impact of Industrialisation in Japan*, op. cit., p. 179.
[2] Ibid., p. 183.
[3] Ibid., p. 186.
[4] Ibid., p. 217.

disorganised. There were over 10 million unemployed. Yet the next 15 years were destined to be a period of phenomenal recovery.

148. The period 1945-49 was characterised by considerable inflation and some degree of uncertainty. In 1946 real national income per head was 52 per cent. of the 1936 figure, commodity prices having risen 2,000 per cent.[1] During this period considerable political, social and agrarian reform took place, including the enactment of labour and trade union legislation. Another significant post-war development was the greater emphasis placed on the expansion of domestic markets—a trend which was influenced by increased dependency of the economy on finance and banking.[2]

149. Professor Sumiya has observed that two advantageous factors favoured a rapid recovery in the early stages. First, the production facilities of the Japanese heavy and chemical industries had been greatly expanded during the war and so provided a basis from the technical point of view for a rapid achievement of production.[3] Secondly, the technological advances achieved elsewhere during the war were immediately applied to Japanese industry.[4]

150. In 1949 the Occupation Authority lent its whole weight to aid the Japanese economic recovery, and at the same time a number of measures were taken to bring about monetary stabilisation. The outbreak of the Korean War in 1950 provided a market which was a great stimulus to production. By 1951 industrial production had reached the 1936 level and continued to increase. Exports reached the 1936 level in 1954, agricultural production in 1955. By 1955 manufacturing production had increased several times by comparison with 1946. By that time also Japanese technical improvements in industry had caught up with those of the other most highly industrialised countries. The stage appeared to be set therefore for the great industrial advance which was to take place after 1955.

151. The period 1955-59 was one of exceptionally rapid industrial development, especially in the machinery and petrochemical industries; the latter had a great developing influence on other industries.[5] The construction, chemical and electric power industries showed an annual productivity increase of 40 per cent. from 1955 to 1959, although actual employment figures increased little.[6] By 1959 Japan had reached the point at which she led the world in shipbuilding, as she still does. At the same time extensive equipment investment introduced industrial techniques in new fields such as synthetic chemicals and electronics. Over-all national production increased 7 per cent. per annum from 1953 to 1959.[7]

152. This growing predominance of the manufacturing sector was achieved at the expense, relatively, of agriculture, mining, textiles and minor industries. In agriculture since 1955 much technical guidance has been made available and equipment, fertilisers, etc., have been much improved; on the whole, however, except for rice and fruit, productivity has advanced relatively slowly. Electric power and coal are tending to be replaced by oil in the new industrial production system.[8] Textiles did not reach the pre-war production level until 1959.

[1] See *Social Impact of Industrialisation in Japan*, op. cit., p. 220.
[2] Ibid., pp. 219-220.
[3] Ibid., pp. 233-234.
[4] Ibid., p. 220.
[5] Ibid., p. 237.
[6] Ibid., p. 251.
[7] See *A Short Economic History of Modern Japan*, op. cit., p. 174.
[8] See *Social Impact of Industrialisation in Japan*, op. cit., pp. 236-237.

153. Japan, like certain other highly industrialised countries, has a major problem—a fast-growing population, the need to import foodstuffs and raw materials and the corresponding need to develop manufactures to the point at which the volume of exports is sufficient to balance the economy. The growing lack of arable land is making the Japanese people increasingly dependent on imports to feed themselves, even though " there is vast overpopulation and underemployment on Japanese farms ".[1] In certain industries, very developed in the domestic market, the Government has found it necessary to take special protective measures to aid manufacturers to export at economic prices—the automobile industry is a case in point. But exports as a whole, since the war, have not risen at the same rate as productivity: in 1959 they represented only a 25 per cent. increase compared with 1936. An element of the situation in the export field which has caused concern is that in 1958 the heavy and chemical industries represented only 39.5 per cent. of the total Japanese exports, as compared with 63 per cent. in the United Kingdom and 75.8 per cent. in the Federal Republic of Germany—although since then this proportion has been slowly increasing.[2] " Industrialisation is thus of vital importance for Japan's national survival as a modern nation." [3]

154. The general position as it appeared in 1958 was as follows:

> . . . on the bright side of the spectrum there appears a modern industrial nation of great vitality with growing output and increasing per capita productivity on the part of an alert and efficient labour force.
>
> On the darker side there is the population-land-resources problem, the employment problem, the agricultural problem, the production cost problem, and, most crucial, the trade problem. As we have seen, Japan has the greatest density of population per arable acre of any country in the world. While the rate of population increase has slowed, the rise in absolute numbers, which is expected to carry the total to 100 million by 1970, stirs grave concern about employment, food supply, and political stability. Over the coming decade Japan will have to find employment for 7 to 8 million new entrants to the labour force. This is in addition to all those presently underemployed in agriculture or petty trade; those who are working a few hours a week at some uneconomic and unrewarding service activity; the unpaid family workers who would seek paid employment if they thought there was the slightest prospect of securing it. The manufacturing sector of Japanese industry will have to expand sufficiently over the coming decade to absorb the new entrants, since agriculture and commerce and services seem to have reached the point of saturation.
>
> In order to expand industrial production, Japan will have to increase its imports, since it has few natural resources and is heavily dependent on imported raw materials and foodstuffs. To earn the exchange to pay for these imports, Japan will have to expand its exports substantially.[4]

155. It would seem appropriate to close this chapter with some reference to the trends in wages which have accompanied this post-war expansion of Japanese manufacturing industries.

156. The period from 1956 onwards has witnessed one very significant development. The wage differentials between technologically advanced and traditional industries have tended to narrow in spite of continuing larger productivity gains in the former. Increases in wages since 1956 in the different industries have thus not risen parallel to the corresponding productivity gains. In fact, wages have tended to increase faster in industries such as textile and lumbering where productivity growth has been slower and the prevalent wage levels traditionally lower than in those, such as auto-

[1] See Jerome B. COHEN: *Japan's Postwar Economy* (Indiana University Press, 1958), p. 41.

[2] See *Social Impact of Industrialisation in Japan*, op. cit., p. 238.

[3] See *Japan as It Is Today* (Tokyo, Ministry of Foreign Affairs, 1956), p. 39.

[4] See *Japan's Postwar Economy*, op. cit., pp. 215-216.

mobile and other transport machinery and the electrical machinery industries, where the productivity gain has been faster and the prevalent wage levels traditionally higher. According to Professor Sumiya, between 1956 and 1960 money wages increased in the latter by 4 per cent. per annum as against about 4 to 6 per cent. per annum in the former. He has further observed in this context: " It may be said that the rate of wage increases is higher in the industries whose wage levels were traditionally low. In this connection, there is no doubt that the wage gap has tended to diminish." [1] This tendency has become accentuated since 1960; between 1960 and 1963 money wages in textiles and lumbering have increased at an annual rate of some 12 to 15 per cent. as against an 8 to 9 per cent. increase in the machinery industries referred to above. It is worth noting that the reported annual productivity gain in the machinery industries during the same period was about 8 per cent. as against corresponding annual gains of 6.3 per cent. in the textile and 0.7 per cent. in the lumbering industries.[2]

157. Professor Sumiya, presumably basing his comments on the situation up to 1961, had observed that as between large and small undertakings the gap remained wide as regards average wages paid.[3] This was attributed to the fact that smaller undertakings reduced the wage bill by employing younger workers. However, Professor Sumiya noted that a comparison of the wages paid according to age groups showed that the differential between large and small undertakings was diminishing.[4]

158. It would appear, however, that since 1960 the gap between the average wages of workers in large and small undertakings has also tended to narrow rapidly. Taking the years 1961 and 1964 for comparison, if the average wages paid in each year in enterprises with more than 1,000 workers are taken as 100, the relative wages in enterprises employing between 500 and 1,000 workers moved up from about 79 to 86 while in the smaller enterprises employing from ten to 30 workers the relative wages moved up from 61 to 75. Further, this trend towards the narrowing of wage differentials by enterprise size is shared by workers in all age groups. In fact, in 1964 enterprises employing less than 100 workers were paying even higher wages than those employing more than 1,000 workers in respect of workers below the age of 25.[5]

159. The last decade has also witnessed a sharp rise in the general level of real wages. While the consumer prices rose during the period by over 35 per cent., the average money wages nearly doubled, resulting in a net gain of about 45 per cent. in real wages. This development may be attributed to two factors—constant union pressure for higher wages and a shortage of young labour which has resulted in an increase of starting wages, especially in medium and small undertakings.[6]

160. Professor Sumiya reaches the following conclusion:

With such a background, the Japanese Government pointed out in the autumn of 1962 that the wage level and living standard in Japan have been approaching those of European society, and

[1] See *Social Impact of Industrialisation in Japan*, op. cit., p. 273.

[2] See *Economic Statistics of Japan* (Bank of Japan, 1963).

[3] See *Social Impact of Industrialisation in Japan*, op. cit., p. 274. In 1959 average monthly wages in establishments with from ten to 99 workers were only 57 per cent. of those paid in undertakings employing over 1,000 (see *A Short Economic History of Modern Japan*, op. cit., p. 182).

[4] See *Social Impact of Industrialisation in Japan*, op. cit., p. 277.

[5] Sources: *Monthly Labour Statistics and Research Bulletin* (Ministry of Labour), Mar. 1965, and *The White Paper on Labour Economy* (1964), statistical table No. 42.

[6] See *Social Impact of Industrialisation in Japan*, op. cit., p. 278.

warned at the same time that wage hikes should remain " within " the improvement of industrial productivity. This opinion announced by the Government has immediately affected labor movements. Both Sohyo and Zenro, taking advantage of the government view, have begun to demand payment of wages on the " European " level. This means that labor unions have found a new target of wage hike demands after the postwar principle of " living wage " became obsolete due to the rise of wage levels. It is believed that the wage demand by the Japanese labor union movement will be focused for the near future on the attainment of the " European wage level ". It means the wage and living standards of Japanese workers have been improved to that extent and standing on the threshold of an affluent society.

CHAPTER 9

EVOLUTION OF THE JAPANESE TRADE UNION MOVEMENT AND OF LEGISLATION RELATING TO FREEDOM OF ASSOCIATION AND THE EXERCISE OF TRADE UNION RIGHTS

A. History of Trade Union Development prior to the War of 1941-45

161. Before the last war there was neither a legal system for trade unions devised as in some of the newly developing countries as a legislative framework in the light of which an incipient trade union movement and structure of industrial relations might grow to form a comprehensive pattern, nor again, as in certain European countries, was there a body of long-enacted law embodying restrictions and prohibitions which had to be removed one by one as the trade unions struggled to establish their basic rights. Such law as existed in this field consisted largely in isolated provisions enacted from time to time—in the earlier stages sometimes to encourage organisation, but later consisting of penal provisions which placed certain restrictions on collective action. It was not until after the war that the pattern changed.

162. It is not necessary to look back further than the Meiji Restoration of 1868 to find the first indications of efforts to combine on the part of the workers. Prior to that date the Japanese economy was largely based on agriculture. From 1868, however, as was observed in the preceding chapter, the imperial régime embarked upon the modernisation of the industry, politics and economy of the country. Slowly an industrial economy developed, and with it an industrial labour force which in turn gave rise to the first efforts at combination by the workers.

163. The first legal enactments favoured the right of the workers, individually but not collectively, to fix their wages by negotiation. Cabinet Notification No. 240 of 1872 provided that the wages of employees, craftsmen and hired workers should be agreed upon by mutual negotiation, but the Penal Law of 1880 rendered employees conspiring against or threatening an employer to obtain wage increases punishable by imprisonment and fine. However, article 29 of the Constitution of 1889 guaranteed freedom of association within the limits of the law.

164. The first phase of trade union history took place in the last 20 years of the nineteenth century. From 1883 to 1892 there were isolated, small-scale efforts to organise, in turn, rickshawmen, printers, ironworkers and shoemakers, all of which were short-lived. Then came the China-Japan War of 1894-95, followed by much more serious attempts. A Society for the Promotion of Trade Unions (Rodo Kumiai Kisei Kai) was set up in 1897. Besides campaigning for factory legislation, it encouraged the formation of several small unions. Its efforts were seconded by the formation, also in 1897, of the Workers' Volunteer Society and the Association for the Study of Socialism. Between 1897 and 1899, unions of iron- and steelworkers, printers, locomotive engineers and shipbuilding workers were founded. In 1899 the

Steelworkers' Union claimed a membership of 5,000 organised in about 40 branches.[1] But the combined effects of opposition in certain quarters, of an economic depression at the same time, and of the enactment of the Public Peace Police Act (Act No. 36 of 1900) put an end to the existence of these early trade unions.

165. Several of the provisions of the Public Peace Police Act were unfavourable to trade union organisation, especially sections 17 and 30, which prohibited and penalised acts of " instigation " and " incitement " committed in the course of labour disputes.

166. From the enactment of this Act in 1900 until 1912 came the second phase in the history of the Japanese trade union movement—the period in which the right to organise was most limited by penal law. It was in this period that the Penal Law of 1880 was replaced by the Penal Law of 1908, which made punishable any collective action with a view to obtaining wage increases. Yet economic developments were even then taking place which were destined to give a greater impetus to the process of trade union organisation. The Russo-Japanese War of 1904-05 marked a further advance in industrialisation. Employers began to group in cartels, a move which gave rise simultaneously to the real beginnings of twentieth-century trade unionism. The workers began to organise, albeit at first more or less clandestinely.

167. The third phase in Japanese trade union history may be described as the rise of the pre-war trade union movement, spanning the years 1912-31. In this period a policy of toleration if not open encouragement of trade unionism prevailed, and the trade unions could exist openly without fear of repression.

168. The Yuai Kai, a trade union organisation despite its name (" Friendly Love Society "), was formed in 1912. It began with 10,000 members and was much influenced by the American Federation of Labor, with which its leaders had personal contacts through Gompers and others. Its branches or local unions and membership grew steadily and by 1920 it claimed to have 120 constituent unions with a membership of 30,000.[2] The Yuai Kai became identified as the right wing of the trade union movement. Other independent unions of more left-wing tendencies were founded, led by the Militant Printers' Union founded in 1916.

169. This progress was greatly assisted by the First World War, which was attended by circumstances very favourable to trade union development—a big and rapid increase in heavy industry entailing the growth of a permanently employed industrial labour force, always the easiest recruiting ground for union membership. There were 50 unions in 1914; in 1918 there were 92. Post-war inflation and domestic shortages at that time roused much discontent among the workers. At the same moment, in 1918, the Government itself manifested its intention to adopt a liberal attitude by announcing that it would not oppose the " wholesome development " of trade unions.[2]

170. This was followed in 1919 by the creation of the International Labour Organisation, perhaps the greatest single influence in the early history of Japanese trade unionism. " No event in the past ever gave so powerful a stimulus to Japanese trade unionism as the creation in 1919 of the International Labour Organisation. In

[1] See Solomon B. LEVINE: *Industrial Relations in Post-War Japan* (University of Illinois, 1958), p. 61.
[2] Ibid., p. 63.

the atmosphere of a general social awakening and favoured by the economic situation, no less than 71 new unions were formed in 1919." [1]

171. Progress from then on was rapid. Sixty-six unions were set up in 1920 (when the All-Japan Miners' Federation was formed) and 71 in 1921 (when the organisations in government industrial undertakings formed the powerful Federation of Workers in State Enterprises, and 22 seamen's unions fused in the Japan Seamen's Union), bringing the total at the end of 1921 to 300 unions with 103,440 members. The mechanics' unions joined together in the Federation of Mechanics' Unions in the year 1922, at the end of which there were 387 unions with 137,491 members.

172. In the meantime in 1921 the Yuai Kai had changed its name to Sodomei (General Federation of Trade Unions), under which name it has had a continuous existence, apart from the war years, until the present day; in 1923 Sodomei itself had 300 unions with over 100,000 members, a majority of organised labour at that time.

173. The years 1923 and 1924 saw the formation of more federations—the National Federation of Printers, the Federation of Japanese Trade Unions (unions of ironworkers, electrical workers and mechanics) and the Federation of Navy Labour Unions. At the end of 1924 there were 447 unions with 175,454 members. By the end of 1926 there were 500 unions with 272,000 members.[2] Influences were now at work which were to divide the whole union movement, but they did not yet arrest the advance of over-all trade union membership—501 unions with 308,900 members at the end of 1928, but still representing only 6 per cent. of the industrial labour force. At the end of 1930 there were 700 unions with 350,000 members, and at the end of 1931 there were 818, with a membership of 370,000, still representing only 8 per cent. of the industrial labour force [3], yet the highest percentage ever reached by the pre-war trade union movement.

174. The period from 1931 to the Second World War was, for the trade union movement, a period of decline. Over-all union membership had not yet reached its peak, but it no longer kept pace with the increase in the industrial labour force. Although the highest membership figure of 420,000 in something like 1,000 unions was reached in 1936, this was in reality a decline in organising power—it represented only 5 per cent. of the industrial labour force.

175. The causes of this decline are to be found initially in the opposing political alignments of the main workers' organisations, with resulting splits in the movement. In 1925 emerged the Japanese Council of Trade Unions, a left-wing rival to Sodomei. Sodomei itself split in two and by 1929 there were Sodomei on the right, the Japanese Council of Trade Unions on the left and, between them in the centre, the League of Japanese Labour Unions. Further unions seceding from Sodomei in 1929 joined the League to form a new centre group, the National League of Labour Unions (Zenkoku).

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[1] See *Freedom of Association*, Studies and Reports, Series A, No. 32, Vol. V (Geneva, I.L.O., 1930), p. 414.

[2] 1 July 1926 saw the repeal of ss. 17 and 30 of the Public Peace Police Act, 1900, which had destroyed the trade union movement at that time, but which had not prevented the advance of the trade unions in the 1920s. Although a Labour Disputes Conciliation Act enacted in 1926 prohibited strikes pending recourse to compulsory conciliation procedure, this did not noticeably impede trade union development.

[3] See *Industrial Relations in Post-War Japan*, op. cit., p. 63.

176. The different groups were bitterly divided on political grounds. The left-wing Japanese Council of Trade Unions was dissolved in April 1928, pursuant to section 8 of the Public Peace Police Act, which empowered the Minister of the Interior to prohibit the existence of any organisation " if deemed necessary for the maintenance of public peace and order ".

177. The pre-war political and economic trends of the 1930s prevented the further development of the trade union movement, although at the end of 1939 there still existed 517 trade unions, claiming 365,804 members. In 1940, however, came the formation of a national labour front. Sodomei itself dissolved in July 1940. At the end of 1940 there were only 49 unions, with 6,455 members, and this remnant of the whole trade union movement rapidly disintegrated.

B. Industrial Relations Legislation and Trade Union Development under the Occupation (1945-52)

178. At the beginning of the Occupation there were no trade unions, no trade union legislation, and no organised industrial relations. The way lay open for a completely new beginning, under the aegis of the Supreme Commander for the Allied Powers (S.C.A.P.).

179. The United States policy directive issued on 22 September 1945 ordered that " encouragement shall be given and favour shown to the development of organisations in labour, industry and agriculture, organised on a democratic basis ". S.C.A.P. gave effect to this directive by promoting the enactment of legislation to protect trade union rights and to assist the peaceful settlement of disputes.

1. *The First Legislative Phase (1945-48)*

180. The legislation enacted in the first years of the Occupation accorded with S.C.A.P.'s declared policy of openly encouraging the formation of workers' organisations.

181. The first trade union law came into force in December 1945. It was inspired partly by the philosophy of the American Wagner Act. It guaranteed the right to organise, the right to bargain collectively and the right to strike, and afforded remedies for acts of anti-union discrimination. Initially it applied to all employed persons, including those in publicly owned undertakings and those in the civil service.

182. This enactment was supplemented in September 1946 by the Labour Relations Adjustment Law, designed to ensure the peaceful settlement of disputes by procedures of conciliation, mediation and voluntary arbitration.

183. The new Constitution of 3 November 1946 guaranteed the basic right of freedom of association (article 21) and the right of workers to organise and to bargain and act collectively (article 28).

184. These enactments were followed by the promulgation of the Labour Standards Law in April 1947, to afford minimum standards for both organised and non-organised workers. Essentially the Law incorporated the principal Conventions of the International Labour Organisation; it provided minimum protection for women workers and minors, regulated hours of work and procedures for discharge and opened the way to the determination of minimum wage rates; other enactments

prohibited certain recruitment practices and established new systems of industrial health insurance, workmen's accident compensation and unemployment benefit.[1]

185. This completed the first legislative phase, intended above all else to encourage the formation of trade unions and to promote and protect their activities. At this point, it is appropriate to examine the extent to which the workers availed themselves of this opportunity.

2. *The Formation of the New Trade Union Movement (1945-48)*

186. In the first years of the Occupation the workers availed themselves of the new guarantees of the right to organise to a very great degree.

187. On 31 December 1945 there were 509 trade unions with a membership of 380,677—already not far below the pre-war peak but insignificant as compared with what was to follow. In one year, by 31 December 1946, 17,266 unions had been formed, with 4,925,598 members. On 30 June 1947 the figures stood at 23,323 unions with 5,692,179 members; on 30 June 1948 there were 33,926 unions with 6,677,427 members. This meant that 54.3 per cent. of paid workers (who constituted about one-third of the total labour force) were organised in trade unions.[2]

188. Unfortunately, from the very beginning, the new trade union movement was beset by political divisions in the same way as the old.

189. In 1946 Sodomei (General Federation of Trade Unions) was revived and, as before, represented right-wing trade unionism. The extreme left-wing elements coalesced in Sanbetsu (National Congress of Industrial Unions).

190. Both organisations appear to have made economic demands which were regarded as excessive at the time. A general strike was threatened in 1947. By 1948 it had become evident that the economic recovery of Japan would require more stability in the conduct of industrial relations. The first sign of a stiffening of attitudes was the growing determination of the employers to resist wage demands not considered to be justified by increased productivity. This was followed by an overhaul of the legislation designed to strengthen the bona fide trade unions in certain ways but also to avoid disruption in the essential sectors of the economy.

3. *The Second Legislative Phase (1948-52)*

191. The Trade Union Law was revised in 1948 but more drastically in 1949. The text of 1 June 1949 is basically the Law as it exists today, although certain provisions have been further amended from time to time. On the same date a revised text of the Labour Relations Adjustment Law came into force. The Public Corporation Labour Relations Law [3], promulgated on 20 December 1948, and the National Public Service Law, promulgated on 21 October 1947, were also amended on 1 June 1949. The laws concerning the local public enterprises and the local public service were to come later.

192. The net result of these important amendments may be summarised as follows.

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[1] See *Industrial Relations in Post-War Japan*, op. cit., p. 25.

[2] Figures cited in *Yearbook of Labour Statistics and Research, 1949* (Tokyo. Division of Labour Statistics and Research, Ministry of Labour, 1949), p. 253. The term " paid workers " excludes those members of the labour force who are self-employed or who are unpaid family workers.

[3] Its title was changed to " Public Corporation and National Enterprise Labour Relations Law " in 1952.

193. Government civil servants were removed *en masse* from the coverage of the Trade Union Law and the Labour Relations Adjustment Law and placed under the new National Public Service Law. They lost the right to bargain collectively with a view to the conclusion of collective agreements, important functions with regard to the determination of wages and other conditions being entrusted to the National Personnel Authority, and they lost the right to strike, without being compensated by the establishment of arbitration machinery. Only employees of the specific civil service could be members or officers of the employees' organisations.

194. Employees of government undertakings became subject to the new Public Corporation Labour Relations Law, which removed them also, for the most essential purposes, from the coverage of the Trade Union Law and the Labour Relations Adjustment Law. They retained their right to bargain and to conclude collective agreements, but lost the right to strike and became subject to compulsory procedures for the settlement of disputes, special separate machinery for the purpose being established. Only employees could thenceforth be members or officers of the trade unions concerned, and supervisory and confidential employees lost the right to organise altogether. At the same time the power of the national unions was reduced by the decentralisation of collective bargaining and the institution of the principle of the bargaining unit. The scope of collective bargaining became limited to the separate enterprise. The matters which might be the subject of collective bargaining were statutorily defined and matters affecting the " management and operation " of the enterprise were excluded. Collective agreements requiring the disbursement of money not available from the budget or funds of the corporation or enterprise could not take effect without the approval of the Diet.

195. These provisions were applied also, in their main essentials, to the local public service and the local public enterprises until parallel laws were enacted—the Local Public Service Law of 13 December 1950 and the Local Public Enterprise Labour Relations Law of 31 July 1952.

196. Both the revised Trade Union Law and the Public Corporation Labour Relations Law did away with the compulsory registration required by the Trade Union Law of 1945, but required unions to be certified as being " bona fide " or in compliance with the provisions of the Law before they could participate in the procedures and avail themselves of the remedies provided for in the Law. Among the requirements which the trade unions had to fulfil for certification under both Laws were the provision of direct secret ballots for the election of officers and changes in constitutions by a majority vote of the membership and provision of equal rights for the members and non-discrimination in respect of membership. Greater protection was afforded to the certificated trade union by the fuller definition given to unfair labour practices (acts of anti-union discrimination against employees, interference by employers by financial means in the formation and functioning of trade unions and refusal to bargain without good reason). However, the employer could refuse to bargain with the trade union which did not fulfil the statutory requirements.

197. Other changes affected the Trade Union Law alone. Strikes were made subject to approval by direct secret ballot of the membership. A union could not be certificated as being in compliance with the Law if it admitted to membership supervisory personnel with the right to hire, fire, promote or transfer or in confidential positions in which they had access to the employer's industrial relations plans and policies.

198. The initial Labour Relations Adjustment Law had already specified as public utilities certain industries in which stoppages would seriously affect the national economy or endanger the daily life of the general public. Compulsory mediation, entailing a " cooling-off " period, applied to those industries. The 1949 revision of the Law empowered the Prime Minister, with the approval of the Diet, to extend the list of these industries.

199. Further changes were made in this Law in 1952 by the substitution for the above provisions of requirements as to the filing of special notice in the case of disputes affecting public utilities. The " emergency adjustment " procedure was introduced as it exists today, according to which the Prime Minister, if he believes that a threatened strike " seriously threatens national economic activities or the daily life of the nation ", may decide upon an emergency adjustment, and the right to strike may be suspended in accordance with the conditions prescribed by the Law for a period of 50 days.

200. Finally, after strikes had occurred in 1952, the Law concerning control of methods of acts of dispute in electrical enterprises and the coal-mining industry was enacted on 7 August 1953. This Law virtually prohibited strikes in these industries with very minor exceptions.

201. The above revisions of and additions to the laws constitute, with subsequent minor changes, the body of relevant legislation as we know it today and which is analysed in Chapters 11 to 15 below.

202. The most immediate effect was to remove from the coverage of the Trade Union Law over 2 million publicly employed persons, constituting over one-third of the total union membership at that time and organised in nearly one-third of the existing trade unions.

203. The effect of this change on the evolution of the trade union movement in the latter half of the Occupation period must now be considered.

4. *The Evolution of the Trade Union Movement in the Latter Part of the Occupation (1948-52)*

204. The legislative changes referred to above did not in themselves reduce the over-all membership of the trade union movement. Rather they produced a realignment. As already noted, on 30 June 1948 54.3 per cent. of paid workers were organised in 33,926 trade unions with a membership of 6,677,427 members.

205. By 30 June 1949 there had been a very slight increase in the number of trade unions, but a very slight decrease in membership—34,688 trade unions with 6,655,483 members.[1] The breakdown of these figures gives the following indication of the new alignments.[2] A total of 4,572 unions with 737,857 members had become subject to the National Public Service Law; 1,553 unions with 609,199 members had become subject to the Public Corporation Labour Relations Law; and 4,614 unions of local government employees, with 932,367 members, still technically under the Trade Union Law, were about to be transferred to the coverage of the Local Public Service Law or the Local Public Enterprise Labour Relations Law, as soon as they

[1] See *Yearbook of Labour Statistics and Research, 1949*, loc. cit.

[2] Ibid., p. 255.

were enacted. The transfer from the coverage of the Trade Union Law affected 11,324 unions with a membership of 2,447,012.

206. But other circumstances also were influencing the development of the trade union movement. The Far East was, even in 1948, experiencing the political tension which was to lead in the middle of 1950 to the Korean War. This was therefore the era in which many extreme left-wing sympathisers in public and private employment were dismissed and considerable numbers of them lost their union posts. As a result Sanbetsu, the left-wing trade union central organisation, which had perhaps double the membership of the right-wing Sodomei in 1948, represented only 15.3 per cent. of organised labour by 30 June 1949 as against the 13.7 per cent. of Sodomei. [1]

207. The policy of economic rehabilitation, moreover, in the latter half of 1948 and in 1949, forced the closure of many smaller undertakings and retrenchment in larger ones. Thus, while as noted above the union membership of 6,677,427 represented 54.3 per cent. of all paid workers, the above figure of 6,655,483 on 30 June 1949 represented 55.7 per cent.[2]

208. But after that, for two years, both the over-all figures and the percentage of organisation were to show a decline. In 1948 Sodomei broke off all further efforts to co-operate with Sanbetsu and by 1949 Sanbetsu was evidently in process of disintegration; Sodomei withdrew from Zenroren, the National Liaison Council of the Japanese Trade Unions, in which it had previously collaborated with Sanbetsu. This left the Council solely under Sanbetsu influence. In the summer of 1950 war broke out in Korea and Zenroren was dissolved. From the point of view of the trade union movement these events were reflected in the official trade union figures [3] issued by the Government: on 30 June 1950 there were 29,144 unions with 5,773,908 members; on 30 June 1951 there were 27,644 unions with 5,686,774 members.

209. But at this point the decline was halted. The war in Korea ended the period of retrenchment by providing a new market for Japanese goods. And in July 1950 Sodomei combined with certain former elements of Sanbetsu to form Sohyo (the General Council of Trade Unions of Japan), from then until the present day by far the largest central organisation of workers in Japan. From the middle of 1951 until the Peace Treaty in April 1952 the trade unions were stabilising their position. On 30 June 1952, although the rate of organisation among paid workers had dropped to 40 per cent.[4], there was a slight rise in the total figures to 27,851 unions with 5,719,560.[5]

C. The Evolution of the Trade Union Movement since the End of the Occupation (April 1952)

210. Although the advent at last of a single central trade union organisation in July 1950 might have given rise to hopes of greater trade union solidarity, any such hopes were very quickly dispelled soon after the signing of the Peace Treaty in April 1952. Almost at once events took place which were shortly to split the Sohyo organisation. The small section of the unions which adhered to the principle of

[1] See *Yearbook of Labour Statistics and Research, 1949*, op. cit., p. 254.

[2] Ibid., p. 253.

[3] See *Yearbook of Labour Statistics, 1959* (Tokyo, Division of Labour Statistics and Research, Ministry of Labour, 1960), p. 384.

[4] Ibid., p. 381.

[5] Ibid., p. 384.

national industrial unionism had already left it in 1951 to form Shinsanbetsu (the National Federation of Industrial Organisations).

211. July 1952 was the month in which the list of government employees subject to the Public Corporation and National Enterprise Labour Relations Law was extended and the subsisting S.C.A.P. and cabinet orders were replaced formally by the enactment of the Local Public Enterprise Labour Relations Law. The Government was also proceeding with a view to relaxing some of the restrictions on overtime and night work and underground work contained in the Labour Standards Law, and also to enacting anti-subversion legislation. In addition, there was dissatisfaction in some quarters over the terms of the Peace Treaty, while a number of unions were pressing wage claims.

212. As a result a wave of strikes took place early in 1952, for the most part with Sohyo at its head. The actual motives, among those referred to in the preceding paragraph, varied in several cases according to the tendencies of the big unions concerned.

213. Later in the year, after the enactments in question had been promulgated, Sohyo shifted its ground, demanding the fixing of a general minimum wage and the linking of wage rates with the cost of living. At the same time demands for substantial wage increases were made. The result was a series of the biggest strikes in the nation's trade union history. By the end of 1952 these strikes ended in failure.

214. The signs of a split in Sohyo were now developing. In 1953 Sohyo led further strikes against the proposal to enact the Law concerning control of methods of acts of dispute in electrical enterprises and the coal-mining industry (see paragraph 200 above). These strikes also ended in failure.

215. At this point the textile workers' unions and some others decided to leave Sohyo. In April 1954 Sodomei, which had retained its integral identity within Sohyo, broke away, with certain other right-wing elements, and established Zenro-Kaigi (Japan Trade Union Congress), with something like 800,000 members.

216. In April 1962 Zenro-Kaigi, including Sodomei, formed a confederation with Zenkanko (National Council of Government and Public Service Workers' Unions); the members of this confederation then prepared for the formation of the Japanese Confederation of Labour (Domei), the inaugural convention of which was held on 11 and 12 November 1964.

217. Sohyo has continued to be an organisation in which diverse political tendencies are represented. These different tendencies, however, have brought about a complicated situation from the point of view of international affiliation, and have prevented the realisation of earlier plans for the affiliation of Sohyo as a whole with the International Confederation of Free Trade Unions. That being so, I.C.F.T.U. agreed to the direct affiliation to it of separate national unions. Six Sohyo unions (coal miners, metal and machinery workers, broadcasting employees, the teachers' union, communication workers and municipal transport workers), representing over 1 million workers, and four of the Zenro-Kaigi unions (seamen, textile workers, cinema and theatre workers and garrison force workers), representing over 400,000 workers, affiliated with I.C.F.T.U. in 1954; this was followed by the affiliation of Sodomei itself shortly afterwards.[1]

[1] *Industrial Relations in Post-War Japan*, op. cit., pp. 87-88. The more recent pattern of international affiliation of Japanese trade unions is described in paragraphs 255 to 259 below.

218. Since 1954 the tactics of Sohyo have changed. There have been no more widespread strikes resembling general strikes, although there have been important strikes in different public sectors. Sohyo has consistently opposed governmental measures in the economic field of which it did not approve and, in these years of economic expansion, has pressed the wage claims of workers in both the public and private sectors with some success.

219. Yet politics have continued to dominate the trade union sphere, although the very different themes advocated by separate forces within Sohyo have not been allowed to reach the point of causing structural division. They have, however, continued to make Sohyo affiliation *en bloc* with I.C.F.T.U. impracticable.

220. As will be seen subsequently, Japanese industrial relations have the unusual feature of a dual approach to the achievement of economic gains by the workers. Collective bargaining and the conclusion of collective agreements are essentially the function of the local unions. On the other hand, general policy making is left mainly to the central organisations, which also engage actively in the political field.

221. A table contained in the report submitted by Mr. Heiji Nomura, Professor of Law at Waseda University, Tokyo, to the meeting of the International Society for Labour Law and Social Legislation held in Lyons from 18 to 22 September 1963, contains information to the effect that, in the Japanese election of Members of the House of Councillors on 1 July 1962, 18 out of 24 Socialist or Democratic Socialist party candidates in national constituencies and 39 out of 69 candidates in local constituencies were or had been union officers and were nominated by union organs.

222. Statistics covering the past decade show that the trade unions since 1952 increased their membership steadily from year to year. But the percentage of organisation among employed workers declined, again steadily, in every year until there was a slight rise in 1961, since when there has been a further very slight increase in the percentage. Recent figures published by the Japan Institute of Labour [1] make this clear:

Date	No. of unions	Membership	Approx. percentage of paid workers
30 June 1952	27,851	5,719,560	40.3
30 June 1953	30,129	5,927,079	38.8
30 June 1954	31,456	6,075,749	37.6
30 June 1955	32,012	6,285,878	37.8
30 June 1956	34,073	6,463,118	35.4
30 June 1957	36,084	6,762,601	35.5
30 June 1958	37,823	6,784,032	34.4
30 June 1959	39,303	7,211,401	33.9
30 June 1960	41,561	7,661,568	33.8
30 June 1961	45,096	8,359,876	36.1
30 June 1962	47,812	8,971,156	36.2
30 June 1963	49,796	9,357,179	36.1
30 June 1964	51,457	9,799,653	36.3

[1] *Japan Labour Bulletin*, New Series, Vol. 4, No. 3, Mar. 1965.

D. The Present Structure, Membership, Distribution and Affiliations of the Trade Unions of Japan

1. *Form and Level of Organisation*

223. The general pattern of trade union organisation in Japan has corresponded to a very large degree with that of industry itself.

224. The modern industrial economy of Japan is based on the coexistence of an unusually large number of very small undertakings side by side with only a small number of undertakings of any considerable size. In March 1952, of 3,750,000 non-agricultural enterprises, 3,490,000 (92.4 per cent.) were small individual enterprises, 95,000 (2.8 per cent.) small or medium-sized partnerships or companies, and 165,000 (4.8 per cent.) corporations. Only the corporations employed a labour force of any appreciable size and, even among the corporations, only 1,700 had as many as 500 employees each. Undertakings with less than 20 employees each comprised 96 per cent. of the whole and provided 54 per cent. of non-agricultural employment. In manufacturing 81 per cent. of the undertakings had under ten employees each and employed 23 per cent. of manufacturing employees; only 0.2 per cent. of the undertakings had over 500 employees each, but these also employed 23 per cent. of the employees.[1] The Japanese employers themselves have furnished comparable figures in respect of 1954, stating that this has been an element which renders the determination of a minimum wage rate very difficult. They give the following table [2]:

Enterprise	No. of employees	Percentage of enterprises		Percentage of employees	
Petty	1-4	80	99.8	29	81
Small	5-49	19		40	
Medium	50-199	0.8		12	
Large	200-999	—	0.2	10	19
Very large	over 999	—		9	

225. The formation of basic trade union organisations in Japan has been strongly conditioned by these considerations. " The structural feature most characteristic of Japanese trade unionism has been its 'enterprise' basis of organisation. Probably more than 85 per cent. of all basic union units, embracing almost 80 per cent. of total union membership, are organised along enterprise lines; that is, their members are confined to a single shop, establishment or enterprise. The remainder are divided about equally between industrial and craft organisations in which the local units are not based simply on enterprise membership." [3] The following official figures [4] illus-

[1] See *Industrial Relations in Post-War Japan*, op. cit., p. 7.

[2] See *Labour Movement in Japan* (Japan Federation of Employers' Associations, 1958), p. 15.

[3] See *Industrial Relations in Post-War Japan*, op. cit., p. 90.

[4] See *Yearbook of Labour Statistics, 1959*, op. cit., p. 386.

trate this situation, and would even seem to show that it tends to become still more firmly established:

Type of union	30 June 1957		30 June 1958		30 June 1959	
	No.	Percentage	No.	Percentage	No.	Percentage
Enterprises	16,693	86.5	17,441	86.6	18,232	88.0
Industrial	668	3.5	819	4.1	635	3.1
Occupational	1,370	7.1	1,351	6.7	1,365	6.6
Area	251	1.3	205	1.0	155	0.7
Other	315	1.6	316	1.6	338	1.6

226. The Japanese enterprise union, moreover, has a number of distinctive features, both in its composition and in its functions.

227. Firstly, it is normally restricted to the permanent or regular employees of the undertaking. It does not attempt to organise or represent temporary employees.

228. Apart from that reservation, it normally organises all the employees of the undertaking and not separate categories. " More than 60 per cent. of all the unions are combined organisations in that they include both white-collar and production workers. Only 15 per cent. solely embrace production workers, while the remaining 25 per cent. are exclusively white-collar. The large proportion of the latter, of course, reflects widespread organisations in service and other tertiary industry, where there are few manual workers of the factory type." [1] Diversity of interests, however, does cause some enterprise unions to form internal divisions and divide the officer posts between manual and non-manual employees.

229. Secondly, the functions of the Japanese enterprise union reflect its autonomy. It cannot be compared in this respect, for example, with the American local or the British trade union branch. Collective bargaining is mainly at the level of the enterprise and is conducted by the enterprise union through its own employed officials (it has been estimated that there is a paid union official for every 150 members).[2] Over a quarter of the union dues are used for enterprise union officials' and staffs' salaries. The national union or federation to which the union may affiliate or the central organisation to which it belongs do not take part in collective bargaining. The only exception to this pattern is the seamen's union, which has never been organised on enterprise lines and has developed permanent industry-wide bargaining machinery in concert with the shipowners.

230. Inevitably this kind of bargaining, in which the union takes stock of the situation in the light of the economic position of the undertaking rather than that of the industry, leads to wide variations in the wage structure within the industry. This is illustrated by the following figures [3] published by the Japanese employers. Taking

[1] See *Industrial Relations in Post-War Japan*, op. cit., p. 91.

[2] Ibid., p. 99.

[3] See *Labour Movement in Japan*, op. cit., p. 16.

the level of wages in 1954 as 100 per cent. in enterprises with 1,000 employees or more each, the following variations were cited:

No. of persons employed	Wages percentage
over 999	100.0
500-999	86.8
100-499	69.0
50-99	55.6
10-49	45.0
4-9	33.5

231. Nevertheless, the enterprise unions have generally combined among themselves to set up national, regional or industrial unions or federations, but, as will be seen below, only 60 per cent. of the enterprise unions are affiliated, either directly or indirectly through their national unions or federations, with one of the central workers' organisations.

232. Their purpose in so affiliating is largely one of liaison and co-ordination, but they are not subject to the control of the central organisations and rarely accept even their guidance.

233. Deprived of all direct contact in the normal fields of trade union negotiation, the central organisations are engaged essentially in the political and politico-economic fields.

2. Trade Union Membership in the Different Industries

234. Official figures illustrate the strength and membership of the trade unions, firstly from the point of view of the respective industries (irrespective of whether they belong to the public or private sector), and secondly in the different sectors, public or private. It is the first series of statistics which reveal the over-all degree of union organisation.

235. While enterprise unionism is the general rule, union organisation has succeeded to its greatest extent, in Japan as elsewhere, in those industries in which enterprises are relatively large, and especially the industries which have been most directly concerned in the modern industrialisation of Japan and also the branches in which public ownership or direction prevails. A relatively high degree of union organisation has been achieved, therefore, in transportation, communications, public utilities, mining, finance, insurance and real estate (including the large banks and investment institutions), steel and iron, shipping, gas and electricity, cotton textiles, public corporations and the civil service. The Government civil service is more highly organised than the local, although one branch of the latter—education—is very highly organised indeed. Manufacturing industries show great variations, from 75 per cent. of organisation down to less than 10 per cent., between different branches. In the construction industry organisation is relatively low in Japan; in the wholesale and retail trades it is extremely low.

236. The following table [1] illustrates the position as it was on 30 June 1961:

[1] *Japan Statistical Yearbook, 1962* (Bureau of Statistics, Office of the Prime Minister), pp. 56, 63 and 363.

Industry	No. of local labour unions	Membership	No. of paid employees	Approx. degree of organisation (percentage)
Agriculture, forestry and hunting	662	88,530	511,700 [1]	17
Fisheries and aquaculture	139	49,199	270,200 [2]	18
Mining	1,033	308,894	507,700	61
Construction	2,629	512,055	2,097,100	24
Manufacturing	13,547	2,892,443	7,907,700	37
Textile mill products	(1,898)	(487,194)	(1,125,300)	43
Pulp, paper and paper worked products	(481)	(92,418)	(255,000)	36
Publishing, printing and allied industries	(899)	(106,277)	(342,700)	31
Chemical and allied products	(1,163)	(312,216)	(487,600)	64
Iron, steel and non-ferrous metals	(849)	(334,527)	(576,400)	58
Fabricated metal products	(777)	(82,370)	(556,800)	15
Machinery	(1,591)	(253,179)	(638,900)	39
Electrical machinery, equipment and supplies	(797)	(319,872)	(653,400)	49
Transportation equipment	(755)	(313,763)	(557,700)	56
Wholesale and retail trades	1,975	231,162	3,369,100	7
Finance, insurance and real estate	2,733	437,862	711,500	61
Transport and communications	8,702	1,551,853	2,093,600	74
Electricity, gas and water	1,059	190,135	232,700	82
Services (other than education)	4,498	342,354	2,915,703	12
Education	3,014	725,749	815,897	89 [3]
Government	4,974	799,107	1,331,800	60

[1] This figure is that of paid employees in industrial undertakings in this sector. This sector as a whole includes almost *5 million self-employed persons and over 8 million unpaid family workers who are not organised.*

[2] Here also no account is taken of the non-organised persons outside industrial undertakings who are self-employed persons or unpaid family workers.

[3] As the membership figure also includes educational personnel other than teachers, it is estimated that at least 95 per cent. of teachers themselves were organised.

237. More recent figures [1], less comprehensive, reveal the following over-all membership by industry as at 30 June 1964:

Industry	Membership	No. of unit unions
Agriculture	4,959	95
Forestry and hunting	91,186	655
Fisheries and marine cultivation	50,565	131
Mining	200,624	828
Construction	565,255	2,839
Manufacturing	3,640,224	16,197
Wholesale and retail trades	364,555	2,619
Finance, insurance	551,013	3,009
Real estate agencies	12,316	144
Transport and communications	1,790,865	10,103
Electricity, gas and water supply	201,609	1,089
Services (including education)	1,212,680	5,122
Public services	925,183	4,815
Unclassifiable	41,308	197

[1] *Japan Labour Bulletin*, Mar. 1965, op. cit., p. 5.

238. As these figures are not accompanied by statistics giving the total labour force in each industry or the percentages of paid workers organised, the deductions which can be drawn from them are limited. In broad terms, however, as compared with 1961, unionisation would appear to show, by 1964, a moderate advance in agriculture, forestry and hunting accompanied by a decline in fisheries and marine cultivation, a sharp decline in mining, a moderate advance in construction, transport and communications, electricity, gas and water supply and services, and a more marked advance in manufacturing, wholesale and retail trades, finance, insurance and real estate and government employment.

3. *Trade Union Membership in the Public and Private Sectors*

239. Apart from the regular national and local public (civil) services, which are subject respectively to the National Public Service Law and the Local Public Service Law, the national public sector is that contained in the coverage of the Public Corporation and National Enterprise Labour Relations Law and the local public sector is that contained in the coverage of the Local Public Enterprise Labour Relations Law. The private sector is covered by the Trade Union Law.

240. The undertakings covered by the Public Corporation and National Enterprise Labour Relations Law comprise, firstly, the three public corporations: Japanese National Railways, Nippon Telegraph and Telephone Public Corporation and Japan Monopoly Public Corporation (which operates the salt, tobacco and camphor monopolies). They include also the national enterprises which undertake the following services (and services incidental thereto):

(i) services including post, postal savings, postal money order, postal transfer savings, post office life insurance and postal annuity (including such works operated by the government agencies undertaking the above-mentioned services as entrusted by the Nippon Telegraph and Telephone Public Corporation, the International Telegraph and Telephone Company and the Japanese Broadcasting Association, as concerned with selling, amortising and purchasing national savings bonds, and paying their premium, as concerned with selling stamps, and as concerned with paying the annuity and pension and receiving and disbursing the treasury funds);

(ii) services of state-owned forests;

(iii) services of printing notes of the Bank of Japan, paper currency, national loan bonds, stamps, postage stamps, postcards, etc. (including services of manufacturing paper necessary for the said services and of compiling, making and publishing the Official Gazette, statute books, etc.);

(iv) services of mintage;

(v) services of alcohol monopoly.

241. The undertakings covered by the Local Public Enterprise Labour Relations Law are the enterprises which undertake the following services (including services incidental thereto) and which are operated by local public bodies (prefectural or municipal authorities):

(1) local railway service;
(2) tramway service;
(3) automobile transportation service;
(4) electricity service;

Industry group	Private sector		Local government		National government and public corporations	
	Establishments	Paid employees	Establishments	No. of employees	Establishments	No. of employees
Mining	9,874	490,277	31	846	1	1,933
Construction	195,661	1,422,165	2,571	148,169	1,241	68,129
Manufacturing	552,845	7,805,990	207	4,873	118	39,955
Tobacco monopoly	—	—	—	—	(68)	(28,583)
Wholesale and retail trades	1,849,151	3,602,324	47	333	566	11,844
Finance and insurance	51,301	708,237	782	1,959	51	23,816
Banks and trusts	(5,771)	(191,969)	(1)	(6)	(30)	(17,611)
Insurance carriers	(1,042)	(11,291)	(79)	(294)	(21)	(6,205)
Real estate	38,481	45,511	980	3,082	—	—
Transport and communications	66,590	1,153,548	1,068	62,239	22,407	873,133
National Railways	—	—	—	—	(5,515)	(422,825)
Private and local government railways	(3,096)	(119,456)	(208)	(30,485)	—	—
Road passenger transport	(8,969)	(299,530)	(129)	(25,648)	(90)	(10,617)
Road freight transport	(29,533)	(277,355)	(5)	(43)	(13)	(1,201)
Water transport	(9,943)	(94,479)	(123)	(1,619)	—	—
Air transport	(90)	(4,334)	(1)	(2)	—	—
Warehousing	(3,446)	(45,538)	(42)	(405)	—	—
Services incidental to transport	(10,489)	(285,432)	(171)	(2,680)	(258)	(3,110)
Communications	(1,024)	(26,424)	(389)	(1,357)	(16,531)	(435,330)
Electricity, gas and water	7,658	164,283	2,835	44,503	20	1,272
Services	790,134	1,916,540	31,157	1,888,647	2,823	198,326
Hotels, etc.	(64,604)	(195,339)	(557)	(2,028)	(304)	(896)
Services for private persons	(303,208)	(341,638)	(1,198)	(3,586)	—	—
Services for establishments	(39,594)	(309,472)	(2,300)	(15,877)	(108)	(2,935)
Auto-repair garages	(17,519)	(86,253)	(55)	(1,323)	(2)	(832)
Misc. repair services	(45,585)	(36,241)	(14)	(598)	(72)	(5,671)
Amusement and recreation	(31,731)	(217,463)	(525)	(20,057)	(6)	(134)
Medical and health	(122,713)	(292,124)	(5,558)	(120,862)	(823)	(72,561)
Education	(13,961)	(169,969)	(48,932)	(815,897)	(940)	(82,473)
Non-profit organisations	(18,115)	(101,957)	(10,254)	(78,453)	(535)	(32,169)
Misc. services	(2,653)	(17,415)	(1,730)	(29,722)	—	—

(5) gas service;
(6) water supply service;
(7) enterprises to which the provisions of Chapter IV of the Local Public Enterprise Law (Law No. 292 of 1952) are applicable as prescribed by by-law.

242. As at 30 June 1960 local public bodies employed 1,355,185 persons; the national Government and the public corporations and national enterprises employed 1,218,408 persons. The table above [1] from which these figures are taken does not break down the figures into any full or precise list showing how the employees are distributed among all the separate entities of the public sector. The extracts, however, give some general indications.

243. It is not possible to cite the comparable figures for 1959, although it is evident that they would have shown very little variation. Hence, some idea of the extent of union organisation in the public sector can be formed from the following figures [2] (available only for 30 June 1959 and not for 1960).

Enterprise	Subject to Trade Union Law		Subject to Public Corporation and National Enterprise Labour Relations Law		Subject to Local Public Enterprise Labour Relations Law		Subject to National Public Service Law		Subject to Local Public Service Law	
	Unions	Members	Unions	Members	Unions	Members	Unions	Members	Unions	Members
Private industry employees .	16,628	4,451,265	—	—	—	—	—	—	—	—
Public corporation employees .	—	—	[20]	620,462	—	—	—	—	—	—
Government employees .	284	200,871	[13]	312,375	[363]	117,509	[276]	272,801	[3,141]	1,236,118

244. The Japan Institute of Labour recently [3] furnished the following figures of union membership:

MEMBERSHIP DISTRIBUTION CLASSIFIED BY STATUTORY PROVISIONS

Statutory provisions	1963	1964
Trade Union Law	6,518,894	6,882,132
Public Corporation and National Enterprise Labour Relations Law	973,031	993,389
Local Public Enterprise Labour Relations Law	166,050	169,945
National Public Service Law	284,594	286,259
Local Public Service Law	1,414,610	1,467,298

[1] See *Japan Statistical Yearbook, 1962*, op. cit., pp. 60-63.
[2] See *Yearbook of Labour Statistics, 1959*, op. cit., p. 384.
[3] See *Japan Labour Bulletin*, Mar. 1965, op. cit., p. 7.

245. Some of the principal unions in the public sector (with their memberships on 30 June 1964 [1]) are the following:

Organisation	Membership
All-Japan Prefectural and Municipal Workers' Union	763,381
Japan Teachers' Union	589,664
National Railway Workers' Union	281,586
Japan Postal Workers' Union	237,597
National Telecommunication Workers' Union	201,448
All-Japan Day Workers' Union	186,205
All Forestry Workers' Union	74,602
Japan Federation of Municipal Transport Workers' Unions	70,078
Japan National Railway Locomotive Workers' Union	56,909
All Agriculture and Forestry Ministry Workers' Union	55,623
National Monopoly Workers' Union	38,988
National Federation of Water Supply Workers' Union	28,030
All Construction Ministry Workers' Union	25,702
All Labour Ministry Workers' Union	17,958
National Administration of Justice Workers' Union	16,281
All-Hokkaido Cultivation Bureau Workers' Union	11,750

246. The above unions are affiliated to the General Council of Trade Unions of Japan (Sohyo).

247. About two-thirds of Sohyo's membership derives from the affiliation of public employees' unions, the principal ones of which were listed in paragraph 245 above. Its main affiliate from the private sector in 1964 [1] were—

Organisation	Membership
General Federation of Private Railway Workers' Unions	241,210
National Metal and Engineering Workers' Union	211,331
Federation of Iron and Steel Industry Workers' Unions	189,697
Federation of Synthetic Chemical Workers' Unions	126,470
National Union of General Workers	103,222
All-Japan Express Workers' Union	75,260
Japan Coal Miners' Union	68,625
Japan Council of Medical Workers' Unions	65,107
Federation of Chemical Industry Workers' Unions	64,954
National Federation of Paper and Pulp Industry Workers' Unions	59,233
National Federation of Automobile Transport Workers' Unions	47,366
All-Japan Federation of Metal Mining Workers' Unions	44,471
National Trade Union of Automobile Transport Workers	37,843
Japan Federation of Press Workers' Unions	36,298
All-Japan Garrison Forces Labour Union	33,642

[1] See *Japan Labour Bulletin*, No. 4, Apr. 1965.

248. Affiliated to the Japanese Confederation of Labour (Domei) are, *inter alia* [1]—

Organisation	Membership
National Federation of Textile Workers' Unions	506,993
National Federation of Metal Industry Workers' Unions	172,724
All-Japan Seamen's Union	132,560
Federation of Electric Workers' Unions of Japan	124,871
National Federation of Chemical and General Trade Unions	86,815
Federation of Japan Automobile Workers' Unions	77,491
Japanese Federation of National Railway Workers' Unions	61,378
Japan Federation of Transport Workers' Unions	49,466
General Federation of Shipbuilding Workers' Unions	40,120
National Union of Coal Mine Workers	38,459
Mitsubishi Heavy Industries Workers' Union	35,624

249. The biggest affiliate of the National Federation of Industrial Organisations (Shinsanbetsu) is the National Machinery and Metal Workers' Union, with 29,725 members.[2]

250. In the private sector, certain independent unions (i.e. unions not affiliated to the central organisations) are grouped in a kind of federation or liaison council, the Churitsuroren. The main independent unions in this group in 1964 [2] were:

Organisation	Membership
All-Japan Federation of Electric Machine Workers' Unions	350,915
General Confederation of Construction Workers' Unions	120,037
National Federation of Life Insurance Workers' Unions	92,809
All-Japan Shipbuilding and Machine Workers' Union	77,521
Workers' Council of All-Japan Food Industries	77,307
National Federation of Ceramic Industry Workers' Unions	37,247

251. Finally, there exist a number of independent national unions which are affiliated neither to Sohyo nor to Domei nor to Shinsanbetsu nor grouped in the Churitsuroren. These comprise [2] three unions in the public sector—the Japan Senior High School Teachers' Union (58,888 members), the Council of Government Special Agencies Workers' Unions (19,687) and the Japan Federation of Teachers' Associations (12,683)—and the following unions in the private sector:

[1] See *Japan Labour Bulletin*, Apr. 1965, op. cit. The source does not indicate which of these unions operate in the private and public sectors respectively.

[2] Ibid.

Organisation	Membership
National Federation of Life Insurance Sellers' Unions	166,348
Federation of City Bank Employees' Unions	110,444
All-Japan Federation of Automobile Workers' Unions	61,427
National Federation of Local Bank Employees' Unions	39,953
National Federation of Agricultural Mutual Aid Societies Employees' Unions	38,343
All-Japan Property Insurance Labour Union	34,131
Congress of National Rubber Footwear Workers' Unions	30,604

4. *Characteristics of National Affiliation*

252. The enterprise unions in Japan generally combine together to form national unions or federations—sometimes they are regional. The main national unions or federations have been listed in the foregoing paragraphs.

253. Statistical study reveals immediately two unusual features. Firstly, affiliation of a local labour union to one of the central workers' organisations may come about in a number of different ways. It may be direct; it may be through the enterprise union for an undertaking which has several plants with a local union in each plant; it may be through a national union or federation to which the local union belongs. It sometimes happened, therefore, at least before the recent formation of Domei, that the local union had two affiliations at the same time: to Sohyo through direct affiliations, to Zenro-Kaigi because it had affiliated with a national union of federation which had joined Zenro-Kaigi—or vice versa. The second unusual feature is the relatively large number of national unions and federations which have remained independent of any of the central organisations and the large number of local unions which, while also independent in the same way, have not even joined a national union or federation.

5. *The Central Organisations*

254. On 30 June 1964 [1] the General Council of Trade Unions of Japan (Sohyo) had a total membership of 4,212,754, the Japenese Confederation of Labour (Domei) had 1,476,215, and the National Federation of Industrial Organisations (Shinsanbetsu) had 58,366. The independent national unions had 1,736,065 members, 935,614 of these belonging to the unions forming the Churitsuroren group.

6. *International Affiliations*

255. Although nothing in the law prohibited them from doing so, neither Sohyo, Zenro-Kaigi nor Shinsanbetsu affiliated *en bloc* with any international organisations of workers. Too many diverse political tendencies and trade union ideologies divided the constituent organisations within these central organisations ever to have permitted this to come about. However, Domei, the successor to Zenro-Kaigi, was accepted *en bloc* as the affiliate of I.C.F.T.U. at the meeting of the I.C.F.T.U. Executive Board in Brussels from 30 November to 3 December 1964.

256. Five Sohyo affiliates—the Japan Broadcasting Workers' Union, the All-Japan Federation of Metal Miners' Unions, the Japan Coal Miners' Union, the Japan Postal Workers' Union and the Japan Federation of Municipal Transport Workers'

[1] See *Japan Labour Bulletin*, Apr. 1965, op. cit.

Unions are directly affiliated to the International Confederation of Free Trade Unions (I.C.F.T.U.). Until recently these five Sohyo organisations and five Zenro-Kaigi affiliates of I.C.F.T.U. and Sodomei (also affiliated to I.C.F.T.U.), had their own Co-ordinating Committee of I.C.F.T.U. affiliates in Japan. In June 1964, with the formation of Domei pending, this body was dissolved and the five Sohyo affiliates of I.C.F.T.U. decided to set up an I.C.F.T.U. Affiliated Unions Council of their own.

257. A number of the Japanese trade union organisations are members of the International Trade Secretariats closely associated with I.C.F.T.U. These include the following Sohyo organisations: the All-Japan Federation of Metal Miners' Unions and the Japan Coal Miners' Union (with the Miners' International Federation); the Japan Postal Workers' Union (with the Postal, Telegraph and Telephone International); the Japan Federation of Municipal Transport Workers' Unions, the National Railway Workers' Union, the Japan National Railways Locomotive Workers' Union (also known as the Nihon National Motive-Power Union) and the All-Japan Express Workers' Union (with the International Transport Workers' Federation); and the Federation of Synthetic Chemical Workers' Unions (with the International Federation of Petroleum Workers). Of the Domei affiliates, the National Federation of Chemical and General Trade Unions belongs to the International Federation of Industrial Organisations and General Workers' Unions; the National Union of Coal Mine Workers to the Miners' International Federation; the All-Japan Seamen's Union to the International Transport Workers' Federation; and the National Federation of Textile Workers' Unions to the International Textile and Garment Workers' Federation. A Shinsanbetsu affiliate, the National Machinery and Metal Workers' Union, belongs to the International Metal Workers' Federation, as does the independent All-Japan Federation of Electric Machine Workers' Unions.

258. In May 1964 almost all the important unions and federations in the metal industries belonging to Sohyo, Domei and Shinsanbetsu and those not affiliated to any national centre formed the Japanese Council of the International Metalworkers' Federation, which is now affiliated with that international trade secretariat.

259. Finally, three Sohyo affiliates are affiliated to Trade Union Internationals of the World Federation of Trade Unions—the All-Japan Day Workers' Union and the All Construction Ministry Workers' Union with the Trade Unions International of Workers of the Building, Wood and Building Materials Industries, and the National Federation of Automobile Transport Workers' Unions with the Transport, Port and Fishery Workers' Trade Unions International.

PART V

Section 1

Analysis of the Legislation Governing Freedom of Association and the Exercise of Trade Union Rights in Japan

260. It is now proposed to analyse in detail the legislation of Japan relating to freedom of association and the exercise of trade union rights. This analysis is based on the information as it existed on 26 January 1965, when the Commission left Japan.

261. Copies of the draft of this analysis were sent previously for verification to the Government of Japan and to each of the complaining organisations. Observations on the draft were received from the Government and from the General Council of Trade Unions of Japan of which account has been taken in preparing the final text.

CHAPTER 10

THE GENERAL SITUATION

262. The only basic text applicable to all workers in Japan is the National Constitution of 3 November 1946[1], article 21 of which guarantees freedom of association, while article 28 guarantees " the right of workers to organise and to bargain and act collectively ". For the rest, five separate legal systems have to be considered, applicable respectively to workers and their organisations in the private sector, in public corporations and national enterprises, in local public enterprises, in the national public service and in the local public service. It will be observed subsequently, however, that the laws applicable to public undertakings at the national and local levels—but not those applicable to the national and local public services—apply, with regard to the sectors to which they relate, certain of the provisions of the legislation relating to the private sector of the economy. Before proceeding to the detailed analysis of the relevant laws, the general legislative situation may be summarised as follows.

A. The Private Sector of the Economy

263. The whole of the private sector is governed by the Trade Union Law, the Labour Relations Adjustment Law and orders enforcing those Laws.[2]

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[1] See *Japan Labour Legislation* (Tokyo, Ministry of Labour, 1959), pp. 3-17.

[2] Trade Union Law, Act No. 174 of 1949, as amended (*Japan Labour Legislation*, op. cit., pp. 83-97; this edition incorporates all amendments made up to that date and is the most recent official text in English); the Enforcement Order of the Trade Union Law, Cabinet Order No. 231 of 29 June 1949, as amended (ibid., pp. 98-106); the Labour Relations Adjustment Law, Act No. 25 of 27 September 1946, as amended (ibid., pp. 107-116); the Enforcement Order of the Labour Relations Adjustment Law, Imperial Ordinance No. 478 of 11 October 1946, as amended (ibid., pp. 117-124). The system established by this legislation is analysed in Ch. 11 below.

264. The Trade Union Law defines trade unions for the purposes of that Law as organisations (including federations) formed for the main purpose of maintaining and improving conditions of work; the definition excludes, in particular, organisations which admit to membership supervisory employees and employees in confidential posts, or which are financially dominated by employers.

265. There is no guarantee of the right not to organise; the union shop is specifically permitted.

266. The Law establishes tripartite central and prefectural labour relations commissions which administer the various procedures provided for in the Law. To be entitled to avail itself of the statutory procedures and remedies a trade union must be certificated by the competent commission as being in compliance with the Trade Union Law, that is, it must satisfy the aforesaid definition and its constitution must provide for certain prescribed matters, including decision of the membership by direct secret ballot in respect of important matters such as the amendment of the constitution, the election of officers and the calling of strikes. The Law does not, apart from the exclusion of supervisory or confidential staff, limit the scope of membership or restrict freedom of choice of union officers or representatives. The certified union is entitled to register; it does not need to do so in order to enjoy the benefits of the Act; the relatively small number of unions which have registered under this Law have done so because registration confers legal personality.

267. The Trade Union Law defines certain practices as unfair labour practices—in particular dismissal of or discrimination against employees because of union membership or activity (except pursuant to a union security agreement), refusal by an employer to bargain, and interference by employers with unions, especially by making financial payments. The competent labour relations commission can order an appropriate remedy in such cases.

268. Collective agreements are binding and there can be no derogation therefrom by individual contract; in prescribed conditions the application of an agreement can be extended to a whole factory or other working place or to a locality.

269. While priority is accorded to conciliation, mediation and arbitration procedures established by the parties, there are statutory [1] procedures under the auspices of the commission. Mediation may be compulsory in the case of disputes involving " public welfare works " as defined or other disputes of such importance as to be deemed to call for the application of the " emergency adjustment " procedure provided for in the Labour Relations Adjustment Law. Arbitration is not compulsory. Strikes are lawful (except for those covered by the Law concerning control of methods of acts of dispute in electrical enterprises and the coal-mining industry) and specified notice of a strike must be given in the case of disputes affecting public welfare works.

B. The Public Corporation and National Enterprise Sector

270. Employees of the three public corporations [2] and the national enterprises and their organisations are governed by the Public Corporation and National

[1] By virtue of the Trade Union Law and the Labour Relations Adjustment Law.

[2] The Japanese National Railways, the Nippon Telegraph and Telephone Public Corporation and the Japan Monopoly Public Corporation.

Enterprise Labour Relations Law (hereinafter called the " P.C.N.E.L.R. Law ") and the order enforcing that Law.[1]

271. The definition of a trade union given in the Trade Union Law is applied also for the purposes of the P.C.N.E.L.R. Law. The exercise of the right to organise, however, is governed by special provisions of the P.C.N.E.L.R. Law which have no counterpart in the Trade Union Law—especially, supervisory and confidential employees may not belong to trade unions at all[2], only the employees of the public corporation and national enterprise may be members or officers of the employees' trade union, and both the right to organise and the right not to organise are guaranteed, so that there cannot be a union shop as in the private sector.

272. The P.C.N.E.L.R. Law establishes a P.C.N.E.L.R. Commission, also tripartite but entirely distinct from the Central Labour Relations Commission set up by the Trade Union Law and having no corresponding commissions at the level of the prefecture.

273. Certification of a trade union's compliance with the P.C.N.E.L.R. Law is effected by the P.C.N.E.L.R. Commission. The union, in fact, must comply with the same provisions of the Trade Union Law as must a union in the private sector, and also with the provision that no supervisory personnel shall join a trade union, among the special provisions contained in the P.C.N.E.L.R. Law mentioned above. Its constitution must deal with the matters prescribed by the Trade Union Law, with the exception of strike ballots, as strikes are prohibited in this public sector. Upon certification the union may (but need not) register in accordance with the Trade Union Law, and so obtain legal personality.

274. The provisions of the Trade Union Law respecting unfair labour practices apply, except for the proviso permitting a union shop. Remedies in respect of such practices are in this case afforded by the P.C.N.E.L.R. Commission, but, with respect to the actual proceedings, the provisions of the Trade Union Law are substantially applied, *mutatis mutandis*.

275. The P.C.N.E.L.R. Law provides for the appointment of standing " negotiators " by both sides for the purpose of collective bargaining. Contrary to the case under the Trade Union Law, the scope of and matters subject to collective bargaining are defined and matters affecting the management and operation of the undertaking are excluded. While the formal conditions relating to collective agreements, their duration and non-derogation therefrom laid down in the Trade Union Law are applied, the P.C.N.E.L.R. Law contains some special provisions relating to the effects of collective agreements—in particular agreements involving the expenditure of funds not available from the corporation budget of funds have no effect unless and until they are approved by the National Diet. While the provisions of the Trade Union Law relating to the conditions in which the application of a collective agreement is extended to a whole factory or other working place are applicable, those relating to its extension to a whole locality are not.

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[1] The Public Corporation and National Enterprise Labour Relations Law, Act No. 257 of 20 December 1948, as amended (*Japan Labour Legislation*, op. cit., pp. 125-140); Enforcement Order of the Public Corporation and National Enterprise Labour Relations Law, Cabinet Order No. 249 of 27 July 1956 (ibid., pp. 141-146).

[2] But those among them employed in national enterprises can join the " employee organisations " formed under the National Public Service Law.

276. The disputes procedures set up under the P.C.N.E.L.R. Law are quite distinct and different in character from those established by the Trade Union Law, the different nature of the procedures being largely due to the fact that strikes in this public sector are entirely prohibited. There is no reference in the P.C.N.E.L.R. Law to procedures established by mutual agreement for the settlement of collective disputes. Conciliation is undertaken by the P.C.N.E.L.R. Commission on the request of one or both parties or of its own motion. Mediation is undertaken under the auspices of the Commission by an ad hoc mediation committee or one of the standing local mediation commissions established by the P.C.N.E.L.R. Law, both being tripartite bodies. The actual procedure of mediation, however, is largely governed by the provisions of the Labour Relations Adjustment Law, as in the case of mediation pursuant to the Trade Union Law. Arbitration is undertaken by an Arbitration Committee, consisting only of members of the P.C.N.E.L.R. Commission representing the public interest, and, contrary to the situation in the private sector, such arbitration may be compulsory. To the actual arbitration proceedings, however, the provisions of the Labour Relations Adjustment Law governing arbitration in the private sector are very largely applied. Awards are final and binding, except that an award which involves the expenditure of funds not available from the corporation budget or funds is, like a collective agreement in similar circumstances, not effective unless and until appropriate action has been taken by the Diet.

277. Among the complainants in the present case, the National Railway Workers' Union and the Japan Postal Workers' Union are organisations of workers employed by public corporations or national enterprises.

C. The Local Public Enterprise Sector

278. Workers and organisations of workers in local public enterprises are subject to the provisions of the Local Public Enterprise Labour Relations Law [1] (hereinafter referred to as the " L.P.E.L.R. Law ") and of by-laws of local public bodies made thereunder. This Law applies to a greater degree than does the P.C.N.E.L.R. Law the legislative provisions applicable to trade unions in the private sector of the economy. On the other hand, it does not make use at all of any of the provisions or machinery of the P.C.N.E.L.R. Law.

279. The definition of a trade union in the Trade Union Law is applied also for the purposes of the L.P.E.L.R. Law. The exercise of the right to organise, however, is governed by certain special provisions of the L.P.E.L.R. Law analogous to those of the P.C.N.E.L.R. Law: supervisory and confidential employees are prohibited from belonging to trade unions [2], only employees of the local public enterprises may be members or officers of the employees' trade union, and both the right to organise and the right not to organise are guaranteed, so that there cannot be a union shop as in the private sector.

280. Unlike the P.C.N.E.L.R. Law, the L.P.E.L.R. Law does not establish any separate labour relations commission; it makes use of the commissions set up under the Trade Union Law.

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[1] Act No. 298 of 31 July 1952, as amended (see *Japan Labour Legislation*, op. cit., pp. 147-152).

[2] However, they may form or join employees' organisations under the Local Public Service Law.

281. The certification of trade unions in this public sector is governed by the provisions of the Trade Union Law. The trade union must, therefore, comply with the provisions of the Trade Union Law like a trade union in the private sector, except that its constitution is not to make provision for strike ballots, because strikes are prohibited in local public enterprises. Certification, as in the private sector, may be followed by voluntary registration and acquisition of legal personality.

282. The provisions of the Trade Union Law respecting unfair labour practices (except for the proviso permitting of a union shop) and the statutory remedies in respect thereof are applied.

283. The provisions of the Trade Union Law respecting collective bargaining and collective agreements in general apply, with the following exceptions (mainly analogous to those noted under the P.C.N.E.L.R. Law). Thus the scope of and subjects regarded as appropriate for collective bargaining are defined and matters affecting the management and operation of the local public enterprise are excluded; the provisions of the Trade Union Law respecting the extension of the scope of application of an agreement to a whole factory or other working place—but not those relating to extension to a whole locality—are applied. No agreement which conflicts with a by-law shall take effect, in so far as it thus conflicts, unless the assembly of the local public body revises or abrogates the by-law to give effect to the agreement; and no agreement involving the expenditure of funds not available from the budget or funds of the local public enterprise shall take effect until appropriate action has been taken by the assembly.

284. Contrary to the case under the P.C.N.E.L.R. Law, the L.P.E.L.R. Law makes use of the machinery for the settlement of disputes set up under the Trade Union Law and the Labour Relations Adjustment Law. However, as strikes are prohibited, arbitration can be compulsory. The provisions noted in the preceding paragraph regarding the implementation of agreements which are in conflict with by-laws or which involve the expenditure of funds not available from the budget or funds of the local public enterprise are applied also, in the same way, in the case of arbitration awards.

285. Some of the unions affiliated to another complainant in this case—the All-Japan Prefectural and Municipal Workers' Union—operate in the local public enterprise sector.

D. The National Public Service Sector

286. The National Public Service Law [1] governs, among other things, the freedom of association and industrial relations of employees of the regular national public service.[2] The industrial relations system applicable to employees and their organisations in the national public service is entirely separate from any other; none of the provisions of the laws hitherto considered is applied to them.

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[1] Act No. 120 of 21 October 1947, as amended (see *Japan Labour Code* (Tokyo, Ministry of Labour, 1953), pp. 643-684. This is the latest text known to have been published officially in English, as the Law is not included in the volume of labour legislation published in 1959. The more important sections relevant to the present case were, however, furnished in more up-to-date form by the Government in March 1963, and account has been taken of this in the analysis.

[2] But members of the regular national public service who are employed in national enterprises become subject, from these points of view, to the provisions of the P.C.N.E.L.R. Law.

287. General responsibility for enforcement of the Law is vested in a National Personnel Authority, which is composed of three commissioners appointed by the Cabinet with the consent of both Houses of the Diet. The Authority has wide powers in respect of personnel administration and the adoption of service standards.

288. The Law permits the personnel to join, or not to join, employee organisations, of which only regular service employees may be members or officers; in this case, supervisory and confidential employees also may join the organisations. There are no statutory " unfair labour practices " as under the Trade Union Law. However, the National Public Service Law prohibits adverse treatment of personnel on the ground of their membership in or lawful activity on behalf of a personnel organisation. Any personnel aggrieved by alleged adverse treatment can apply for a review to the National Personnel Authority, which shall investigate the matter and issue a binding order approving, revising or cancelling the action taken against the personnel.

289. Application for registration of the oganisation must be addressed to the Authority and be accompanied by the formal particulars prescribed by Rules of the Authority and also by a certification to the effect that the officers have been elected by direct secret ballot as prescribed by the said Rules. The constitution of the organisation must deal with the formal matters laid down in the Rules of the Authority. If the organisation is in compliance with the National Public Service Law and the said Rules it is entitled to be registered.

290. Acquisition of legal personality is not automatic upon registration and is not necessary to the functioning of the organisation as the representative of its members; nevertheless, it cannot be obtained without registration. The organisation which desires to be a legal person must apply specifically for legal personality at the same time as it applies for registration.

291. Registration may be suspended, or cancelled after review procedure is taken by the Authority, when the organisation ceases to comply with the foregoing requirements for registration. Deregistration entails loss of legal personality if the organisation is one which is a legal person. An organisation whose registration or legal personality is revoked can appeal to the court.

292. Wages, hours of work and other conditions of employment are determined by law and, although the personnel organisations may negotiate with proper authorities, such negotiation does not include the right of collective agreement. Pay and allowances are fixed in accordance with a pay plan, which is established by law but concerning which the National Personnel Authority is required to conduct continuous study and to propose necessary revisions to the Diet and the Cabinet; the Authority also recommends necessary changes in respect of working hours and other conditions, and must report annually to the Diet and to the Cabinet as to the propriety of existing pay schedules. The personnel may also submit to the Authority requests for administrative action in respect of pay and other conditions, which the Authority shall investigate and on which, if it considers it appropriate, the Authority shall take or recommend necessary action, according to whether its own or another jurisdiction is concerned.

293. There are no procedures for the conciliation, mediation or arbitration of disputes in the national public service. Strikes are prohibited.

294. Of the complainants, the Japanese Congress of Government Employees' Unions operates in the national public service sector.

E. The Local Public Service Sector

295. The system established by the Local Public Service Law [1] is also a system which does not apply any of the provisions of the enactments referred to under the foregoing heads. It nevertheless has many analogies with the system established by the National Public Service Law.

296. The Local Public Service Law governs, among other things, the freedom of association and industrial relations of employees of the regular local public service.[2]

297. The Law provides for the establishment of personnel commissions in the case of the prefectures and certain larger cities, and of equity commissions in the case of other local authorities. They are appointed by the head of the local public body concerned, with the consent of its assembly. To a lesser degree, the personnel commission (but not the equity commission) performs general administrative functions comparable to those of the National Personnel Authority in the case of the national public service.

298. The Law permits the personnel to join, or not to join, employee organisations, of which only regular service employees may be members or officers; as at the national level, supervisory and confidential employees may join these organisations. Adverse treatment of personnel because of membership in or lawful activity on behalf of an employee organisation is prohibited, and applications for review of adverse action taken against the personnel may be made to the personnel or equity commission, which deals with them according to a procedure similar to that followed by the National Personnel Authority under the National Public Service Law.

299. The Law itself does not make registration compulsory. The constitution of the organisation applying for registration must deal with the same formal matters as must that of an organisation at the national level and, again, it is a condition for registration that provision shall be made in the same way for the election of officers by direct secret ballot of the members as prescribed by the law. If the organisation is in compliance with the Law—but also with the by-laws of the local public body—it is entitled to be registered.

300. As compared with the situation under the National Public Service Law there is one important difference. Where a personnel commission exists, it effects the registration in a manner similar to that adopted by the National Personnel Authority. But, if there is not a personnel commission, registration is effected not by the equity commission but by the head of the local public body, which is also the employing authority.

301. Acquisition of legal personality is voluntary and may be applied for at the time of registration (as under the National Public Service Law).

302. Deregistration and loss of legal personality are governed under the Local Public Service Law by provisions similar to those applicable to organisations of national public service employees.

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[1] Act No. 261 of 13 December 1950, as amended (see *Japan Labour Code*, op. cit., pp. 685-715).

[2] But employees of the regular local public service who are employed in local public enterprises, while remaining administratively subject to the Local Public Service Law, become by reason of their employment subject to the L.P.E.L.R. Law in so far as their trade union rights and collective industrial relations are concerned.

303. Wages, hours and other working conditions are fixed by by-laws. The registered personnel organisation can negotiate with the authorities of the local public body, but such negotiation does not include the right to conclude a collective agreement. But it is possible to conclude a " written agreement ", the exact effect of which is not fully explained in the Law, but which should be observed with " sincerity ", if it does not conflict with the by-laws or with the rules of the agencies of the local public body.

304. The Law institutes a " pay schedule ", very similar to the pay plan at the national level and, again analogously, the personnel commission (but not the equity commission) studies the pay schedule continuously and makes recommendations to the assembly and to the head of the local public body. At the local public service level the employee can make requests—either to a personnel commission or to an equity commission—for administrative action in respect of pay or other conditions, which the Commission shall investigate and on which, according to the jurisdiction in respect of the matter, the Commission shall take or recommend necessary action.

305. There are no procedures for the conciliation, mediation or arbitration of disputes in the local public service. Strikes are prohibited.

306. Among the complainants in this case, the Japan Teachers' Union is one composed mainly of employees' organisations which operate in the sector covered by the Local Public Service Law, as do some of the organisations affiliated to the All-Japan Prefectural and Municipal Workers' Union.

* * *

307. In the next five chapters an analysis will be made in turn of the situation in respect of each of the five different systems established by the legislation referred to above. Account will also be taken of a few relevant provisions contained in other enactments not so far mentioned. Following that analysis, reference will be made to proposals relating to the amendment of the legislation which have been indicated to the Committee on Freedom of Association by the Government of Japan. The final chapter of this part reviews the general legislative position in the light of the relevant international instruments.

CHAPTER 11

THE SYSTEM ESTABLISHED BY THE TRADE UNION LAW AND RELATED LEGISLATION

Scope of Application of the Trade Union Law

308. The Trade Union Law applies to workers in the private sector of the economy and to their employers. " Workers ", for the purposes of the Trade Union Law, are defined by section 3 as " those who live on their wages, salaries or other remuneration assimilable thereto regardless of the kind of occupation ".

Labour Relations Commissions

309. Before examining the provisions of the Trade Union Law which regulate freedom of association and industrial relations, it is necessary to give consideration to the agencies established by the Law which are made responsible for the application of many of those provisions.

310. Section 19 of the Trade Union Law provides for the establishment of a Central Labour Relations Commission (and a separate Mariners' Central Labour Relations Commission) and prefectural labour relations commissions (and mariners' local labour relations commissions) [1] each consisting of equal numbers of members representing employers, workers and the public interest.

311. The Central Labour Relations Commission, which comes under the jurisdiction of the Minister of Labour, consists of 21 members (s. 19 (5) and (6)). The Minister of Labour shall appoint [2] the employers' members in accordance with the recommendations of the employers' organisations, the labour members with the recommendations of trade unions and the public members with the agreement of the employers' members and the labour members (s. 19 (7)); of the public members not more than three shall belong to the same political party (s. 19 (9)).[3] The term of office is one year, but members may be reappointed (s. 19 (11) and (12)). The Chairman of the Commission, who shall preside over its business, shall be elected by all the members from among the public members, as shall the member who deputises when the Chairman is prevented from performing his duties (s. 19 (15) to (18)).

[1] The central and prefectural labour relations commissions shall have a director, not more than two vice-directors and other necessary staff appointed by the Minister of Labour or prefectural governors with the approval of the chairmen concerned (Trade Union Law, s. 19 (19) and (21)).

[2] When the Minister of Labour is to appoint the members representing employers or the members representing labour, he shall request the employers' organisations or trade unions whose organisation covers two or more prefectures for the recommendation of candidates, and he " shall appoint the members from among the candidates so recommended "; when he is to appoint the members representingthe public interests he shall request an agreement of the employers' members and labour members by presenting the list of candidates to be appointed, and then " he shall appoint the public members from among those so agreed on " (Enforcement Order of the Trade Union Law, s. 20).

[3] If a public member of the Central Labour Relations Commission joins, leaves or is expelled from a political party, he must inform the Minister of Labour (Enforcement Order of the Trade Union Law, s. 22).

312. The members of each prefectural labour relations commission are appointed by the governor of the prefecture [1], and all the provisions referred to in the preceding paragraph apply to them *mutatis mutandis*, except that, while in the case of the few prefectural commissions which have 21 members the rule in section 19 (9) referred to above is followed, in the case of the large majority, which have only 15 members [2], not more than two of the public members may belong to the same political party (s. 19 (20) and (21)).[3]

313. The central and prefectural labour relations commissions shall perform independently the functions provided for in the Trade Union Law and also in the Labour Relations Adjustment Law (Enforcement Order of the Trade Union Law, s. 16).

314. The Central Labour Relations Commission shall have authority to formulate and promulgate rules of procedure in respect both of its own proceedings and of those of the prefectural commissions (Trade Union Law, s. 26).[4]

315. Meetings of a commission may be public when the commission deems it necessary for the public welfare; meetings shall be convened by the Chairman; in general commissions may not open meetings and take decisions unless at least one employers' member, one labour member and one public member are present [5]; decisions shall be made by a majority of the members present, and in case of a tie the Chairman decides (Trade Union Law, s. 21).

316. The rights of every commission to require the attendance of the organisations or persons concerned in a case before it, to require the production of books and documents, and to cause its members or staff to carry out investigations—including inspection of working places—are laid down in section 22 of the Trade Union Law; offences arising out of contraventions of this section are defined, and penalties prescribed, in section 30.[6]

317. Members and ex-members of the commissions and executive staff and former executive staff are prohibited from disclosing any secret information obtained in the

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[1] The prefectural governor shall request the employers' organisations or trade unions organised within the area of the prefecture for the recommendation of candidates and " shall appoint " the employers' and labour members from among the candidates so recommended; when appointing the public members he shall request the approval of the employers' members and labour members by presenting the list of candidates to be appointed, and " shall select the public members from among those so approved " (Enforcement Order of the Trade Union Law, s. 21).

[2] The prefectural labour relations commissions for Hokkaido, Kanagawa, Aichi, Tokyo, Osaka, Hyogo and Fukuoka each have 21 members (seven for each of the three interests), all the others having 15 (s. 25-2 and Annex to Enforcement Order of the Trade Union Law).

[3] If a public member joins, leaves or is expelled from a political party or the party to which he was affiliated has been changed, he must inform the prefectural governor.

[4] The Central Labour Relations Commission may give necessary general instructions to a prefectural labour relations commission regarding the basic policies and interpretation of the laws and ordinances concerning the affairs of prefectural commissions, and may require a prefectural commission to submit reports concerning affairs being handled by it and may make any suggestion or give advice concerning the application of laws and ordinances and other matters (Enforcement Order of the Trade Union Law, ss. 18 and 19).

[5] However, as will be noted subsequently, some of the decisions of the commissions are taken only by their public interest members and require the presence of a majority of such members.

[6] If a deputy... or others engaged for the work of a juridical person or if a person should contravene these provisions in connection with the business of the juridical person or the person, it is no defence in the juridical person or the person to plead that no orders to commit such contravention were given (Trade Union Law, s. 31).

performance of their functions (Trade Union Law, s. 23), on pain of imprisonment or fine (s. 29).

318. Section 19 (22) of the Trade Union Law provides that, as regards seamen covered by the Seamen's Law (Law No. 100 of 1947), the functions of the Central Labour Relations Commission and the prefectural labour relations commissions under the Trade Union Law shall be performed respectively by the Mariners' Central Labour Relations Commission and mariners' local labour relations commissions [1], and those of both the Minister of Labour and the prefectural governors by the Minister of Transportation.[2]

319. The different functions and procedures of the labour relations commissions with regard to the certification of trade unions, the scope of collective agreements, the settlement of disputes and cases of unfair labour practices are considered below under the separate subjects to which they relate. Their functions in relation to local public enterprises are examined in Chapter 13 below.

The Right to Form and Join Organisations

320. Unlike the enactments relating to the different branches of the public sector, the Trade Union Law contains no provisions giving effect in formal and positive form to the basic constitutional guarantee of the right to establish and join trade unions. The right finds its essential guarantee in the provisions of the Law which prohibit and repress interference with and denial of the right of workers to organise, which are examined subsequently under the heading of " Protection of the Right to Organise ".

321. In order that it may enjoy the right to participate in the formal procedures and to avail itself of the remedies provided for in the Law, the constitution and rules of a trade union must provide, *inter alia*, that " in no event shall anyone be disqualified for union membership because of race, religion, sex, social status or family origin " (Trade Union Law, s. 5-1 and s. 5-2 (4)).

322. Under section 2 (1), an organisation does not satisfy the definition of a " trade union " and thus become entitled to the benefit of the Law, if it admits to membership—

officers, workers at the supervisory post having direct authority to hire, fire, promote or transfer, workers at the supervisory post having access to confidential information relating to the employer's labour relations plans and policies so that their official duties and obligations directly conflict with their loyalties and obligations as members of the trade union concerned and other persons who represent the interest of the employer.[3]

323. There is no guarantee of the right not to organise. On the contrary, under section 7 (1) of the Law, it is specifically not an unfair labour practice for an employer to conclude " a trade agreement with a trade union to require, as a condition of

[1] The mariners' local labour relations commissions are set up not in the areas of prefectures but in each of the jurisdictional areas of the maritime bureaux.

[2] The provisions of the Trade Union Law concerning the central and prefectural labour relations commissions apply *mutatis mutandis* to the mariners' central and local labour relations commissions, but all the mariners' local labour relations commissions are composed of 15 members (Trade Union Law, s. 19 (22)).

[3] Unlike the legislation relating to the public corporations and national enterprises and local public enterprises, the Trade Union Law does not prohibit the formation of trade unions of their own by supervisory personnel.

employment, that the workers must be members of the trade union if such trade union represents a majority of the workers in the particular plant or working place in which such workers are employed ".

The Right to Form and Join Federations

324. For the purposes of the Trade Union Law, section 2 defines a " trade union " as including a federation.

Registration of Organisations

325. Trade unions are not obliged to register under the Trade Union Law. However, to be entitled to avail themselves of the procedures and remedies provided in the Trade Union Law, they must obtain certification from the competent labour relations commission [1] of their compliance with the requirements of the Law. Section 5 of the Law provides that " unless the trade union has submitted evidence to the labour relations commission [2] and proved that it is in compliance with the provisions of section 2 and paragraph 2 of this section, the trade union shall not be eligible to participate in the formal procedures provided for in this Law and to avail itself of the remedies provided therein ". The provisions in section 2 referred to are the definition of a trade union as an organisation " formed autonomously and substantially by the workers for the main purpose of maintaining and improving the conditions of work and for raising the economic status of the workers ", and the provision that this definition is not satisfied by an organisation which admits to membership supervisory employees and other persons who represent the interest of the employer, which receives the employer's financial support in defraying its operational expenditures, whose objects are confined to mutual aid work or other welfare work, or which principally aims at " carrying on political or social movement ". Section 5-2 of the Law, with which it must also comply, lists the matters in respect of which provision must be made in the constitution of the organisation.[3] Having thus proved that it has complied with the Law, the trade union is entitled to a certification to that effect delivered by the labour relations commission (Enforcement Order of the Trade Union Law, s. 2-2).

326. While the trade union certificated by the commission is not obliged to register to obtain the benefits of the Trade Union Law, it can acquire the status of a

[1] This normally shall mean the prefectural labour relations commission concerned when the trade union is organised within the area of one prefecture only, but shall mean the Central Labour Relations Commission where the trade union is organised to extend over two or more prefectures or where the Central Labour Relations Commission deems a case to be an issue of national importance (Enforcement Order of the Trade Union Law, s. 1).

In the case of mariners, read " mariners' local labour relations commission " for " prefectural labour relations commission ", " Mariners' Central Labour Relations Commission " for " Central Labour Relations Commission " and " area of the regional maritime bureau concerned " for " area of one prefecture " (Enforcement Order of the Trade Union Law, s. 29). The Central Labour Relations Commission may review any adjudication of a prefectural labour relations commission under section 5 of the Trade Union Law, with full authority to reserve, accept or modify such adjudication, or it may reject an appeal for review; such review shall be initiated by the Central Labour Relations Commission or by appeal of either party (Trade Union Law, s. 25 (2)). [Provisions applied *mutatis mutandis* to the mariners' central and local labour relations commissions.]

[2] Only the public members of the labour relations commission shall participate in this certification (the labour and employers' members are entitled to participate in hearings held prior to a decision on cases of unfair labour practices) (Trade Union Law, s. 24); the proceedings and decision require the presence of a majority of the public members (Enforcement Order of the Trade Union Law, s. 26).

[3] See " Constitutions and Rules of Organisations " below.

juridical person, in accordance with section 11, by registering at the place where its main office is located.[1] The matters necessary for registration other than those set forth in the Law are to be fixed by cabinet order (s. 11 (2)).[2]

Constitutions and Rules of Organisations

327. As noted above, in order to be certificated and so participate in the procedures provided in the Trade Union Law and avail itself of the remedies provided therein, a trade union, while apparently free to deal therein with such other matters as it may choose, must deal in its constitution with the matters enumerated in section 5-2 of that Law, which reads as follows:

> 2. The constitution of the trade union shall include provisions provided for in each of the following items:
>
> (1) name;
>
> (2) address of the main office;
>
> (3) members of a trade union besides a federated trade union (hereinafter referred to as " local union ") shall have the right to participate in all affairs of the trade union and the right to be rendered equal treatment;
>
> (4) in no event shall anyone be disqualified for union membership because of race, religion, sex, social status or family origin;
>
> (5) the official of a local union shall be elected by secret ballot directly by the members, and the officials of a federation or a national union may be elected by secret ballot directly by the members of the local union or by delegates elected directly by secret ballot of the members of the local union;
>
> (6) the general meeting shall be at least once every year;
>
> (7) a financial report showing all sources of revenues and expenses, names of main contributors and present financial status shall be made public to the members at least once every year, together with certification of its accuracy by a professionally competent auditor appointed by the members;
>
> (8) no strike action shall be started without the decision made by secret ballot either directly by a majority of members voting or directly by a majority of delegates voting directly elected by secret ballot by all members;
>
> (9) no constitution of a local union shall be revised except by a majority vote by direct secret ballot of the members. No constitution of a national union or a federation shall be revised except by a majority vote by direct secret ballot of the members of the local union or of the delegates directly elected by secret ballot by all members.

Officers and Representatives of Organisations

328. Section 1 of the Trade Union Law declares it to be one of the purposes of the Law to ensure that workers may carry out collective action " including the designation of representatives of their own choosing to negotiate . . . ".

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[1] Registration is effected by the Legal Affairs Bureau, district legal affairs bureau or its branch bureau or branch office in charge of the area where the main office of the trade union is located (Enforcement Order of the Trade Union Law, s. 7).

[2] This was done by Cabinet Order No. 231 of 29 June 1949, as amended (the Enforcement Order of the Trade Union Law); it requires the trade union to make the application for registration, which must be accompanied by a copy of the constitution of the union, the certificate of the Labour Relations Commission and proof of the qualification of the representative (s. 8). Matters for registration are the name and main office of the union, its object and undertaking, the name and address of its representative and the grounds, if any, on which it may be dissolved (s. 3); any changes in the registered items must also be registered (ss. 4 and 5).

329. No provisions in the Law restrict the right of workers' organisations to elect their representatives in full freedom. The only stipulation is that contained in section 5-2 (5) (see paragraph 327 above) requiring, as a condition for certification, that the constitution of an organisation shall provide for the election of officers by direct secret ballot of the members, in the case of a local union, and by secret ballot directly by the members of the local union, or by delegates themselves elected by direct secret ballot of the members of the local union in the case of a federation or national union.

Internal Administration of Organisations

330. The constitution of an organisation must, as a condition for certification, provide that—*(a)* members, in the case of a local union, " shall have the right to participate in all affairs of the trade union and the right to be rendered equal treatment " (Trade Union Law, s. 5-2 (3)); *(b)* the general meeting shall be held at least once a year (s. 5-2 (6)); *(c)* a " financial report showing all sources of revenues and expenses, names of main contributors and present financial status shall be made public to the members at least once every year, together with certification of its accuracy by a professionally competent auditor appointed by the members " (s. 5-2 (7)).

331. Funds specially set up for mutual aid and other welfare work may not be used for other purposes except pursuant to a resolution of the general meeting of the union (s. 9).

Objects, Activities and Programmes of Organisations

332. Section 2 of the Trade Union Law defines " trade unions ", for the purposes of the Law, as " those organisations, or federations thereof, formed autonomously and substantially by the workers for the main purpose of maintaining and improving the conditions of work and for raising the economic status of the workers ". This definition excludes organisations " whose objects are confined to mutual aid work or other welfare work ", or " which principally aim at carrying on political or social movement " (s. 2 (3) and (4)).

333. When an organisation applies for registration it must furnish particulars as to its objects (Enforcement Order of the Trade Union Law, s. 3 (3)).

334. Section 3 of the Subversive Activities Prevention Law, Act No. 240 of 21 July 1952, which prescribes sanctions and measures of control with respect to subversive organisations, provides that any measures taken " shall not on any account whatever be improperly carried out to restrict or interfere with any lawful activity by labour unions [1] and other organisations ".

Legal Personality of Organisations

335. If a trade union which has been certificated as being in compliance with the Trade Union Law chooses to become registered, such registration confers upon it the status of a juridical person (s. 11). The requirements as to registration of the dissolution and liquidation of a trade union which is a juridical person are considered in paragraph 340 below.

[1] This, of course, means trade unions in all sectors of the economy.

International Affiliation of Organisations

336. The Trade Union Law contains no provisions relating to the international affiliation of trade union organisations.

Deregistration, Suspension and Dissolution of Organisations

337. Neither the Trade Union Law nor the Enforcement Order of the Trade Union Law contains any provisions relating to the deregistration of organisations or permitting their suspension or dissolution other than as provided for in their own constitutions or by decision of their members.

338. Section 10 of the Trade Union Law provides that a trade union shall be dissolved either when circumstances arise which require its dissolution as provided in its constitution or when a resolution for dissolution is adopted by a general meeting of the union by a majority of at least three-quarters of the total membership of the union or of the affiliated unions.

339. When a union applies for registration particulars must be furnished as to the grounds on which it may be dissolved, if provision to that effect has in fact been made (Enforcement Order of the Trade Union Law, s. 3).

340. Application to register the dissolution of a trade union which is a juridical person must be made furnishing documents proving the reasons for dissolution and also (if he is a person other than the normal representative of the union) certifying the qualification of the liquidator (Enforcement Order of the Trade Union Law, s. 10); within two weeks of its completion the liquidation itself must be registered (s. 6).

Collective Bargaining and Collective Agreements

(a) *Collective Bargaining*

341. The Trade Union Law gives effect to the basic right to bargain collectively guaranteed by article 28 of the Constitution of Japan. The purpose of the Law to promote collective bargaining and to encourage the conclusion of collective agreements is set forth in section 1 of the Law, which reads as follows:

> 1. The purposes of the present Law are to elevate the status of workers by promoting that they shall be on equal standing with their employer in their bargaining with the employer; to protect the exercise by workers of autonomous self-organisation and association in labour unions so that they may carry out collective action including the designation of representatives of their own choosing to negotiate the terms and conditions of work; and to encourage the practice and procedure of collective bargaining resulting in trade agreements governing relations between employers and workers.
>
> 2. The provisions of article 35 [1] of the Penal Code (Law No. 45 of 1907) shall apply to collective bargaining and other acts of a trade union which are appropriate, being performed for the attainment of the purposes of the preceding paragraph, provided, however, that in no event shall acts of violence be construed as appropriate acts of trade unions.

342. In accordance with the above-stated purposes the right of union representatives to negotiate is laid down in section 6 and reinforced by the obligation to negotiate imposed on employers by section 7 (2). Section 6 provides that—

[1] This provides that no person shall be penalised for acts performed in accordance with " an appropriate business function ".

Representatives of a trade union or those to whom the powers thereto are delegated by the trade union shall have the power to negotiate with the employer or the employers' organisation on behalf of the members or their trade union for conclusion of a trade agreement or on other matters.

It is prohibited as an unfair labour practice, under section 7 (2), for an employer " to refuse to bargain collectively with the representative of the workers employed by the employer without fair and appropriate reasons ".

(b) *Collective Agreements*

343. A collective agreement between a trade union and an employer or employers' organisation concerning conditions of work and other matters takes effect when it has been put in writing and been signed or sealed by both parties (Trade Union Law, s. 14). The term of validity of a collective agreement shall not exceed three years, even though it purports to provide for a longer term; 90 days' written notice must be given of intention to terminate an agreement which does not provide as to its term of validity or (after the expiration of its prescribed term) an agreement which, while making such provision, also includes a provision that it shall remain in effect, without fixing the effective period, after the expiration of the said term (s. 15).

344. Individual contracts of employment may not derogate from an applicable collective agreement; section 16 provides that—

Any provision of an individual labour contract contravening the standards concerning conditions of work and other treatment of workers provided in a trade agreement shall be void. In this case, the invalidated part of the individual contract shall be replaced by the provisions of the standards. The same rule shall apply to the part which is not laid down in the individual contract.

(c) *Extension of Application of Collective Agreements*

345. Sections 17 and 18 of the Trade Union Law prescribe the circumstances in which the application of a collective agreement may be extended to all the workers of the category covered by the agreement employed respectively in the factory or other working place or locality concerned.

346. Under section 17 " when three-quarters or more of the workers of similar kind normally employed in a factory or other working place come under application of one trade agreement, the remaining workers of similar kind employed in the same factory or other working place shall *ipso facto* be bound by the same agreement ".[1]

347. Section 18 of the Trade Union Law, relating to the extension of the application of a collective agreement to a whole locality, provides as follows:

1. When a majority part of the workers of similar kind in a certain locality come under application of one trade agreement, the Labour Minister or the Prefectural Governor may, at the request of either one or both of the parties concerned with the said trade agreement and according to the resolution of the Labour Relations Commission, take the decision to extend the compulsory application of the trade agreement (including the part revised under the provisions of paragraph 2) to all the remaining workers of the same kind employed in the same locality and their employers.

[1] A development which may be aided by the fact that the proviso to s. 7 (1) of the Law permits the negotiation of a closed-shop agreement by a union once it has as members more than half of the workers employed in a particular factory or other workplace.

2. In case the Labour Relations Commission deems, in making the resolution of the preceding paragraph, that the trade agreement in question contains inappropriate provisions, the Commission may amend those provisions.

3. The resolution under paragraph 1 shall become effective by public notification.[1]

348. A fourth paragraph to this section was added by section 8 (1) of the Supplementary Provisions of the Minimum Wages Law, 1959, to the effect that the Minister of Labour or prefectural governor, if he regards the agreement involved in the request under section 18 (1) of the Trade Union Law cited above as an agreement within the terms of section 11 of the Minimum Wages Law (see paragraph 359 below), shall, before taking a decision, hear the opinion of the Central Minimum Wages Council or the chief of the prefectural labour standards office (before giving his opinion the latter must consult his prefectural minimum wages council).[2]

Statutory Regulation of Minimum Wages and Conditions of Employment

349. Section 1 of the Labour Standards Law, Act No. 49 of 7 April 1947, as amended [3], expresses the principle that working conditions must be such as to " meet the need of the worker who lives life worthy of a human being ". The enterprises and offices to which the Law applies are listed in section 8 [4] and section 9 defines a " worker " within the scope of the Law as one who is employed in such enterprises or offices and receives wages therefrom, irrespective of the kind of occupation.

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[1] The resolution and decision mentioned in s. 18 (1) of the Trade Union Law shall be made by the competent Prefectural Labour Relations Commission and the Prefectural Governor, when the locality concerned lies within one prefecture, and by the Central Labour Relations Commission and the Minister of Labour, if the region concerned covers two or more prefectures, or when the Central Labour Relations Commission deems the case concerned to be an issue of national importance (Enforcement Order of the Trade Union Law, s. 15) (functions discharged *mutatis mutandis*, in the case of seamen, by the competent Mariners' Local Labour Relations Commission or the Mariners' Central Labour Relations Commission).

[2] The provisions of the new s. 18 (4) of the Trade Union Law are not applied with respect to standards applicable to mariners (Supplementary Provisions of the Minimum Wages Law, 1959, s. 8 (2)).

[3] *Japan Labour Legislation*, op. cit., pp. 199-232.

[4] S. 8 of the Labour Standards Law reads as follows:

8. This Law applies to each of the items and offices listed below. However, it does not apply to any enterprise or office employing only those relations living with the employer as family members nor to domestic employees in the home:

(1) enterprises engaged in the manufacture, rebuilding, improving, repairing, cleaning, sorting packing and decoration of goods, finishing, tailoring for the purpose of selling, distinction or breaking up, and alteration of material (this includes industries which generate, transform and transmit electricity, gas and various forms of power, and also waterworks);

(2) mining, stone cutting and other extraction of gravel or minerals;

(3) engineering. construction, and building, remodelling, maintenance, repairing, renovation, wrecking, dismantling of structures and those enterprises engaged in preparatory work for the above enterprises;

(4) enterprises engaged in the transportation of freight and passengers by roads, railroads, streetcar lines, cable lines, vessels and airplanes;

(5) enterprises handling freight at docks, on vessels, at jetties, piers, railway stations and warehouses;

(6) enterprises engaged in the cultivation of land or reclamation of waste land, planting, cultivating, harvesting of crops, timber cutting, and other agricultural and forestry enterprises;

(7) enterprises engaged in the breeding of animals, catching, gathering and breeding of marine animals and seaweed, and other enterprises such as livestock raising, sericulture and fisheries;

(8) enterprises engaged in the selling, delivery, storing and sending of commodities and barber-shop;

(9) banking, insurance, agency, brokerage, bell collection, information and advertising enterprises;

(10) motion-picture production and showing cinematography, stage and other show enterprises;

(11) postal, telegraph and telephone services;

(12) enterprises engaged in education, research and investigation;

(footnote continued overleaf)

350. So far as the fixing of minimum wages and the machinery for fixing them are concerned, the essential provisions have been replaced by the Minimum Wages Law, 1959, but other prescriptions [1] dealing with matters normally within the scope of collective bargaining still remain in force, in particular section 32, which lays down the principle of the maximum eight-hour day and the maximum 48-hour week; section 35, which stipulates the principle of the weekly rest day; section 33, allowing these standards to be exceeded in case of accidents and other unavoidable temporary needs and in case the employer has obtained the sanction of the administrative office; section 36, allowing these standards to be exceeded if the employer has concluded a collective agreement in writing with a trade union having a majority membership among the workers concerned or, in the absence of such a union, with the person representing a majority of such workers, and submitted that agreement to the administrative office; section 37, which determines the calculation of rates for overtime work and work on rest days; section 39, prescribing vacations with pay; section 40, allowing special ordinances to be issued concerning working hours in cases where it is essential to avoid inconvenience to the public or where there is other special need in certain enterprises; section 41, which excludes from the application of sections 32 to 38 persons in the categories referred to in section 8 (6) and (7) and supervisory, managing and confidential personnel in all enterprises; and section 90, requiring the employer, when making rules of employment, to consult the trade union which represents a majority of the workers concerned or, in the absence of such a union, the person representing a majority of such workers.

351. But the essential provisions concerning minimum wages are now those contained in the Minimum Wages Law, Act No. 137 of 15 April 1959.[2]

352. The purpose of this Law, as expressed in section 1 thereof—

is to improve the working conditions of low-paid workers by guaranteeing minimum amounts of wages to them according to categories of industries or occupations or regions, and at the same time to contribute to stabilising workers' living, raising the quality of the labour force and securing fair competition among undertakings, as well as to promote sound development of the national economy.

353. The field of application of the Law is the same as that of the Labour Standards Law, except that the Law is not applicable to local public service personnel of the regular service (excluding employees of local public enterprises and " persons

(13) enterprises engaged in the treatment and care of the sick and feeble, and other hygiene and sanitation;

(14) hotel, restaurant, snack bar, service trade and recreation hall enterprises;

(15) enterprises engaged in incineration, cleaning and butchery;

(16) governmental and other public offices which do not come under any of the foregoing items;

(17) other enterprises or offices defined by ordinance.

S. 1 of the Enforcement Order of the Labour Standards Law adds to the foregoing list (pursuant to item (17) of s. 8 cited above):

(1) enterprises carried on by a veterinarian, advocate, patent attorney, certified public accountant, tax practitioner, notary, marshal, judicial scrivener, administrative scrivener, land and house investigator, surveyor and others similar thereto;

(2) enterprises carried on by a visiting housekeepers' society, stenographers' society, copyists' society and other visiting workers' societies;

(3) enterprises or offices of corporations or associations which do not come under the enterprises provided for in article 8, items (1) to (15), inclusive of the Law.

[1] The sections of the Labour Standards Law reviewed in this paragraph do not apply to seamen covered by the Seamen's Law (Labour Standards Law, s. 116).

[2] *Japan Labour Legislation*, op. cit., pp. 455-472.

engaged in simple manual labour in general administrative agencies other than local public enterprises " covered by the L.P.E.L.R. Law), and that the Law is applicable to homeworkers in respect of minimum home work wages.

354. Minimum wages must be fixed " taking into consideration the cost of living of workers, wages of kindred workers and normal capacity of industries to pay wages " (s. 3).

355. Section 26 of the Minimum Wages Law establishes a Central Minimum Wages Council in the Ministry of Labour and a prefectural minimum wages council in each prefectural labour standards office.[1] A minimum wages council shall be composed of equal members of members representing respectively workers, employers and the public interest (s. 28).

356. Minimum wages are actually fixed by any one of four methods, as the case may be.

357. Firstly, under section 9 (1), the Minister or the chief of the prefectural labour standards office may, where an inter-enterprise agreement on minimum amounts of wages has been concluded and all the parties concerned have applied by mutual consent, make a determination, based on the provisions of the agreement, which shall apply to the employers parties to the agreement and to their workers. If the Minister or the chief of the prefectural labour standards office deems the relevant provisions relating to the minimum amount of wages in that agreement inappropriate he may, on the basis of recommendations by the competent minimum wages council, invite the parties to revise them and make a new application (s. 9 (2)). Any determination will apply also to employers who subsequently adhere to the agreement (including employers who are members of the organisation of the employers which has acceded to the agreement) or join an organisation party to the agreement, and to the workers employed by such employers (s. 9 (3)).

358. Secondly, section 10 empowers the same authority—when the greater part of workers of the same kind employed in establishments in a specified region and of the employers employing them are covered by one of the minimum wages referred to in section 9 (1) or by one of two or more of such minimum wages which are substantially similar, and when the greater part of such employers make application—to make a determination, based thereon, applying minimum wages to all workers of the same kind in the region and to their employers.

359. Thirdly, the same authority may, in the event that the greater part of the workers of the same kind employed in establishments in a specified region and of the employers employing them are covered by one collective agreement containing a provision concerning the minimum amount of wages, or by any one of two or more agreements making substantially similar provision concerning minimum wages, and if application is made by mutual consent by all the trade unions or employers parties to the agreement, determine, on the basis of the said provisions, the minimum wages applicable to all the workers of the same kind employed in the specified region and to all the employers who employ these workers (s. 11).

360. Workers of the same kind who are not covered by the minimum wages or collective agreements referred to in sections 10 and 11 or their employers may raise

[1] In respect of mariners s. 41 of the Minimum Wages Law entrusts the functions of these respective bodies to the mariners' central and local labour relations commissions set up under the Trade Union Law.

objections pursuant to section 12, in which case the competent authority must ask the opinion of the minimum wages council. In any case, before any determination under section 9 (1), 10 or 11 is made, the competent authority must first consult the minimum wages council and make the decision " paying respect " to the opinion of the council (s. 15); the same provision applies with respect to decisions to revise or abolish an existing determination pursuant to section 13.

361. Fourthly, the Minister of Labour or the chief of the prefectural labour standards office may, if he recognises that it is necessary to decide minimum wages for the purpose of improving the working conditions of low-paid workers in a specified industry, occupation or region and that it is difficult or inappropriate to do so according to the aforesaid procedures, request the minimum wages council to make an investigation and deliberation and make a decision respecting its opinion (s. 16).

Dispute Procedures

(a) *General Principles*

362. The general purpose of the Labour Relations Adjustment Law, as defined in section 1 thereof, is, " in conjunction with the Trade Union Law, to promote a fair adjustment of labour relations and to prevent or settle labour disputes [1] and thereby to contribute to the maintenance of industrial peace and to economic development ". Section 5 emphasises that the parties and the labour relations commissions concerned in dispute cases or other authority concerned should as far as possible utilise every appropriate convenience to expedite their disposal.

(b) *Machinery Established by the Parties*

363. Before prescribing the statutory procedures of conciliation, mediation and arbitration of disputes the Law lays emphasis on the right—even the duty—of the parties to establish their own procedures by agreement. Section 2 of the Labour Relations Adjustment Law provides that—

> The parties concerned with labour relations shall make special endeavours mutually to promote proper and fair labour relations, and fix by trade agreement matters relating to the establishment as well as management of regular agencies to adjust differences constantly, and in the event that labour disputes occur to endeavour to settle them autonomously in all sincerity.

The effect of section 2 is reinforced by section 4, according to which—

> Nothing in this Law shall be construed either to prevent the parties from determining for themselves their labour relations or from adjusting the differences of their claims concerning labour relations by direct negotiations or collective bargaining or to relieve the parties concerned with labour relations of their responsibility for making such endeavours.

It is further reinforced by the concluding sections (ss. 16, 28 and 35) of the chapters of the Law dealing respectively with conciliation, mediation and arbitration, which provide that nothing in the chapters concerned shall be construed to prevent the settlement of a dispute by other means of conciliation (or mediation, or arbitration) either by mutual agreement or in accordance with the provisions of a trade agreement.

[1] " Labour dispute " means " a disagreement of claims arising between the parties concerned with labour relations regarding labour relations, resulting in either conditions with the occurrence of acts of dispute or conditions with the danger of their occurrence " (Labour Relations Adjustment Law, s. 6).

(c) *Agencies Responsible for the Conciliation, Mediation and Arbitration of Disputes in accordance with Statutory Procedures*

364. Authority to conciliate, mediate, and arbitrate in labour disputes is vested, in general terms, in the labour relations commissions by section 20 of the Trade Union Law. While normally the prefectural labour relations commission will be responsible in respect of disputes within its prefecture (or the mariners' local labour relations commission in the case of a dispute within the jurisdictional area of the corresponding maritime bureau), the Central Labour Relations Commission " may " assume initial jurisdiction in cases concerning two or more prefectures (the Mariners' Central Labour Relations Commission if the dispute covers two or more maritime areas) or in any cases which present issues of national importance (Trade Union Law, ss. 19 (22) and 25). Section 2-2 of the Enforcement Order of the Labour Relations Adjustment Law provides that the function of the labour relations commission concerning conciliation, mediation and arbitration shall be performed by the prefectural labour relations commission concerned when the labour dispute occurs within the area of one prefecture only, and " shall " be performed by the Central Labour Relations Commission when the place where the labour dispute occurs extends over the area of two or more prefectures, or when the Central Labour Relations Commission deems it to be an issue of national importance or when an emergency adjustment [1] has been decided, although section 2-2 (2) still permits the Central Labour Relations Commission to designate a prefectural commission to handle any specific case which would otherwise be within the jurisdiction of the Central Commission.[2]

365. Normally statutory conciliation, as is noted below, is carried out by the conciliators of the different commissions.

366. Statutory mediation and arbitration functions entrusted by section 20 of the Trade Union Law to the Commissions are also performed by persons styled " special adjustment committeemen ", where such persons have actually been appointed.

367. Section 8-2 of the Labour Relations Adjustment Law provides that special adjustment committeemen may[3] be installed in the Central Labour Relations Commission by the Minister of Labour and in a prefectural labour relations commission by the prefectural governor " in order to make them participate in the mediation or arbitration carried out by the Labour Relations Commission "; they shall be appointed by the Minister of Labour or the prefectural governor respectively. The committeemen, who are persons quite distinct from the members of the commissions, shall represent respectively employers, labour and the public interest. Of the special adjustment committeemen, those representing employers shall be appointed in accordance with the recommendation of the employers' organisations, those representing labour in accordance with the recommendation of the trade unions and those

[1] See paras. 378 to 380 below.

[2] Provisions applied, *mutatis mutandis*, by s. 13 of the Enforcement Order of the Labour Relations Adjustment Law to mariners' local labour relations commissions and the Mariners' Central Labour Relations Commission.

[3] Whether or not special adjustment committeemen be so installed in the Central Labour Relations Commission shall be determined by the Labour Minister after asking the opinion of the said Commission; in that case the Minister, with the consent of the Commission, shall decide the members to be appointed, not to exceed five for each of the respective interests of employers and workers and the public interest (Enforcement Order of the Labour Relations Adjustment Law, s. 1). This section applies *mutatis mutandis* to the corresponding decisions of the prefectural governor in the case of a prefectural labour relations commission (ibid., s. 1-6).

representing the public interest "with the consent of the members of the labour relations commission representing employers and workers ".[1]

(d) *Statutory Conciliation Procedure*

368. Each labour relations commission shall appoint and keep a panel of conciliators, who " shall be men of knowledge and experience who are capable of rendering assistance for the settlement of the dispute" (Labour Relations Adjustment Law, ss. 10 and 11). In the event of a dispute, upon the request of both or one of the parties or on his own initiative, the chairman of the competent commission shall appoint a conciliator from the panel or, with the consent of the commission, may appoint a person not on the panel as a temporary conciliator (s. 12), who shall endeavour to contact both parties, ascertain their views and assist them in reaching a settlement (s. 13). If he sees no prospect of effecting a settlement, the conciliator shall withdraw and report the essential facts of the case to the commission (s. 14).

(e) *Statutory Mediation Procedure*

369. The labour relations commission shall, pursuant to section 18 of the Labour Relations Adjustment Law, carry out mediation in any of the following cases:

(1) when a request for mediation has been made to the labour relations commission by both parties concerned with the dispute;

(2) when both or either one of the parties requests mediation to the labour relations commission in accordance with the provisions of a trade agreement;

(3) when in a case involving public welfare work [2] a request for mediation has been made by either party to the labour relations commission;

(4) when in a case involving public welfare work the labour relations commission decided that it is necessary to carry out mediation on its own initiative;

(5) when in a case involving public welfare work, or in a case having great scope or involving work of a special nature and for these reasons seriously affecting the public welfare, a request for mediation has been made by the Labour Minister (as regards the seamen covered by the Seamen's Law, the Transportation Minister) or the prefectural Governor, to the labour relations commission.

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[1] When the Minister of Labour is to appoint special adjustment committeemen representing employers or workers in the Central Labour Relations Commission he shall request employers' organisations or trade unions whose organisations cover two or more prefectures to recommend candidates " and appoint the committeemen from among those recommended "; when he is to appoint those representing the public interest " he shall present a list of the candidates ... to the members of the Central Labour Relations Commission representing employers and workers respectively for their consent thereupon and appoint the committeemen from among those so consented " (Enforcement Order of the Labour Relations Adjustment Law, s. 1-2). (The precise wording of this provision would make it appear that the concluding phrase in the text of s. 8-2 of the Labour Relations Adjustment Law published by the Ministry of Labour and cited in para. 367 above involves a mistranslation in the English version.) Similar rules apply with respect to the appointment by a prefectural governor of special adjustment committeemen, in a prefectural labour relations commission, the employers' and workers' organisations to be consulted in this case being those organised only within the area of the prefecture (Enforcement Order of the Labour Relations Adjustment Law, s. 1-7).

[2] " Public welfare work " is defined in s. 8 (1) of the Labour Relations Adjustment Law as " the following work which provides services essential to daily life of the general public: (1) Transportation work; (2) Post, telegraph or telephone work; (3) Work for supplying water, gas or electricity; (4) Medical treatment and public health work ". Under s. 8 (2) the Prime Minister shall have power to designate as a " public welfare work " other work—for a specified period not exceeding one year with the approval of the Diet— " the stoppage of which will seriously affect the national economy or seriously endanger the daily life of the general public"; such a designation must be widely publicised immediately by such means as the press and radio in addition to being gazetted.

370. Mediation shall be carried out [1] by setting up a mediation committee consisting of mediation committeemen representing employers, workers (these two groups in equal numbers) and the public interest, these persons being designated by the chairman of the commission from among the members of the labour relations commission or the special adjustment committeemen (see paragraph 367 above) respectively representing these three interests (ss. 19, 20 and 21). The mediation committee shall elect a chairman from among those of its members who represent the public interest; he shall convene the committee; its decisions shall be by majority vote of the members attending; no meeting of the committee shall be held unless its members representing employers and workers are present (ss. 22 and 23). The committee shall fix a date, request the presence of the parties and invite them to present their views (s. 24).

371. When a request for mediation has been made by one party or the commission has decided or been requested by the Minister to mediate, the other party or both parties, as the case may be, shall be notified without delay (Enforcement Order of the Labour Relations Adjustment Law, s. 7).

372. Section 26 of the Labour Relations Adjustment Law empowers the mediation committee to draft a proposal [2] for settlement, present it to the parties concerned and recommend them to accept it, and publish (if necessary with the aid of the press and radio) the proposal for settlement together with the reasons therefor; if the proposal is accepted by both parties and thereafter disagreement arises over the interpretation or implementation of the settlement, the party concerned shall request the mediation committee to present a clarification, which shall be given within 15 days, prior to which clarification or to the end of the said period neither party shall resort to acts of dispute.

(f) *Statutory Arbitration Procedure*

373. The arbitration of labour disputes in the private sector is voluntary.

374. Section 30 of the Labour Relations Adjustment Law provides that the labour relations commission shall arbitrate either " when a request for arbitration by the Labour Relations Commission has been made by both parties concerned with the dispute " or " when a request for arbitration by the Labour Relations Commission has been made by both or either one of the parties in a case where the trade agreement provides that application for arbitration by the Labour Relations Commission must be made ".

375. The arbitration is to be undertaken by setting up an arbitration committee of three persons (s. 31).

376. The arbitration committeemen " shall be designated by the Chairman of the Labour Relations Commission from among the members or the Special Adjustment Committeemen representing the public interest " of the commission " who have been selected with the agreement of the parties concerned "; in default of agreement he shall designate them from among the same persons after asking the opinions of the parties concerned (s. 31-2).

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[1] Special expedition and priority shall be given to all mediation cases involving public welfare work (Labour Relations Adjustment Law, s. 27).

[2] The proposal must be made within 15 days of the making of the application, request or decision to mediate under s. 18 of the Labour Relations Adjustment Law and must be accepted or rejected by the parties within ten days of its being made (Enforcement Order of the Labour Relations Adjustment Law, s. 10).

377. The members of the arbitration committee elect their own chairman, who convenes the meeting of the committee; no meeting of the committee may be held or decision taken unless at least two of the three members of the committee are present; decisions are taken by a majority of the members of the arbitration committee (ss. 31-3 and 31-4). Members of the commission or special adjustment committeemen representing employers and workers, designated respectively by the parties concerned, may attend the meeting and state their views with the approval of the arbitration committee (s. 31-5). The arbitration award shall have the same effect as a collective agreement (s. 34).

(g) *Emergency Adjustment of Disputes*

378. A special procedure may be invoked for dealing with certain disputes of outstanding public importance.

379. Section 35-2 of the Labour Relations Adjustment Law empowers the Prime Minister, " when he deems that, because of the case being related to a public welfare work[1], or being of a large scale, or being related to a work of special nature, suspension of the operation thereof arising from an act of dispute seriously threatens national activities or the daily life of the nation ", to decide upon emergency adjustment, but only when there exists such a threat. In taking such a decision, the Prime Minister shall first ask the opinion of the Central Labour Relations Commission[2], when he has taken the decision he must immediately publicise it[3] and the reasons therefor and notify the Commission and the parties concerned.

380. Having thus been notified, the Central Labour Relations Commission shall exert its utmost efforts to settle the dispute and, to this end, may conciliate, mediate, arbitrate (but only in cases falling within s. 30), investigate and publicise the facts of the case, and recommend measures for settlement (s. 35-3). Thus, even in these serious cases, arbitration would appear to remain voluntary, because section 30 provides for arbitration only when both parties request it or when one party requests it pursuant to the provisions of a collective agreement. The Commission shall give absolute priority to cases involving emergency adjustment (s. 35-4).

Strikes and Lockouts

381. Neither the Trade Union Law nor the Labour Relations Adjustment Law prohibits strikes or lockouts, except in so far as they are proscribed by section 36 of the Labour Relations Adjustment Law, which provides that " no act which hampers or causes the stoppage of maintenance or normal operation of safety accommodations at factories, mines[4] and other places of employment shall be resorted to as an act of dispute ".[5]

[1] As defined in s. 8 of the Law (see footnote to para. 369 above).

[2] Or the Mariners' Central Labour Relations Commission in a case involving seamen covered by the Seamen's Law.

[3] Through the press and radio as well as by notification in the Official Gazette (Enforcement Order of the Labour Relations Adjustment Law, s. 10-3).

[4] And, with respect to mines, s. 3 of the Law concerning control of methods of acts of dispute in electrical enterprises and the coal-mining industry, Law No. 171 of 7 August 1953 (*Japan Labour Legislation*, op. cit., p. 153) provides that neither employers nor employees in the coal-mining industry shall perform, as an act of dispute, such acts of suspending the normal operation of mine safety maintenance activities provided for in the Mine Safety Law (Law No. 70 of 1949) as endanger human lives in mines, inflict ruinous or serious damage on mineral resources, destroy vital facilities in mines, or cause damage by mining.

[5] An "act of dispute" is defined in s. 7 of the Labour Relations Adjustment Law as meaning "strike, soldiering, lockout and other acts and counter-acts, hampering the normal course of work of an enterprise,

382. Certain other enactments, however, prohibit acts of dispute. Section 2 of the Law concerning control of methods of acts of dispute in electrical enterprises and the coal-mining industry (Law No. 171 of 7 August 1953) provides that " the employer in the electric enterprise or those employed in the electric enterprise shall not perform, as an act of dispute, an act of suspending the normal supply of electricity or any other acts of interrupting directly the normal supply of electricity ". Seamen are prohibited from resorting to an act of dispute while their vessel is in a foreign port or when it may endanger human life or the vessel.[1]

383. Some of the provisions of the Trade Union Law and the Labour Relations Adjustment Law do place temporary restrictions [2] on recourse to acts of dispute or regulate the exercise of the right to strike.

384. In order to be certificated as in compliance with the Trade Union Law a trade union must provide in its constitution that " no strike action shall be started without the decision made by secret ballot either directly by a majority of members voting or directly by a majority of delegates voting directly elected by secret ballot by all members " (Trade Union Law, s. 5-2 (8)).

385. Section 9 of the Labour Relations Adjustment Law requires the parties concerned, when acts of dispute occur, to report thereon without delay to the labour relations commission or the prefectural governor (or the Director of the Maritime Transportation Bureau, in the case of seamen covered by the Seamen's Law (Law No. 100 of 1947)).[3]

386. Special conditions govern strike notices in disputes affecting " public welfare work " within the meaning of section 8 [4] of the Labour Relations Adjustment Law. Section 37 of the said Law provides that, when the parties concerned in a case involving public welfare work resort to any act of dispute, they shall notify it to the labour relations commission and the Minister of Labour or the prefectural governor at least ten days prior to the day on which the act of dispute is to begin; under section 38, when it has been publicised that an emergency adjustment [5] has been decided upon, the parties shall not resort to any act of dispute for 50 days from the day of its publication. Contraventions of these provisions are punishable by fines in accordance with sections 39 and 40.

387. If a strike does not infringe any of the foregoing legal provisions, it is a " proper act " of dispute. Section 8 of the Trade Union Law deprives an employer of the right to " claim indemnity from a trade union or members of the same for damages received through a strike or other acts of dispute which are proper acts ".[6]

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performed by the parties concerned with labour relations with the object of attaining their respective aims ".

[1] " Report of the Committee on Freedom of Employers' and Workers' Organisations ", App. II, p. 945 (Geneva, I.L.O., 1956).

[2] Reference has already been made (see para. 372 above) to the provision in s. 26 of the Labour Relations Adjustment Law requiring abstention from acts of dispute pending the making by a mediation committee of any clarification requested in respect of a proposal for settlement which it has made and which has been accepted by the parties.

[3] Ss. 1-10 and 2 of the Enforcement Order of the Labour Relations Adjustment Law define in more detail the manner of reporting, the authorities and agencies having jurisdiction and the notification to be made by the latter as between themselves.

[4] See footnote to para. 369 above.

[5] See para. 379 above.

[6] This " trade union immunity " clause is particularly important for the trade union which is a juridical person and subject to art. 44 of the Civil Code: " A juridical person is liable for damages done to other persons

(footnote continued overleaf)

Protection of the Right to Organise

(a) *General Provisions*

388. One of the purposes of the Trade Union Law, as defined in section 1 thereof, is " to protect the exercise by workers of autonomous self-organisation and association in labour unions ". To satisfy the definition of a " trade union " capable of being certificated as being in compliance with the Law and thus entitled to participate in the procedures and avail itself of the remedies provided for in the Act, an organisation must, *inter alia*, be one which is " formed autonomously and substantially by the workers ", a definition which is not satisfied by organisations " which receive the employer's financial support in defraying the organisations' expenditures " (Trade Union Law, s. 2 (2)).[1]

(b) *Unfair Labour Practices*

389. Accordingly certain acts of anti-union discrimination or interference are made the subject of remedial procedures under the Trade Union Law. These acts are those defined as " unfair labour practices " as defined in section 7 of the Law, which reads as follows:

> The employer shall be disallowed to do the following practices:
>
> (1) to discharge or give discriminatory treatment to a worker by reason of his being a member of a trade union, for his having tried to join or organise a trade union or for his having performed proper acts of a trade union; or to make it a condition of employment that the worker must not join or must withdraw from a trade union. Provided, however, that this shall not prevent an employer from concluding a trade agreement with a trade union to require, as a condition of employment, that the workers must be members of the trade union if such trade union represents a majority of the workers in the particular plant or working place in which such workers are employed;
>
> (2) to refuse to bargain collectively with the representative of the workers employed by the employer without fair and appropriate reasons;
>
> (3) to control or interfere with the formation or management of a trade union by workers or to give financial support to it in defraying the union's operational expenditure. Provided, however, that this shall not apply to prevent the employer from permitting the workers to confer or negotiate with him during working hours without loss of time or pay, or to the employer's contribution for welfare funds, or benefit or similar funds which are actually used for payments to prevent or relieve economic misfortune or accident, or to the furnishing of minimum office space;
>
> (4) to discharge or give discriminatory treatment to a worker for his having filed a complaint with the labour relations commission that the employer has violated the provisions of this article, for his having requested the labour relations commission to review the order issued under the provisions of article 27, paragraph 4, or for his having presented evidence or having made testimony at the investigation or hearing conducted by the labour rela-

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by its directors or other agents (representatives) in the exercise of their duties. When other persons have been damaged by acts which are beyond the scope of the objects of a juridical person, the members and/or directors who have supported a resolution concerning such matters, and the directors and/or other agents (representatives) who have carried it into execution, are jointly and severally liable." S. 12 of the Trade Union Law provides that art. 44 of the Code shall apply to a trade union which is a juridical person " except for the cases provided for in section 8 of the Law ".

[1] S. 2 (2) makes the final clause cited subject to the same proviso as is contained in s. 7 (1) cited in the following paragraph.

tions commission in regard to such complaint or request or at the adjustment of labour disputes provided for in the Labour Relations Adjustment Law (Law No. 25 of 1946). [1]

390. While a trade union must be certificated as being in compliance with the Trade Union Law in order to avail itself of the remedies therein provided in respect of alleged unfair labour practices, the lack of such certification shall not deny to any individual worker the protection afforded by section 7 (1) of the Law cited above (Trade Union Law, s. 5).

(c) *Procedure for Dealing with Complaints of Unfair Labour Practices*

391. Complaints alleging unfair labour practices may be filed with a labour relations commission. Normally this will be the prefectural labour relations commission [2] within whose jurisdiction comes the domicile or the locality of the main office, of the worker, trade union or other workers' organisation, or of the employer, who is a party to the unfair labour practice, or the commission which exercises jurisdiction over the area where the practice was committed (Enforcement Order of the Trade Union Law, s. 27).[3] The Central Labour Relations Commission may

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[1] The provisions of s. 7 of the Trade Union Law and the statutory remedies therein examined subsequently may be compared with the obligations which Japan has assumed, by ratifying the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), to apply the provisions of that Convention, Art. 1, 2 and 3 of which read as follows:

Article 1

1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.

2. Such protection shall apply more particularly in respect of acts calculated to—

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

Article 2

1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

Article 3

Machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles.

It is to be observed that legislation which *authorises* (as does s. 7 (3) of the Trade Union Law) or *prohibits*—but not legislation which *imposes*—union security arrangements is not contrary to Art. 1 of the Convention (see *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 43rd Session, Geneva, 1959 (Geneva, I.L.O., 1959), paras. 36-40, pp. 109-110).

[2] In the case of seamen covered by the Seamen's Law, the mariners' local labour relations commission (Enforcement Order of the Trade Union Law, s. 29).

[3] If the case is pending before more than one prefectural labour relations commission, it shall normally by dealt with by the one which first accepted it, although the Central Labour Relations Commission may designate another one; it can also designate one of the commissions concerned to deal together with two or more interrelated cases pending before different commissions (Enforcement Order of the Trade Union Law, s. 27) (ibid., s. 29, applies the same rules, in the case of seamen, in respect of the mariners' local and central labour relations commissions).

assume initial jurisdiction in cases which the Commission deems present issues of national importance (Enforcement Order of the Trade Union Law, s. 27).[1]

392. A complaint is not receivable by the labour relations commission after more than one year has elapsed since the day on which the practice complained of took place, or terminated (in the case of a continuing practice) (Trade Union Law, s. 27 (2)).

393. When the complaint has been filed with the labour relations commission, the commission, in accordance with section 27 of the Trade Union Law, " shall make an immediate investigation and if it is deemed necessary shall have a hearing of the issues on the merits of the complaint . . . at such hearing, sufficient opportunity to present evidence and cross-examine the witnesses shall be given to the employer concerned as well as the complainants ". The Commission may require the attendance of witnesses and question them, at the request of the parties or ex officio (s. 27 (3)). At the conclusion of the hearing the Commission " shall make a finding of fact and issue its order in accordance therewith, either granting in full or in part the relief sought by the complainants or dismissing the complaint ", this being put into writing and a copy served on each party, the order becoming effective as from the date of service (s. 27 (4)).

394. Only the public interest members of the commission participate in the adjudication of such cases, but this does not preclude labour members and employers' members from participating in hearings held prior to a decision (Trade Union Law, s. 24). The Commission may not carry out its proceedings and make its decision without the presence of a majority of the public members (Enforcement Order of the Trade Union Law, s. 26).

395. The Central Labour Relations Commission " may review the adjudications of the Prefectural Labour Relations Commission . . . with full authority to reverse, accept or modify such adjudications, or it may reject appeal for review. Such review shall be initiated by the Central Labour Relations Commission or by appeal of either party " (Trade Union Law, s. 25 (2)).[2]

396. Within 15 days of being served with the order of the prefectural labour relations commission (in case there are reasons justifying the failure to file a request for review within that period, within one week calculated from the day after the date on which such reasons cease to exist), the employer may file a request for review by the Central Labour Relations Commission, but such request shall not have the effect of staying the order and it shall lose its force and effect only when the Central Labour Relations Commission revokes or modifies it as a result of review (Trade Union Law, s. 27 (5)). If the employer decides not to request such review, or if an order is issued by the Central Labour Relations Commission, he may within the 30 days following service of the order file his petition with the court [3] for the revocation of the order (Trade Union Law, s. 27 (6)). If the employer has filed a request for review with the Central Labour Relations Commission, he may file a petition with the court only for he revocation of the order of the Commission on his request for review (s. 27 (7)).

[1] As may, *mutatis mutandis*, the Mariners' Central Labour Relations Commission (Trade Union Law, s. 19 (22), and Enforcement Order of the Trade Union Law, s. 29).

[2] The same provisions apply to reviews of adjudications of mariners' local labour relations commissions by the Mariners' Central Labour Relations Commission (Trade Union Law, s. 19 (22)).

[3] When a petition has thus been filed with the court, the court may, on appeal from the labour relations commission concerned, order the employer concerned to comply in full or in part with the order of the commission pending final judgment by the court (Trade Union Law, s. 27 (8)).

If the employer does not petition the court within the stipulated time, the order of the Commission becomes fixed and, if the employer does not comply with the order, the Commission shall inform the competent District Court (s. 27 (9)). If all or part of the order of a prefectural labour relations commission against which an employer has petitioned the court is sustained by a fixed judgment of the court, such order cannot be reviewed by the Central Labour Relations Commission (s. 27 (10)). The provision of paragraph 5 shall apply *mutatis mutandis* to a request for review filed by the trade union or worker with the Central Labour Relations Commission and the provision of paragraph 7 to a petition filed with the court by the trade union or worker in accordance with the Administrative Suit Cases Law (Law No. 139 of 1962) (s. 27 (11)).

397. If an employer violates an order of the court made under section 27 (7) of the Trade Union Law pending its final judgment or violates an order of the Commission which has become fixed, he is liable to a fine not exceeding 100,000 yen (in the case of an order calling for positive action this may be multiplied by the number of days of non-compliance (s. 32)). Violation of an order of the Commission when all or part of it has been sustained by the fixed judgment of the Court is punishable by imprisonment for not more than one year or a fine not exceeding 100,000 yen, or both (s. 28).

CHAPTER 12

SITUATION UNDER THE PUBLIC CORPORATION AND NATIONAL ENTERPRISE LABOUR RELATIONS LAW AND RELATED LEGISLATION

Scope of Application of the Law

398. The three public corporations and the various national enterprises to which the Public Corporation and National Enterprise Labour Relations Law applies are enumerated in section 2 of the Law, which reads as follows:

The term " public corporation and national enterprise " as used in this Law includes those designated below:

(1) The public corporations listed below:
  (i) the Japanese National Railways;
  (ii) the Nippon Telegraph and Telephone Public Corporation;
  (iii) the Japan Monopoly Public Corporation.[1]

(2) The national enterprises undertaking the following services (including the services incidental thereto):
  (i) services including post, postal savings, postal money order, postal transfer savings, post-office life insurance and postal annuity (including such works operated by the government agencies undertaking the above-mentioned services as entrusted by the Nippon Telegraph and Telephone Public Corporation, the International Telegraph and Telephone Company and the Japanese Broadcasting Association, as concerned with selling, amortising and purchasing national saving-bonds, and paying their premium, as concerned with selling stamps, and as concerned with paying the annuity and pension and receiving and disbursing the treasury funds);
  (ii) services of state-owned forests (including forestry conservation works administered under the State-Owned Forests Special Account);
  (iii) services of printing notes of the Bank of Japan, paper currency, national loan bonds, stamps, postage stamps, postcards, etc. (including services of manufacturing paper necessary for the said services and of compiling, making and publishing the Official Gazette, statute books, etc.);
  (iv) services of mintage (including the services of making medals, etc.);
  (v) services of alcohol monopoly.

399. For the purposes of the Law, " employees " includes those who are employed in the three public corporations mentioned above, " other than those who are executive officers and those who are employed daily ", and " national public service personnel in the regular government service who are employed in the national enterprises " listed above (Public Corporation and National Enterprise Labour Relations Law, s. 2-2).

400. Now, so far as the aforesaid " national public service personnel in the regular government service " who are employed in national enterprises are concerned, sec-

[1] This corporation operates the salt and tobacco monopolies.

tion 40 of the Public Corporation and National Enterprise Labour Relations Law provides that, by reason of their being so employed, certain provisions of the National Public Service Law which normally apply to the regular government service personnel shall no longer apply to them (except for such of them as are managerial or supervisory or confidential personnel)—*inter alia*, section 86 of the National Public Service Law relating to the rights of national public servants to request the National Personnel Authority to take action over wages, etc., sections 98-2 and 98-3 relating to the organising rights of national public servants, section 101-3 relating to leave of absence to perform the duties of an employees' organisation, and sections 90 to 92-2 relating to review of adverse action (only in case the adverse action in question is based on an unfair labour practice).

401. In other words, while the national public service personnel in the regular government service who are employed in the national enterprises remain subject to many but not all of the administrative and staff regulations laid down in the National Public Service Law, they are, by reason of employment in national enterprises, removed right out of the National Public Service Law and put under the Public Corporation and National Enterprise Labour Relations Law in respect of their trade union rights and industrial relations.

402. While the Public Corporation and National Enterprise Labour Relations Law governs the trade union rights and industrial relations of employees in this national public sector, section 3 of this Law provides that matters not provided for therein shall be regulated, *mutatis mutandis* and with some exceptions and modifications, by the provisions of the Trade Union Law. Other sections provide similarly for the application of certain provisions of the Labour Relations Adjustment Law. Account is taken of this in the following analysis.

Public Corporation and National Enterprise Labour Relations Commission

403. The Commission established by this Law is entirely separate from the Central Labour Relations Commission set up under the Trade Union Law. Moreover, although it may have branches for various purposes, it has no subordinate commissions operating at the level of the prefecture. At the same time, in the manner of its appointment and composition, the nature of its functions within its particular sphere and the procedures which it applies, it has many affinities with the Trade Union Law Central Labour Relations Commission, apart from the situations in which it actually applies the same legal provisions as does the other Commission.

404. Section 19 of the Public Corporation and National Enterprise Labour Relations Law (hereafter in this chapter of the analysis referred to as " the P.C.N.E.L.R. Law ", or as " the Law " where the context is clear) provides that the Public Corporation and National Enterprise Labour Relations Commission (hereafter in the present chapter referred to as " the Commission ") " shall be established in the Ministry of Labour ".[1]

405. The Commission, as provided by section 20, " shall be composed of five commissioners representing the public interest (' public commissioners'), three commissioners representing the public corporation and national enterprise (' employer

[1] The Commission shall have an executive office and branch offices for dealing with its business (s. 25-2 of the Law and s. 4 of the Enforcement Order of the Law).

commissioners ') and three commissioners representing the employees (' labour commissioners ') ".[1] The Prime Minister " shall appoint a public commissioner with the consent of both Houses from among the persons entered in the list of candidates prepared by the Minister of Labour after hearing the opinion of the employer and labour commissioners, an employer commissioner on the recommendation of the public corporation and national enterprise, and a labour commissioner on the recommendation of the union " (s. 20 (2)); if the date on which it becomes necessary to appoint a public commissioner occurs when the Diet is not in session or the House of Representatives is dissolved, the Prime Minister may make an appointment subject to approval by the next session of the Diet in accordance with the conditions laid down in section 20 (3) and (4) of the Law. When the Prime Minister is to appoint the employer commissioners or labour commissioners " he shall request the public corporations and national enterprises or the trade unions . . . of their employees to recommend [2] their candidates and shall appoint the commissioners from among those recommended " (Enforcement Order of the P.C.N.E.L.R. Law, s. 2).[3]

406. The chairman of the Commission and also a deputy chairman shall be elected by all the commissioners from among the public commissioners (s. 25 of the Law).

407. Disqualifications for office as a public commissioner are mainly of a political nature. Two or more of the public commissioners appointed shall not belong to any one political party (s. 20 (5) of the Law). A public commissioner shall, when he has joined or seceded from or been expelled from a political party, or when his affiliation with a political party has changed, immediately notify the Prime Minister (Enforcement Order of the Law, s. 3). Apart from disqualifications applicable to all the commissioners on the grounds of bankruptcy or serious penal conviction, no person shall be appointed a public commissioner if he is a member of the Diet or a member of the assembly of a local public body or if he is an employee or official of a public corporation (s. 21 of the Law). Commissioners in office who cease to comply with any of the foregoing qualifications shall be dismissed (s. 24). Moreover, a public commissioner is prohibited from becoming an officer of a political party or other political organisation or positively engaging in political activities or, in the case of a full-time public commissioner, from engaging in any other job or business for reward or profit without the consent of the Prime Minister (s. 23).

408. The term of office of a commissioner is two years, but he may be reappointed (s. 22).

409. While the commissioners generally shall be in part-time service, either one or two of the public commissioners may serve full-time (s. 20 (6)); those in full-time service may, on behalf of the Commission, investigate the labour relations of employees of the public corporation and national enterprise and other matters deemed necessary for dealing with the business of the Commission, in addition to matters relating to cases pending before the Commission (s. 25-3 (2)).

[1] In contrast with the Central Labour Relations Commission under the Trade Union Law, in which all three interests are equally represented (see para. 311 above).

[2] When the employees' trade union submits its recommendations it must append a certificate of the P.C.N.E.L.R. Commission that it is in compliance with the P.C.N.E.L.R. Law (Enforcement Order of the P.C.N.E.L.R. Law, s. 2-2) (as to conditions for certification, see paras. 418-420 below).

[3] Consequently, while the employer and labour commissioners are appointed similarly to those of the Trade Union Law Central Commission, the appointment of public commissioners needs parliamentary approval and they need not be persons agreed upon by the employer and labour commissioners, as in the case of the Central Labour Relations Commission (see para. 311 above).

410. Except as otherwise prescribed by the Law or the Enforcement Order of the Law, the Commission may establish rules with respect to its procedure and other necessary matters relating to its business (s. 25-4).[1]

411. The functions of the Commission with regard to the certification of trade unions, the settlement of disputes and cases of unfair labour practices are considered below under the separate subjects to which they relate.

The Right to Form and Join Organisations

412. Section 4 (1) of the Law provides that " employees may organise or refrain from organising trade unions, or may affiliate with or refrain from affiliating with such unions, provided that those holding managerial or supervisory positions and those employed in a confidential capacity shall not be permitted to organise or affiliate with unions ".[2] The categories of employees thus rendered ineligible for union membership " shall be designated and made public in notification by the Minister of Labour[3], based on the resolution [4] of the Public Corporation and National Enterprise Labour Relations Commission " (s. 4 (2)). By virtue of section 40 of the P.C.N.E.L.R. Law, however, the said managerial or supervisory and confidential personnel who are employed in national enterprises remain subject to the National Public Service Law and can therefore participate in the personnel organisations formed under that law.

413. Only the employees of the public corporation and national enterprise " shall be eligible to become members of the employees' unions of the said public corporation and national enterprise or to be elected as officers of such unions " (s. 4 (3)).[5] In fact, the word " become " is interpreted by the Government as meaning " become or remain " in the sense that a dismissed employee has no right to remain a member or officer of the union.[6]

414. In addition to the exclusion of supervisory or confidential employees from any right to organise in " trade unions " and to loss of the right of a person who

[1] S. 21 of the Trade Union Law relating to the holding of meetings, s. 22 regarding the right of a commission to require the attendance of witnessses and production of documents and to cause its staff to make investigations and inspections, s. 23 binding members and staffs of a commission to secrecy and ss. 29 and 30 prescribing penalties for contraventions (see paras. 315 to 317 above) apply *mutatis mutandis* to the P.C.N.E.L.R. Commission (P.C.N.E.L.R. Law, s. 25-6).

[2] In contrast to s. 2 (1) of the Trade Union Law, which goes no further than to require a trade union, in order to be certificated, not to admit supervisory and confidential personnel to membership (see para. 322 above), and to s. 7 (1) of the Trade Union Law, which permits a closed shop (see para. 323 above).

[3] According to the allegations of the Japan Postal Workers' Union, Labour Ministry Notice No. 10 of 25 April 1958 relating to employees of the National Railways designated those holding the positions of reserve deputy stationmaster and head of local sub-branch as persons " holding managerial or supervisory positions ", thus depriving 8,000 of the 370,000 members of the railway workers' unions of their right of membership, and Ministry of Postal Administration Notice No. 50 of 29 May 1958 changed the titles but not the duties of 5,277 postal employees so as to bring them within the same definition. This complainant alleged also that Labour Ministry Ordinance No. 3 of 22 January 1959 designated a further 4,058 postal workers as persons " holding managerial or supervisory posts ".

[4] Only the public commissioners may participate in making this resolution (P.C.N.E.L.R. Law, s. 25-3); a majority of them must be present when the proceedings are held and the decision taken (Enforcement Order of the P.C.N.E.L.R. Law, s. 5).

[5] There is no comparable provision in the Trade Union Law.

[6] An interpretation apparently upheld by the Tokyo District Court on 2 November 1957 in the case of the Locomotive Engineers' Union. In addition, the Court appears to have upheld the view that s. 4 (3) of the P.C.N.E.L.R. Law does not infringe art. 28 of the Constitution and that the retention of dismissed employees as members or officers afforded the employing authorities " fair and appropriate reasons " for refusing to bargain within the meaning of s. 7 (2) of the Trade Union Law as applied to public corporations (see par. 434 below).

ceases to be an employee to belong to the union concerned, not even the whole of the other employed personnel, so far as a public corporation is concerned, can join the trade union of its employees, because the definition of " employees " of a public corporation excludes " those who are employed daily " (s. 2-2 (1) of the Law). However, " those who are employed daily " remain entirely subject to the Trade Union Law.

415. By virtue of section 3 of the P.C.N.E.L.R. Law trade unions of employees under this Law are covered by the provisions in section 5-1 and section 5-2 (4) of the Trade Union Law to the extent that they require a trade union, as one of the conditions for participation in the procedures and entitlement to remedies provided in the P.C.N.E.L.R. Law and the Trade Union Law, to provide in its constitution that " in no event shall anyone be disqualified for union membership because of race, religion, sex, social status or family origin ".

The Right to Form and Join Federations

416. According to section 3 of the P.C.N.E.L.R. Law the trade union of public corporation and national enterprise employees is covered by the definition of " trade union " in the opening paragraph of section 2 of the Trade Union Law, according to which a " trade union " includes a " federation ".

417. However, the formation of a federation under the P.C.N.E.L.R. Law is subject to the limitation that it shall not include unions of employees other than public corporation and national enterprise employees.

Registration of Organisations

418. In paragraph 325 above it was observed that a trade union, to participate in the procedures provided in the Trade Union Law and avail itself of the remedies provided therein, needs to be certificated as being in compliance with that Law. In order that a union may have the right to be certificated, section 5 of the Trade Union Law requires it to satisfy the competent labour relations commission that it complies with the definition of a trade union in section 2 of that Law and that its constitution provides for the matters listed in section 5-2 of that Law. It was further observed in paragraph 325 that the trade union thus satisfying the said commission has the right to be certificated to that effect by the said commission (Enforcement Order of the Trade Union Law, s. 2-2). Having obtained its certificate, the trade union may choose to register and so acquire legal personality under section 11 of the Trade Union Law. Upon registering it must furnish the further particulars specified in section 3 of the Enforcement Order of the Trade Union Law.

419. In the public corporation and national enterprise sector the above provisions are applied, *mutatis mutandis*, by section 3 of the P.C.N.E.L.R. Law and section 1 of the Enforcement Order of the P.C.N.E.L.R. Law, with modifications, the result being as follows.

420. The trade union, to participate in the procedures and avail itself of the remedies of the P.C.N.E.L.R. Law and the Trade Union Law, must still be certificated as being in compliance with section 2 of the Trade Union Law to the extent that it must be an organisation " formed autonomously and substantially by the workers for the main purpose of maintaining and improving the conditions of work and for raising

the economic status of the workers " and must not be an organisation which receives the employer's financial support in defraying its operational expenditures, or an organisation whose objects are confined to mutual aid or other welfare work or which principally aims at carrying on " political or social movement ". In addition, apart from its members and officers satisfying the definition of " employees " contained in section 2-2 of the P.C.N.E.L.R. Law (see paragraph 414 above) and being actual serving employees in accordance with section 4 (3), the organisation must also be in compliance with section 4 (1), which denies all right to organise to supervisory and confidential personnel. Finally, its constitution must deal with the matters specified in section 5-2 of the Trade Union Law (cited in full in paragraph 327 above), with the exception that the requirement as to strike votes therein does not apply because strikes, as will be seen, are prohibited in this public sector of the economy.

421. The employees' trade union which satisfies the P.C.N.E.L.R. Commission [1] as to its compliance with the above requirements is entitled to be certificated accordingly by the P.C.N.E.L.R. Commission.[2] The next step—as in the private sector, an optional one—is registration. The union certificated by the P.C.N.E.L.R. Commission may acquire the status of a juridical person by registering at the place where its main office is located[3], matters necessary for registration other than those set forth above being fixed by cabinet order.[4]

Constitutions and Rules of Organisations

422. Section 5-2 of the Trade Union Law [5] enumerates the nine separate matters which must be provided for in the constitution of a trade union in order for it to be certificated and so participate in the procedures and avail itself of the remedies pro-

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[1] Only the public commissioners of the P.C.N.E.L.R. Commission shall take part in this determination (P.C.N.E.L.R. Law, s. 25-3); the proceedings and decision require the presence of a majority of the public commissioners (Enforcement Order of the P.C.N.E.L.R. Law, s. 5) (to the extent following the rules laid down in s. 24 of the Trade Union Law and s. 26 of the Enforcement Order of the Trade Union Law respectively; contrary, however, to the situation under s. 24 of the Trade Union Law, no provision is made under s. 25-3 of the P.C.N.E.L.R. Law to permit employer and labour commissioners to participate in hearings held prior to a decision).

[2] Enforcement Order of the Trade Union Law, s. 2-2, as applied by s. 1 of the Enforcement Order of the P.C.N.E.L.R. Law.

[3] Trade Union Law, s. 11, as applied by s. 3 of the P.C.N.E.L.R. Law. The actual registration would appear to be effected, as in the case of a trade union in the private sector, by the Legal Affairs Bureau, district legal affairs bureau or its branch bureau or branch office in charge of the area where the main office of the trade union is located (Enforcement Order of the Trade Union Law, s. 7, as applied by s. 1 of the Enforcement Order of the P.C.N.E.L.R. Law).

[4] This was done by Cabinet Order No. 249 of 27 July 1956, as amended (Enforcement Order of the P.C.N.E.L.R. Law). S. 1 of this order applied the provisions of, *inter alia*, ss. 3, 4, 5 and 8 of the Enforcement Order of the Trade Union Law prescribing the documents and particulars which must be registered or furnished at the time of registration (see final footnote to para. 326 above).

[5] S. 5-2 of the Trade Union Law provides that—

The constitution of the trade union shall include provisions provided for in each of the following items:

(1) name;

(2) address of the main office;

(3) members of a trade union besides a federated trade union (hereinafter referred to as " local union") shall have the right to participate in all affairs of the trade union and the right to be rendered equal treatment;

(4) in no event shall any one be disqualified for union membership because of race, religion, sex, social status or family origin;

(footnote continued overleaf)

vided in the Trade Union Law. Section 3 of the P.C.N.E.L.R. Law applies the same provisions to a trade union of employees covered by the P.C.N.E.L.R. Law which seeks to enjoy procedures and remedies provided for in the P.C.N.E.L.R. Law and those under the Trade Union Law in so far as applicable. The only modification is the omission of the eighth item in section 5-2 of the Trade Union Law, relating to secret ballots in respect of strikes, because strikes in public corporations and national enterprises are prohibited.

Officers and Representatives of Organisations

423. Section 4 (3) of the P.C.N.E.L.R. Law stipulates that " only the employees of the public corporation and national enterprise shall be eligible . . . to be elected as officers " of unions of such employees.[1] The definition of " employees " excludes in the case of a public corporation " those who are employed daily " (P.C.N.E.L.R. Law, ss. 2-2 (1) and 4 (1)).

424. Section 3 of the P.C.N.E.L.R. Law applies section 5-2 (5) of the Trade Union Law. Hence the constitution of the union, as a condition for certification, must provide in the same way for the election of officers by direct secret ballot of the members or of delegates themselves elected by direct secret ballot of the members.

425. The public corporation and national enterprise " may, on request by a union, permit a limited number of its employees to engage exclusively in union activities as officers thereof. In this case no remuneration shall be paid by the public corporation and national enterprise to such employees " (P.C.N.E.L.R. Law, s. 7).

Internal Administration of Organisations

426. The provisions of sections 5-2 (3), (6) and (7) of the Trade Union Law respecting matters of internal administration (see paragraph 327 above) which must be provided for in the constitution of a union as a condition for certification, and of section 9, requiring a resolution of the general meeting for the use of mutual aid or welfare funds for other purposes, are applied by virtue of section 3 of the P.C.N.E.L.R. Law.

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(5) the official of a local union shall be elected by secret ballot directly by the members, and the officials of a federation or a national union may be elected by secret ballot directly by the members of the local union or by delegates elected directly by secret ballot of the members of the local union;

(6) general meeting shall be held at least once every year;

(7) financial report showing all sources of revenues and expenses, names of main contributors and present financial status shall be made public to the members at least once every year, together with certification of its accuracy by a professionally competent auditor appointed by the members;

(8) no strike action shall be started without the decision made by secret ballot either directly by a majority of members voting or directly by a majority of delegates voting directly elected by secret ballot by all members;

(9) no constitution of a local union shall be revised except by a majority vote by direct secret ballot of the members. No constitution of a national union or a federation shall be revised except by a majority vote by direct secret ballot of the members of the local union or of the delegates directly elected by secret ballot by all members.

[1] There is no provision of this kind in the Trade Union Law.

Objects, Activities and Programmes of Organisations

427. The provisions of section 2 of the Trade Union Law, defining the main purpose of a trade union as being the maintaining and improving of conditions of work and raising the economic status of the workers, and of section 2 (3) and (4), which exclude from the definition of a " trade union ", for the purposes of the legislation, organisations whose objects are confined to mutual and or other welfare work, or which principally aim at carrying on " political or social movement ", are applied by virtue of section 3 of the P.C.N.E.L.R. Law.[1]

Legal Personality of Organisations

428. The provision in section 11 of the Trade Union Law permitting a certificated trade union to acquire legal personality by registering itself is applied to trade unions of employees of public corporations and national enterprises by section 3 of the P.C.N.E.L.R. Law.

International Affiliation of Organisations

429. The P.C.N.E.L.R. Law contains no provisions relating to the international affiliation of trade union organisations covered by the Law.

Deregistration, Suspension and Dissolution of Organisations

430. Neither the P.C.N.E.L.R. Law nor the Enforcement Order of the P.C.N.E.L.R. Law contains any provisions relating to the deregistration of organisations or permitting their suspension or dissolution other than as provided in their constitution or by decision of their members.

431. Section 10 of the Trade Union Law, according to which a trade union shall be dissolved either when circumstances arise which require its dissolution as provided in its constitution [2] or when a resolution for dissolution is adopted by a general meeting of the union by a majority of at least three-quarters of the total membership, is applied to unions of public corporation and national enterprise employees by section 3 of the P.C.N.E.L.R. Law.

432. The regulations concerning the registration of the dissolution and completion of liquidation of a trade union which is a juridical person contained in sections 6 and 10 of the Enforcement Order of the Trade Union Law (see paragraph 340 above) are applied by section 1 of the Enforcement Order of the P.C.N.E.L.R. Law.

Collective Bargaining and Collective Agreements

(a) *Collective Bargaining*

433. According to section 1 thereof, the P.C.N.E.L.R. Law—

aims at securing the uninterrupted operation of the public corporation and national enterprise at maximum efficiency for the promotion and protection of the public welfare, by establishing the

[1] And, as in the case of a union in the private sector, particulars of the objects of a union must be furnished if it applies for registration (Enforcement Order of the Trade Union Law, s. 3 (3), applied by s. 1 of the Enforcement Order of the P.C.N.E.L.R. Law).

[2] As in the case of trade unions in the private sector, a trade union under the P.C.N.E.L.R. Law must, when registering, furnish particulars as to the grounds on which it may be dissolved, if provision to that effect has been made (Enforcement Order of the Trade Union Law, s. 3, as applied by s. 1 of the Enforcement Order of the P.C.N.E.L.R. Law).

usages and procedures of collective bargaining in order to bring about an amicable and peaceful adjustment of grievances or disputes over wages and working conditions between labour and management.

434. " The negotiator representing the trade union shall have the power to negotiate with the employer on behalf of the members of the trade union for the conclusion of a collective agreement or on other matters." [1] This right is reinforced by the provision that it shall be an unfair labour practice for the employer " to refuse to bargain collectively with the negotiator representing the trade union without fair and appropriate reasons ". [2]

435. Collective bargaining between the public corporation and national enterprise and the union " shall be carried out exclusively through negotiators " representing the respective sides (P.C.N.E.L.R. Law, s. 9); such negotiators shall be nominated by the public corporation and national enterprise and the union, after which each party shall present its list of negotiators to the other party (s. 10). The number of negotiators, their term of office and other necessary matters relating to the bargaining procedures shall be fixed by collective bargaining (s. 11).[3]

436. The actual scope of collective bargaining is defined in section 8 of the P.C.N.E.L.R. Law, which reads as follows:

> 8. In addition to those as provided for in section 11 [4] and section 12, paragraph 2 [5], the following matters with respect to the employees other than those rendered ineligible for union affiliation by the proviso to section 4, paragraph 1 [6], may be subject to collective bargaining and may be provided for in a collective agreement; provided that matters affecting the management and operation of the public corporation and national enterprise shall be excluded from collective bargaining;
>
> (1) matters concerning wages and other remuneration, working hours, recess, holidays and vacations;
>
> (2) matters concerning the standards of promotion, demotion, transfer, discharge, suspension from office, seniority and disciplinary disposition;
>
> (3) matters concerning safety, health and accident compensation for work;
>
> (4) matters concerning working conditions other than those provided for in the preceding items.

(b) *Collective Agreements*

437. The provisions of section 14 of the Trade Union Law (requiring agreements to be written and signed or sealed), section 15 (nullifying those provisions of individual contracts which contravene the collective agreement) and section 16 (prohibiting derogation by individual contract) (see paragraphs 343 and 344 above) are applicable (P.C.N.E.L.R. Law, s. 3).

438. The implementation of certain agreements is subject to section 16 of the P.C.N.E.L.R. Law, which provides that—

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[1] Trade Union Law, s. 6, as modified and applied by s. 3 of the P.C.N.E.L.R. Law.

[2] Trade Union Law, s. 7 (2), as modified and applied by s. 3 of the P.C.N.E.L.R. Law.

[3] There are no comparable provisions in the Trade Union Law.

[4] See preceding paragraph.

[5] S. 12 (2) provides that the organisation of the joint grievance adjustment board and other matters relating to the adjustment of grievances shall be fixed by collective bargaining.

[6] That is to say, " those holding managerial or supervisory positions and those employed in a confidential capacity ", who therefore, in the case of the three public corporations can neither form a union to bargain for them nor have their interests protected by the union formed by the other employees; in the case of national enterprises they can form employees' organisations under the National Public Service Law.

Any agreement involving the expenditure of funds not available from the appropriated corporation budget or corporation funds shall not be binding upon the Japanese Government and no funds shall be disbursed pursuant thereto until appropriate action has been taken by the Diet.

Such agreement shall be submitted to the Diet with reasons for ratification or disapproval within ten days of its conclusion; provided that if the Diet is not in session such agreement shall be submitted to the Diet within five days after it convenes. Approval by the Diet shall render the terms of the agreement effective as of the date specified in such agreement.

(c) *Extension of Application of Collective Agreements*

439. Section 17 of the Trade Union Law, according to which, " when three-quarters or more of the workers of similar kind normally employed in a factory or other working place come under the application of one trade agreement, the remaining workers of similar kind employed in the same factory or other working place shall *ipso facto* be bound by the same agreement ", would appear to be applicable by virtue of section 3 of the P.C.N.E.L.R. Law. However, section 3 of the Law specifically excludes the application of section 18 of the Trade Union Law, which prescribes the conditions in which a collective agreement may become binding in respect of a whole locality (see paragraph 347 above).

Regulation of Minimum Wages and Conditions of Employment

440. The Labour Standards Law, including its provisions referred to in paragraph 350, is applied wholly to public corporations and national enterprises.

441. In its observations on the draft analysis of the legislation the Government notes that the Minimum Wages Law applies also to public corporations and national enterprises.[1] In applying the Law to the employees of public corporations and national enterprises no measures are taken to redraft the Law.

Dispute Procedures

442. The P.C.N.E.L.R. Law establishes a system of conciliation, mediation and arbitration which, while it also utilises some of the procedural provisions of the Labour Relations Adjustment Law, is entirely distinct from the machinery set up under the Trade Union Law and the Labour Relations Adjustment Law.

443. The P.C.N.E.L.R. Law " aims at securing the uninterrupted operation of the public corporation and national enterprise " (s. 1). Hence, strikes are prohibited and procedures of conciliation, mediation and arbitration are established.

444. The statutory procedures for the settlement of disputes are described below.

(a) *Joint Grievance Adjustment Board*

445. Section 12 of the P.C.N.E.L.R. Law requires the public corporation and national enterprise and the union to set up a joint grievance adjustment board, with equal numbers of representatives of each side, for the purpose of " properly settling grievances of employees "; the organisation of the Board and other matters relating to the adjustment of grievances shall be fixed by collective bargaining. Beyond this

[1] In its own observations the General Council of Trade Unions of Japan says that it is not applicable.

neither the Law nor the Enforcement Order of the Law defines the kind of grievances subject to the procedure, but, if an analogy may be drawn from the very similar provisions in section 13 of the Local Public Enterprise Labour Relations Law, the grievances referred to would be those " arising from daily working conditions ".[1]

(b) *Agency Responsible for Conciliation, Mediation and Arbitration*

446. The Public Corporation and National Enterprise Labour Relations Commission is the agency responsible for undertaking the conciliation (P.C.N.E.L.R. Law, s. 26), mediation (s. 27) and arbitration (s. 33) of labour disputes. The Central and Prefectural Labour Relations Commissions set up under the Trade Union Law have no jurisdiction whatsoever with regard to disputes in this national public sector.

(c) *Conciliation*

447. The P.C.N.E.L.R. Commission may, " on application of both or either of the parties concerned or on a resolution of the Commission "[2], undertake conciliation with respect to a dispute between the public corporation and national enterprise and the employees thereof (P.C.N.E.L.R. Law, s. 26).

448. The conciliators are nominated by the chairman of the Commission from among the commissioners, those entered in the list of candidates for mediators under section 29 (3) (see paragraph 454 below) or the mediators of the local mediation commission under section 30 (see paragraph 453 below); alternatively, they may be other persons nominated by the chairman with the consent of the Commission (s. 26 (2)).

449. The Commission and its chairman may, in accordance with the Rules of the Commission, " have a local mediation commission take charge of the business relating to conciliation " (s. 26 (6)).

450. The procedure of conciliation is governed as in the private sector by sections 13 and 14 [3] of the Labour Relations Adjustment Law, that is to say, the conciliator shall endeavour to contact both parties, ascertain their views and assist them in reaching a settlement, but, if he sees no prospect of settlement, shall withdraw and report the salient facts to the P.C.N.E.L.R. Commission.

(d) *Mediation*

451. According to section 27 of the P.C.N.E.L.R. Law the Commission shall undertake mediation—

(1) when both of the parties concerned have applied for mediation to the Commission;

(2) when either of the parties concerned has applied for mediation to the Commission according to the provisions of a collective agreement;

(3) when the Commission has on application of either of the parties decided that it is necessary to undertake mediation;

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[1] There are no comparable provisions in the Trade Union Law.

[2] As is roughly the case with respect to conciliation in the private sector under s. 12 of the Labour Relations Adjustment Law.

[3] Applied *mutatis mutandis* by P.C.N.E.L.R. Law, s. 26 (5).

(4) when the Commission has at its own initiative decided that it is necessary to undertake mediation;

(5) when the competent Minister [1] has requested the Commission to undertake mediation.

452. Mediation by the Commission is in fact undertaken on behalf of the Commission either by a mediation committee set up for the particular case or by one of the local mediation commissions, which are standing bodies (s. 28). Before describing the mediation procedure it is necessary to consider how these bodies are appointed and how their respective jurisdiction is defined.

453. In the first place the Minister of Labour is required, by section 9 of the Enforcement Order of the P.C.N.E.L.R. Law, to " nominate candidates for mediators with the prior consent of the Commission" and to "prepare a list of candidates for mediators "; he shall publicise this list (s. 9 (4)). The members of the standing local mediation commissions [2] are appointed by the Minister with the consent of the P.C.N.E.L.R. Commission (P.C.N.E.L.R. Law, s. 30 (2)).[3] The public interest members of the local mediation commissions must comply with certain political limitations.[4] The term of office of all mediators in the local mediation commissions is two years, but they may be reappointed; their service is part time.[5]

454. A mediation committee—an ad hoc body—" shall be composed of three or less mediators representing the public interest, three or less mediators representing the public corporation and national enterprise and three or less mediators representing the employees; provided that mediators representing the public corporation and national enterprise and mediators representing the employees shall be equal in number " [6] (s. 29); the said mediators shall be nominated by the chairman of the P.C.N.E.L.R. Commission from among the public interest, employer and labour commissioners of the Commission respectively (s. 29 (2)); notwithstanding the foregoing provisions, however, the chairman of the Commission may, when he considers

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[1] That is, the Labour Minister and the Minister of Transportation (in a case relating solely to the Japanese National Railways), the Minister of Postal Services (in a case relating solely to the Nippon Telegraph and Telephone Public Corporation and to enterprises mentioned in s. 2 (2) (i)), the Minister of Finance (in a case relating solely to the Japan Monopoly Public Corporation and to enterprises mentioned in s. 2 (2) (iii) and (iv)), the Minister of Agriculture and Forestry (in a case relating solely to the enterprises mentioned in s. 2 (2) (ii)) and the Minister of International Trade and Industry (in a case relating solely to enterprises mentioned in s. 2 (2) (v)) (P.C.N.E.L.R. Law, s. 39).

[2] The P.C.N.E.L.R. Law stipulates only that employer and labour interests shall be represented equally in the local mediation commission (P.C.N.E.L.R. Law, s. 29, applied *mutatis mutandis* by s. 30 (4)). These members represent the public interest in each local mediation commission. Employer and labour interests are each represented by three members in the local mediation commissions for Tokyo and Osaka; by two members for each interest in the others (Enforcement Order of the P.C.N.E.L.R. Law, s. 7 (2)).

[3] When the Minister is to appoint the mediators of a local mediation commission representing the employing undertakings or their employees, he shall ask the employers or the unions to recommend their candidates for mediators and " shall appoint the mediators from among those recommended " with the consent of the P.C.N.E.L.R. Commission (Enforcement Order of the P.C.N.E.L.R. Law, s. 10); when a union makes its recommendations it must append the certificate of the P.C.N.E.L.R. Commission that it is in compliance with the P.C.N.E.L.R. Law (Enforcement Order of the P.C.N.E.L.R. Law, s. 10 (2)).

[4] These are analogous to those attaching to public interest commissioners of the P.C.N.E.L.R. Commission. Thus no two or more public interest members of a local mediation commission may belong to any one political party, such a member may not be a member of the Diet or the assembly of a local public body, he may not become an officer of a political party or organisation or positively engage in political activities; ensuing disqualification on any of these grounds shall entail dismissal from office as a mediator (ss. 20 (5), 21, 23 (2), 24, P.C.N.E.L.R. Law, applied *mutatis mutandis* by s. 30 (4)). If a public interest mediator joins, secedes from or is expelled by a political party, or if his political party affiliation changes, he must immediately inform the Minister (Enforcement Order of the P.C.N.E.L.R. Law, s. 3, applied *mutatis mutandis* by s. 10 (3)).

[5] P.C.N.E.L.R. Law, ss. 22 and 20 (6), applied *mutatis mutandis* by s. 30 (4).

[6] There can, therefore, be a preponderance of mediators representing the public interest.

it necessary and with the prior consent of the Commission, nominate a member from the aforesaid " list of candidates for mediators " (s. 29 (3)).

455. The local mediation commission shall normally have jurisdiction in a case within its own jurisdictional area, and a mediation committee shall normally undertake mediation in cases covering more than one such area (P.C.N.E.L.R. Law, s. 28 (2) and (3)).[1]

456. When, in terms of section 27 of the P.C.N.E.L.R. Law cited in paragraph 451 above, or of section 28, a request for mediation has been made by one party, or the Commission has decided or been requested by the Minister to mediate, the other party or both parties, as the case may be, shall be notified immediately (Enforcement Order of the P.C.N.E.L.R. Law, s. 6).

457. From this point onwards the proceedings of both mediation committees and local mediation commissions are governed by certain of the provisions of the Labour Relations Adjustment Law as applied by section 32 of the P.C.N.E.L.R. Law. In particular, the chairman of the mediation body shall be elected by its members from among its public interest members (Labour Relations Adjustment Law, s. 22, as applied); he shall convene the meeting, which may not be held without the presence of the employer and labour members, and any decision is by majority vote of the members attending (s. 23); the mediation body shall fix the date, request the presence of the parties and invite them to present their views (s. 24). The mediation commission or committee may draft a proposal for settlement, present it to and recommend the parties to accept it and to publish (if necessary, with the aid of the press or radio) the proposal with the reasons therefor; if the proposal is accepted by both parties and thereafter disagreement arises over the interpretation or implementation of the settlement, the party concerned shall request the mediation body to present a clarification, which it shall do within 15 days (s. 26 (1), (2) and (3), as applied).[2]

458. The P.C.N.E.L.R. Commission may ask a mediation committee or a local mediation commission to submit a report on its business or may give any necessary instruction to it (s. 31, P.C.N.E.L.R. Law).

(e) *Arbitration*

459. According to section 33 of the Law the P.C.N.E.L.R. Commission shall undertake arbitration—

(1) when both of the parties concerned have applied for arbitration to the Commission;

(2) when either of the parties concerned has applied for arbitration to the Commission according to the provisions of a collective agreement;

(3) when either of the parties concerned has applied for arbitration to the Commission, in case the Commission has failed to settle a dispute within two months after it commenced conciliation or mediation;

[1] But in appropriate cases jurisdiction in a case covering two or more areas may be entrusted to one local mediation commission (P.C.N.E.L.R. Law, s. 28 (5)). On the other hand the P.C.N.E.L.R. Commission may decide that in a case within only one such area mediation shall be undertaken by a mediation committee, either because the case is deemed to be of national importance or for other appropriate reasons (s. 28 (4)).

[2] No reference appears to be made, however, in the P.C.N.E.L.R. Law or in the Enforcement Order of the P.C.N.E.L.R. Law as to application of the provisions of s. 10 of the Enforcement Order of the Labour Relations Adjustment Law, according to which the proposal for settlement must be made within 15 days of the making of the application, request or decision to mediate and be accepted or rejected within ten days of its being made.

(4) when the Commission has decided that it is necessary to undertake arbitration regarding a case in which the Commission has been undertaking conciliation or mediation;

(5) when the competent Minister [1] has requested the Commission to undertake arbitration.[2]

460. When such application, decision or request has been made the Commission shall notify the other party or both the parties, as the case may be, without delay (Enforcement Order of the P.C.N.E.L.R. Law, s. 11).

461. For each case the Commission shall set up an arbitration committee, consisting of all the public commissioners of the Commission or of three of them nominated by the chairman of the Commission (P.C.N.E.L.R. Law, s. 34 (1) and (2)). By virtue of section 34 (3) of the P.C.N.E.L.R. Law, the provisions of sections 31-3 to 34 of the Labour Relations Adjustment Law shall apply *mutatis mutandis* to an arbitration committee, arbitration and award. This means, in particular, that the arbitration committee elects its own chairman, that he convenes the committee, that no meeting shall be held and no decision taken unless a majority of the arbitrators are present, and that the decision shall be taken by a majority of the arbitrators (ss. 31-3 and 31-4, Labour Relations Adjustment Law, as applied). Employer and labour commissioners may attend the meeting and state their opinions with the approval of the arbitration committee (s. 31-5).

462. An Arbitration Committee shall give its award within 30 days from the commencement of the arbitration and shall notify the parties concerned of the award and make it public (Enforcement Order of the P.C.N.E.L.R. Law, s. 13).

463. The award " shall be final and binding upon both parties, and the Government shall endeavour as much as possible so that it may be implemented; provided that an award involving the expenditure of funds not available from the appropriate corporation budget or corporation funds shall be dealt with in accordance with the provision of section 16 " (P.C.N.E.L.R. Law, s. 35)—i.e. it shall not bind the Government and no funds shall be disbursed pursuant thereto until appropriate action has been taken by the Diet; it shall be submitted to the Diet with reasons for ratification or disapproval thereof within ten days or, if the Diet is not in session, within five days after it convenes; approval by the Diet renders the award effective as from the date specified therein.

Strikes and Lockouts

464. Strikes and lockouts are entirely prohibited in public corporations and national enterprises.[3] Section 17 of the P.C.N.E.L.R. Law provides that " employees and their unions shall not engage in a strike, slowdown or any other acts of dispute hampering the normal course of operation of the public corporation and national enterprise, nor shall any employees conspire to effect, instigate or incite such prohibited conduct " and that " the public corporation and national enterprise shall

[1] " Competent Minister " has the same meaning as in s. 37 (5) (see footnote to para. 451 above).

[2] Thus establishing compulsory arbitration in certain cases in contrast to the voluntary arbitration in the private sector provided for under ss. 30 and 35-3 of the Labour Relations Adjustment Law (see paras. 374 and 380 above).

[3] A strike by employees of such undertakings can, therefore, never be a " proper act " in respect of which the union can claim civil immunity under s. 8 of the Trade Union Law, and the union, its officers and its members, if the union is a juridical person, would be subject to the full application of s. 44 of the Civil Code applied to trade unions in the private sector, subject to s. 8 of the Trade Union Law, by s. 12 of the Trade Union Law, and *mutatis mutandis*, but not subject to the said s. 8, applied by s. 3 of the P.C.N.E.L.R. Law (see para. 387 above, and footnote thereto).

not engage in a lockout ". Any employee violating the provisions of section 17 shall be subjected to dismissal (s. 18).

465. Section 79 of the Postal Communication Law, 1947, prescribes imprisonment or a fine in the case of a person engaged in the mail service who wilfully and maliciously does not handle mail or causes it to be delayed. Prior to the enactment of the Cabinet Order (Cabinet Order No. 201) concerning temporary measures based on the communication of the Supreme Commander of the Alllied Powers addressed to the Prime Minister, dated 22 July 1948, in July 1948 acts of dispute by postal workers were not unlawful and did not render them liable to prosecution under section 79 of the Postal Communication Law. Since the prohibition of strikes by Cabinet Order No. 201, however, postal workers performing acts of dispute have been prosecuted and convicted under the said section 79.

466. In the case of workers of the Japanese National Railways strikers also become subject to section 31 of the Japanese National Railways Act (Law No. 256 of 20 December 1948), which provides as follows:

> 31. In case an employee is found guilty of any of the acts enumerated below, the President may subject him to such disciplinary action as dismissal, suspension from office, pay reduction or reprimand:
>
> (1) violation of the provisions of this Law or of the operational rules established by Japanese National Railways;
>
> (2) failure to discharge duties that are called for by his office, or dereliction of duty.

467. Section 25 of the Railway Business Law (Law No. 65 of 1900) provides that any railway employee who endangers the safety of passengers or of the general public by acting in contravention of his official obligations or by neglecting his duties is liable to penal servitude for a term not exceeding three months or to a fine not exceeding 500 yen.

Protection of the Right to Organise

(a) *General Provisions*

468. Section 3 of the P.C.N.E.L.R. Law would appear to render applicable to organisations of public corporation and national enterprise employees the provisions of section 2 (2) of the Trade Union Law, according to which the statutory definition of " trade union " does not include organisations which receive the employer's financial support in defraying their operational expenditures.[1]

(b) *Unfair Labour Practices*

469. The same section provides for the application, *mutatis mutandis* but also with some modifications, of the " unfair labour practice " provisions of section 7 of the Trade Union Law. As a result, section 7 of the Trade Union Law, cited as applied to trade unions in the private sector in paragraph 389 above, is applied to public corporation and national enterprise employees' unions in the following terms:

> 7. The employer shall be disallowed to do the following practices:

[1] Again with the same proviso as is cited in s. 7 (3) of the Trade Union Law cited in the following paragraph.

(1) to discharge or give discriminatory treatment to a worker by reason of his being a member of a trade union, for his having tried to join or organise a trade union, or for his having performed proper acts of a trade union; or to make it a condition of employment that the worker must not join or must withdraw from a trade union;

(2) to refuse to bargain collectively with the negotiator representing the trade union without fair and appropriate reasons;

(3) to control or interfere with the formation or management of a trade union by workers or give financial support to it in defraying the union's expenditure. Provided, however, that this shall not apply to prevent the employer from permitting the workers to confer or negotiate with him during working hours without loss of time or pay, or to the employer's contribution for welfare funds, or benefit or similar funds which are actually used for payments to prevent or relieve economic misfortune or accident, or to the furnishing of minimum office space;

(4) to discharge or give discriminatory treatment to a worker for his having filed a complaint with the Public Corporation and National Enterprise Labour Relations Commission that the employer has violated the provisions of this article; or for his having presented evidence or having made testimony at the investigation or hearing conducted by the Public Corporation and National Enterprise Labour Relations Commission or at the adjustment of disputes provided for in the Public Corporation and National Enterprise Labour Relations Law.

470. While the trade union, in order to avail itself of the statutory remedies in respect of " unfair labour practices ", must be certified as being in compliance with the P.C.N.E.L.R. Law and the Trade Union Law so far as applicable, the lack of a certificate shall not deny any individual worker the protection afforded by section 7 (1) of the Trade Union Law cited above (Trade Union Law, s. 5, as applied *mutatis mutandis* by P.C.N.E.L.R. Law, s. 3).

(c) *Procedure for Dealing with Complaints of Unfair Labour Practices*

471. Complaints of unfair labour practices may be filed with the P.C.N.E.L.R. Commission. Section 25-5 of the P.C.N.E.L.R. Law empowers the Commission, when a complaint has been filed, to " carry out investigations, give hearings, find facts and issue necessary orders ". Only public commissioners shall take part in the adjudication of such cases, but this shall not preclude employer and labour commissioners from participating in the hearings (s. 25-3) [1]; no meeting of the Commission for dealing with an unfair labour practice case may be held, and no decision taken, unless a majority of the public commissioners are present (Enforcement Order of the P.C.N.E.L.R. Law, s. 5).

472. With regard to the examination of the case, the provisions of section 27 (1), (2), (3), (4), (6), (8) and (9) (first sentence) of the Trade Union Law [2] are applied (by s. 25-5 (2) of the P.C.N.E.L.R. Law), *mutatis mutandis* and with certain modifications. The effects of this may be summarised as follows.

473. When the complaint has been filed, the P.C.N.E.L.R. Commission shall make an immediate investigation and, if necessary, shall have a hearing of the issues on the merits of the complaint, at which hearing sufficient opportunity to present

[1] Notwithstanding the provisions of s. 25-3, the Commission may, as prescribed by its Rules, cause a mediator representing the public interest of a local mediation commission to carry out an investigation and give a hearing, in which case a mediator representing the public corporation and national enterprise and a mediator representing the employees of the local mediation commission concerned may participate in the hearing (s. 25-5 (3)).

[2] See paras. 392-396 above.

evidence and cross-examine witnesses shall be given to the employer as well as to complainants (Trade Union Law, s. 27 (1), as applied). The Commission shall not accept the complaint when more than one year has elapsed since the day on which the unfair labour practice took place or terminated (if it was a continuing practice) (s. 27 (2)); however, the time limit is reduced to two months in the case of a complaint based on dismissal pursuant to section 18 of the P.C.N.E.L.R. Law for having performed an act of dispute prohibited by section 17 thereof, and in such a case the Commission shall endeavour to issue its order within two months after the filing of the complaint (P.C.N.E.L.R. Law, s. 25-5 (4) and (5)). The Commission may require witnesses to attend the hearing and put questions to them at the request of the parties or ex officio (Trade Union Law, s. 27 (3), as applied). At the conclusion of the hearing the Commission " shall make a finding of fact and issue its order in accordance therewith either granting in full or in part the relief sought by the complainants or dismissing the complaint ", this being put into writing and a copy served on each party, the order becoming effective as from the date of service (s. 27 (4), ibid.).

474. The right of appeal to the courts from the decisions of the P.C.N.E.L.R. Commission is similar to that afforded by the Trade Union Law in respect of appeals to a court from the Central Labour Relations Commission. Within 30 days of the date of service of the order the employer may file a petition with the court for the revocation of the order (Trade Union Law, s. 27 (6), as applied), in which event the Court may, on appeal from the Commission, order the employer to comply in full or in part with the order of the Commission pending final judgment (s. 27 (8)); if the employer does not petition the Court within the 30-day period, the order of the Commission becomes fixed (s. 27 (9)). The trade union or worker concerned may also petition the court for the revocation of the P.C.N.E.L.R. Commission order in accordance with the Administrative Suit Cases Law.

475. Sections 28 and 32 of the Trade Union Law prescribing penalties where an employer violates fixed orders of the Commission or judgments or interim orders of the court (see paragraph 397 above) are not applied to the public corporation and national enterprise, by virtue of section 3 of the P.C.N.E.L.R. Law, nor do any alternative penalties appear to be prescribed.

CHAPTER 13

SITUATION UNDER THE LOCAL PUBLIC ENTERPRISE LABOUR RELATIONS LAW AND RELATED LEGISLATION

Scope of Application of the Law

476. Section 3 of the Local Public Enterprise Labour Relations Law (hereinafter referred to as the " L.P.E.L.R. Law ") reads as follows:

The term " local public enterprise " as used in this Law includes the enterprise which undertakes the following services (including services incidental thereto) and which is operated by the local public body:

(1) local railway service;

(2) tramway service;

(3) automobile transportation service;

(4) electricity service;

(5) gas service;

(6) water supply service;

(7) industrial water supply service;

(8) enterprise to which the provisions of Chapter IV of the Local Public Enterprise Law (Law No. 292 of 1952) are applicable as prescribed by by-law based on the provisions of section 2, paragraph 4, of the said Law, besides the services mentioned in the preceding items.

477. According to section 3-2 the term " employees " as used in this Law includes the local public service personnel in the regular service who are employed in the local public enterprise. The consequence of this definition, therefore, is to take such employees out of the scope of various provisions of the Local Public Service Law, so far as freedom of association and trade union rights are concerned—especially sections 46 to 48 thereof relating to application for action on working conditions, sections 49 to 51 relating to review of adverse action and sections 52 to 56 relating to personnel organisation.[1] The L.P.E.L.R. Law applies also to the labour relations of " employees in the regular service employed for simple labour " as referred to in section 57 of the Local Public Service Law (Supplementary Provisions of the L.P.E.L.R. Law, s. 4).[2]

478. While the L.P.E.L.R. Law governs the trade union rights and industrial relations of the employees of the enterprises listed in section 3 thereof cited above, section 4 of this Law provides that matters not provided for therein shall be treated,

[1] The same principle is applied to national public service personnel in the regular service who are employed in national enterprises (see paras. 400 and 401 above).

[2] The effect of this is that the L.P.E.L.R. Law applies to the labour relations of all employees of the regular local public service who are of the " simple labour " category, whether they are employed in local public enterprises or in offices where the personnel superior to that category remain entirely subject to the Local Public Service Law.

with certain exceptions, by the Trade Union Law and the Labour Relations Adjustment Law.[1] Account will be taken of this in the following analysis.

Labour Relations Commissions

479. Sections 19 ff. of the Trade Union Law are applied in the local public enterprise sector by virtue of section 4 of the L.P.E.L.R. Law. This means that the labour relations commissions competent in respect of mediation and arbitration, etc., under the L.P.E.L.R. Law are the Central Labour Relations Commission and the prefectural labour relations commissions established under the Trade Union Law, the composition, appointment and general procedural and operational rules of which were described in paragraphs 309 to 319 above.

480. The functions of the commissions in respect to the organisations of employees of local public enterprises and their members are considered under the different heads below.

The Right to Form and Join Organisations

481. Section 5 of the L.P.E.L.R. Law provides that " employees may organise or refrain from organising trade unions or may affiliate with or refrain from affiliating with such unions, provided that those holding managerial or supervisory positions and those in charge of confidential affairs shall not be permitted to organise or affiliate with trade unions ".[2] The scope of employees provided for in the above proviso " shall be determined by by-law [3], in accordance with the standard fixed by cabinet order " (s. 5-2).

482. Only the employees of the local public enterprise " shall be eligible to become members or officers of the employees' trade unions " (s. 5-3).[4] The Government has stated that the L.P.E.L.R. Law applies *mutatis mutandis* not only to " employees of the local public enterprise " (which includes " all the employees, manual or non-manual ") but also to " persons engaged in simple manual labour in general administrative agencies other than local public enterprises ", and that these two categories can organise in the same trade unions.

483. By virtue of section 4 of the L.P.E.L.R. Law trade unions of employees under this Law are covered by sections 5 and 5-2 (4) of the Trade Union Law, which require a trade union, as one of the conditions for participation in the procedures and entitlement to the remedies provided in the Trade Union Law, to provide in its constitution that " in no event shall anyone be disqualified for union membership because of race, religion, sex, social status or family origin ".

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[1] But not, it may be noted, by any of the provisions of the P.C.N.E.L.R. Law.

[2] Thus following the P.C.N.E.L.R. Law, in contrast to the Trade Union Law, under which supervisory employees can form trade unions (see para. 322 above) and which does not guarantee the right not to organise but, on the contrary, specifically permits the union shop or closed shop (see para. 323 above).

[3] It was alleged by the All-Japan Prefectural and Municipal Workers' Union that the Iwate Prefectural Government, in 1959, revised the relevant by-law designating the personnel regarded as " managerial or supervisory " staff in such a way as to disqualify for union membership 20 of the 27 branch chairmen and 274 of the 1,900 members of the Iwate Prefectural Government Medical Employees' Union. The Government of Japan made no comment on the figures alleged but stated that the by-law was " in conformity with the standard fixed by cabinet order ".

[4] As in the P.C.N.E.L.R. Law (see para. 423 above). There is no comparable provision in the Trade Union Law. In fact, as in the case of the public corporation and national enterprise sector, the word " become " has been interpreted by the employing authorities as meaning " become or remain " in the sense that a dismissed employee has no right to remain a member or officer of the union.

The Right to Form and Join Federations

484. It would appear from section 4 of the L.P.E.L.R. Law that the trade union of local public enterprise employees is covered by the definition of " trade union " in the opening paragraph of section 2 of the Trade Union Law, according to which a " trade union " includes a " federation ".

485. In paragraph 482 above it was explained that " employees of the local public enterprise " and " persons engaged in simple manual labour in general administrative agencies other than local public enterprises " (to whom, nevertheless, the L.P.E.L.R. Law applies) can form the same trade unions. According to the Government these two categories can unite or federate with the same respective categories of the same local public body or other local public bodies, and such federation can extend beyond the limits of a prefecture; these L.P.E.L.R. Law federations cannot federate with organisations formed under the Local Public Service Law.

Registration of Trade Unions

486. Sections 5 and 11 of the Trade Union Law apply, *mutatis mutandis*, to organisations of local public enterprise employees (L.P.E.L.R. Law, s. 4). Such organisations, therefore, to enjoy the procedures and remedies laid down in the Trade Union Law, must satisfy the Labour Relations Commission, like a trade union in the private sector, that they comply with the definition of a trade union contained in section 2 of the Trade Union Law (see paragraph 332 above) and that their constitutions provide for the matters enumerated in section 5-2 of the Trade Union Law (see paragraph 327 above), with the exception, however, of section 5-2 (8) relating to strike votes, because strikes in local public enterprises are prohibited. They then have the right to be certificated by the Labour Relations Commission like trade unions in the private sector.

487. Once they are certificated they can register, apparently voluntarily, like any trade union and so acquire legal personality (see paragraph 335 above).

Constitutions and Rules of Organisations

488. In accordance with section 5-2 of the Trade Union Law, applied by section 4 of the L.P.E.L.R. Law, the trade union of local public enterprise employees must deal with certain matters in its constitution. Section 5-2 was cited in full in paragraph 327 above. Exactly the same provisions apply to a local public enterprise employees' union, with the omission of section 5-2 (8) relating to strike votes.

Officers and Representatives of Organisations

489. Section 5-3 of the L.P.E.L.R. Law provides that " only the employees " of the local public enterprise " shall be eligible to become members or officers of the employees' trade unions ".[1]

490. Section 4 of the L.P.E.L.R. Law applies section 5-2 (5) of the Trade Union Law; hence the constitution of a union in this sector must provide in the same way, as one of the conditions for certification, for the election of officers by direct secret

[1] There is no provision of this kind in the Trade Union Law.

ballot of the members or of delegates themselves elected by direct secret ballot of the members.

491. The local public enterprise " shall be authorised to permit employees to engage exclusively in union activities as officers thereof, provided that the number of such employees shall be limited by designation of the said enterprise; no compensation shall be paid by the enterprise to such employees " (L.P.E.L.R. Law, s. 6).

Internal Administration of Organisations

492. The provisions of section 5-2 (3), (6) and (7) of the Trade Union Law respecting matters of internal administration (see paragraph 327 above) which must be provided for in the constitution of a trade union as a condition for certification, and of section 9 thereof, requiring a resolution of the union general meeting for the use of funds specially established for mutual aid or welfare for other purposes, are applied by virtue of section 4 of the L.P.E.L.R. Law.

Objects, Activities and Programmes of Organisations

493. The provisions of section 2 of the Trade Union Law (see paragraph 332 above) are applied to local public enterprise employees' unions by section 4 of the L.P.E.L.R. Law.

Legal Personality of Organisations

494. By virtue of section 4 of the L.P.E.L.R. Law the position in this sector is the same as in the private sector (see paragraph 335 above).

International Affiliation of Organisations

495. The L.P.E.L.R. Law contains no provisions relating to the international affiliation of organisations of local public enterprise employees.

Deregistration, Suspension and Dissolution of Organisations

496. The position in these respects is the same as under the Trade Union Law (see paragraphs 337 to 340 above).

Collective Bargaining and Collective Agreements

(a) *Collective Bargaining*

497. Section 6 of the Trade Union Law, providing for the right of union representatives to negotiate, and section 7 (2), making it an unfair labour practice for an employer to refuse to bargain collectively without fair and appropriate reasons (see paragraph 389 above), are applied to the local public enterprise sector by section 4 of the L.P.E.L.R. Law.

498. The scope of collective bargaining in this sector is provided for in section 7 [1] of the L.P.E.L.R. Law, which provides as follows:

[1] This section follows very closely that of s. 8 of the P.C.N.E.L.R. Law (see para. 436 above).

1. Matters affecting the management and operation of the local public enterprise shall be excluded from collective bargaining.

2. With respect to the categories of employees not rendered ineligible for trade union affiliation under section 5 [1], the following matters may be subject to collective bargaining and shall be appropriately provided for in all trade agreements;

(1) matters concerning wages and other remuneration, working hours, recess, holidays and vacations;

(2) matters concerning the standards of promotion, demotion, transfer, discharge, suspension from office, seniority and disciplinary disposition;

(3) matters concerning safety and sanitation and accident compensation for work;

(4) matters concerning working conditions other than those provided for in the preceding items;

(5) matters concerning the grievance machinery.

(b) *Collective Agreements*

499. Section 14 of the Trade Union Law (requiring agreements to be written and signed or sealed), section 15 (relating to duration and termination of agreements) and section 16 (nullifying those provisions of individual contracts which contravene the collective agreement) (see paragraphs 343 and 344 above) are applicable (L.P.E.L.R. Law, s. 4).

500. The question of the implementation of agreements which are in conflict with by-laws or with regulations and other rules or which involve disbursements not available from the budget or funds of the local public enterprise concerned is governed by sections 8, 9 and 10 of the L.P.E.L.R. Law, which read as follows:

8. The chief of the local public body, when an agreement has been concluded the terms of which are in conflict with the by-law of the local public body concerned, shall, within ten days after its conclusion, submit a Bill on the necessary revision or abrogation of the by-law in order that the said agreement may cease to conflict with the by-law to the assembly of the local public body concerned for decision by it. However, in case the assembly of the local public body concerned is not in session at the date when ten days have elapsed after its conclusion, the chief of the local public body concerned shall submit the Bill to the assembly immediately after the next session is convoked.

The agreement referred to in the preceding paragraph, unless there is revision or abrogation of the by-law referred to in the preceding paragraph, shall not take effect to the extent that it is in conflict with the by-law.

9. The chief of the local public body and other agencies of the local public body, when an agreement has been concluded the terms of which are in conflict with the regulations and other rules established by them, shall immediately take measures concerning the necessary revision or abrogation of the regulations and other rules in order that the said agreement may cease to conflict with the regulations and other rules.

10. Any agreement involving the expenditure of funds not available from the budget or funds of the local public enterprise shall not be binding upon the local public body concerned, and no funds shall be disbursed pursuant thereto, until appropriate action has been taken by the assembly of the local public body concerned.

The chief of the local public body, when the agreement referred to in the preceding paragraph has been concluded, shall, within ten days after the conclusion of the said agreement, submit the said agreement with reasons thereof to the assembly of the local public body concerned for its approval. However, if the assembly of the local public body concerned is not in session at the date when ten days have elapsed after its conclusion, the chief of the local public body concerned shall submit the agreement to the assembly immediately after the next session is convoked.

[1] I.e. employees holding managerial or supervisory positions and those in charge of confidential affairs.

Approval by the assembly of the local public body concerned pursuant to the provisions of the preceding paragraph shall render the terms of the agreement effective as from the date specified therein.[1]

(c) *Extension of Application of Collective Agreements*

501. Section 17 of the Trade Union Law, according to which " when three-quarters or more of the workers of similar kind normally employed in a factory or other working place come under the application of one trade agreement, the remaining workers of similar kind employed in the same factory or other working place shall *ipso facto* be bound by the same agreement ", is applicable (as is the case in the public corporation and national enterprise sector) by virtue of section 4 of the L.P.E.L.R. Law. But, again as in the public corporation and national enterprise sector (see paragraph 439 above), section 4 of the L.P.E.L.R. Law excludes from application to the local public enterprise sector the provisions of section 18 of the Trade Union Law, which prescribes the conditions in which a collective agreement may become binding in respect of a whole locality (see paragraph 347 above).

Regulation of Minimum Wages and Conditions of Employment

502. The Labour Standards Law, including its provisions referred to in paragraph 350, is applied wholly to local public enterprises.

503. And again, the Minimum Wages Law applies to local public enterprises.

Dispute Procedures

504. There are two distinctive features with reference to the procedures for the settlement of disputes in local public enterprises. Firstly, the L.P.E.L.R. Law follows the line of the P.C.N.E.L.R. Law to the extent of making strikes and lockouts illegal, requiring the establishment of grievance machinery, making it possible to undertake compulsory mediation and arbitration and attaching similar conditions to the implementation of certain awards. However, it does not utilise any of the machinery of the P.C.N.E.L.R. Law; in fact, the L.P.E.L.R. Law agencies for the settlement of disputes are the Central and Prefectural Labour Relations Commissions set up under the Trade Union Law, and their procedures in the private sector are applied almost integrally, as will be seen, in respect of disputes in the local public enterprise sector by virtue of the fact that, with the exception of the provisions therein relating to strikes—and, in consequence, those relating to the circumstances in which mediation and arbitration ensue and to emergency adjustment—the provisions of the Labour Relations Adjustment Law are applied to disputes in local public enterprises in the same way as to disputes in the private sector.

(a) *Joint Grievance Adjustment Council*

505. Section 13 of the L.P.E.L.R. Law requires the local public enterprise and the employees or their trade unions to set up a joint grievance adjustment council, with equal numbers of representatives of each side; its function is to " properly settle the grievance of the employees arising from daily working conditions "; the

[1] S. 10 of the L.P.E.L.R. Law may be compared with s. 16 of the P.C.N.E.L.R. Law, which, *mutatis mutandis*, it follows very closely in principle (see para. 438 above).

details of jurisdiction and operation of the council shall be fixed by collective bargaining between the local public enterprise and its employees or their trade unions.[1]

(b) *Agencies Responsible for Conciliation, Mediation and Arbitration*

506. In the first place, section 4 of the L.P.E.L.R. Law renders applicable the provisions of sections 2, 4, 16, 28 and 35 of the Labour Relations Adjustment Law, which call upon the parties to agree as to their own procedures for the settlement of disputes and give priority to the utilisation of such procedures (see paragraph 363 above).[2]

507. By virtue of section 4 of the L.P.E.L.R. Law, section 20 of the Trade Union Law is applicable, that is, the Central and Prefectural Labour Relations Commissions are competent with respect to statutory conciliation, mediation and arbitration of labour disputes in local public enterprises.

508. The provisions of section 25 of the Trade Union Law and section 2-2 of the Enforcement Order of the Labour Relations Adjustment Law determining the respective jurisdictions of the Central and Prefectural Labour Relations Commissions with regard to disputes (see paragraph 364 above) are applied (with the exception of the reference to emergency adjustment) by section 4 of the L.P.E.L.R. Law, as are the provisions of section 8-2 of the Labour Relations Adjustment Law and sections 1, 1-2, 1-6, and 1-7 of the Enforcement Order of the Labour Relations Adjustment Law relating to special adjustment committeemen (see paragraph 367 above and footnotes thereto).

(c) *Statutory Conciliation Procedure*

509. The provisions of sections 10 to 14 of the Labour Relations Adjustment Law (see paragraph 368 above) are applied by section 4 of the L.P.E.L.R. Law.

(d) *Statutory Mediation Procedure*

510. Mediation in the private sector, apart from emergency procedures[3], is governed essentially by sections 18 to 28 of the Labour Relations Adjustment Law and sections 7 to 10 of the Enforcement Order of the Labour Relations Adjustment Law (see paragraphs 369 to 372 above). All these provisions, with the exception of section 18 of the Labour Relations Adjustment Law (defining the circumstances in which mediation is undertaken) and section 26 (4) thereof (prohibiting acts of dispute pending clarification of a mediation proposal) are applied by section 4 of the L.P.E.L.R. Law.

511. Section 18 of the Labour Relations Adjustment Law is replaced, with respect to the local public enterprise sector, by section 14 of the L.P.E.L.R. Law, which reads as follows:

> 14. The labour relations commission shall undertake mediation with regard to labour relations of the local public enterprise in the following cases:
>
> (1) when both of the parties concerned apply for mediation;

[1] These provisions may be compared with those of s. 12 of the P.C.N.E.L.R. Law (see para. 445 above), which are very similar but do not envisage bargaining on the workers' side, which is not in all cases conducted by the trade unions.

[2] In these respects the L.P.E.L.R. Law differs from the P.C.N.E.L.R. Law.

[3] The emergency adjustment procedures (Labour Relations Adjustment Law, ss. 35-2, 35-3, 35-4 and 35-5) are not applied to the local public enterprise sector (L.P.E.L.R. Law, s. 4).

(2) when both or one of the parties concerned apply for mediation on the basis of the provisions of a trade agreement;

(3) when one of the parties concerned applies for mediation and the labour relations commission decides upon the necessity of undertaking mediation;

(4) when the labour relations commission decides upon the necessity of undertaking mediation ex officio;

(5) when the Labour Minister or a prefectural governor requests the labour relations commission to undertake mediation.

(e) *Statutory Arbitration Procedure*

512. Arbitration in the private sector (apart from the case of emergency adjustment under provisions which do not apply to local public enterprises) is governed essentially by sections 30 to 34 of the Labour Relations Adjustment Law (see paragraphs 373 to 377 above). All these provisions, with the exception of section 30 (defining the circumstances in which arbitration is undertaken), are applied by section 4 of the L.P.E.L.R. Law.

513. Section 30 of the Labour Relations Adjustment Law is replaced, with respect to the local public enterprise sector, by section 15 of the L.P.E.L.R. Law, which reads as follows:

15. The labour relations commission shall undertake arbitration with regard to labour relations of the local public enterprise in the following cases:

(1) when both of the parties concerned apply for arbitration;

(2) when both or one of the parties concerned apply for arbitration on the basis of the provisions of a trade agreement;

(3) when the labour relations commission decides upon the necessity of undertaking arbitration of the labour dispute whose conciliation or mediation is pending in the said labour relations commission;

(4) when the mediation has not been effected within two months (a period exceeding two months in case the said period is fixed by the agreement of the parties concerned and communicated to the labour relations commission within two months);

(5) when the Labour Minister or a prefectural governor requests the labour relations commission to undertake arbitration.

514. With respect to the implementation of awards section 16 of the L.P.E.L.R. Law provides that " the provisions of section 8 shall apply *mutatis mutandis* to the arbitration award the terms of which are in conflict with the by-law of the local public body concerned, the provisions of section 9 to the arbitration award the terms of which are in conflict with the regulations or other rules of the local public body concerned and the provisions of section 10 to the arbitration award involving the expenditure of funds not available from the budget or funds of the local public enterprise concerned ".[1]

Strikes and Lockouts

515. Strikes and lockouts are prohibited in local public enterprises [2] as in public corporations and national enterprises. Section 11 of the L.P.E.L.R. Law provides

[1] Ss. 8, 9 and 10 of the L.P.E.L.R. Law were cited in full in para. 500 above.

[2] Consequently, the trade unions in this sector, like those in the public corporation and national enterprise sector, do not enjoy the protection of s. 8 of the Trade Union Law (L.P.E.L.R. Law, s. 4); hence s. 12 of the Trade Union Law, which does apply, makes a trade union of local enterprise employees which is a juridical person subject in full to art. 44 of the Civil Code (see footnote to para. 387 above).

that " the employees and their trade unions shall not resort to a strike, slowdown and any other acts of dispute hampering the normal course of operations, nor shall any employees conspire, instigate or incite to effect such prohibited acts " and that " the local public body shall not resort to a lockout ". " The local public body may dismiss the employees who have acted in violation of " the above provisions and such employees in that case " shall not be entitled to participate in the procedures or to avail themselves of the remedies provided for in this Law, the Trade Union Law and the Labour Relations Adjustment Law " (s. 12).[1]

Protection of the Right to Organise

516. Section 4 of the L.P.E.L.R. Law renders applicable in this sector the provisions of section 2 (2) of the Trade Union Law, according to which " trade unions ", for the purposes of this legislation, do not include organisations which receive the employer's financial support in defraying their operational expenditures.[2]

517. The L.P.E.L.R. Law applies section 7 of the Trade Union Law relating to unfair labour practices—cited in paragraph 389 above—with the exception of the proviso to section 7 (1) permitting of a union or closed shop in the case of unions in the private sector.

518. The procedure for dealing with unfair labour practice cases in the private sector—in accordance with the provisions of the Trade Union Law and the Enforcement Order of the Trade Union Law—was described in paragraphs 391 to 397 above. The same provisions as were referred to in these paragraphs are applicable in the local public enterprise sector by virtue of section 4 of the L.P.E.L.R. Law.

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[1] In contrast to employees of a public corporation or national enterprise, who can have recourse to the P.C.N.E.L.R., Commission within two months in respect of dismissal for having committed unlawful acts of dispute (see para. 473 above).

[2] Again, as in the case of the public corporations and national enterprises, with the proviso to s. 2 (2) that this shall not prevent the employer from permitting workers to confer or negotiate with him during working hours without loss of time or pay, and shall not apply to the employer's contribution to welfare funds and benefit or similar funds actually used to prevent or relieve economic misfortune or accident, or to the furnishing of minimum office space.

CHAPTER 14

SITUATION UNDER THE NATIONAL PUBLIC SERVICE LAW

Scope of Application of the Law

519. The National Public Service Law (hereafter in this chapter referred to as " the N.P.S. Law ", or " the Law ", if the context is clear) is an enactment which lays down the standards for the operation of the national public service, and only a comparatively small part of it relates directly to freedom of association and trade union rights of the personnel. Section 2-4 of the Law provides that its provisions shall apply to all positions in the regular service and that the National Personnel Authority shall have authority to determine whether positions are in the national public service or not and, within the provisions of sections 2-2 and 2-3, to determine whether positions are in the regular service or the special service. The persons comprising the " special service ", to whom the Law does not in general apply, are defined in section 2-3.[1]

520. The persons to whom the Law (and, in particular, its provisions relating to freedom of association, trade union rights and employment relations) does apply—the regular service [2] according to section 2-4—comprise all those persons in the national service other than the special service (section 2-2).[3]

521. The coverage of the Trade Union Law (Law No. 174 of 1949) the Labour Relations Adjustment Law (Law No. 25 of 1946) and the Seamen's Law (No. 100 of 1947), and any orders issued thereunder shall not apply to the personnel of the regular service (Supplementary Provisions of the N.P.S. Law, s. 16).

The National Personnel Authority

522. Section 3 of the N.P.S. Law establishes a National Personnel Authority and entrusts to it responsibility for enforcing the Law. The Authority may make rules, issue directives and establish procedures concerning matters necessary for the execution of the Law (s. 16). If for the realisation of the objectives of the Law the

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[1] Essentially, the Prime Minister, Minister of State, Commissioners of the National Personnel Authority, persons holding elective positions, ambassadors, ministers, judges, court officials, confidential secretaries to the foregoing persons, officials and certain of the personnel of the Imperial household, Diet personnel, secretaries to Diet members and personnel of the Security Agency. But the list also includes persons whose duties are not technical, professional, supervisory or administrative and who are persons engaged when technically speaking " unemployed " in connection with work relief or public works projects.

[2] Including temporary employees (N.P.S. Law, s. 60).

[3] It must not be forgotten, however, (see para. 400 above) that, while they remain administratively subject to the N.P.S. Law, one important group of persons in the regular service—those employed in " national enterprises " (in posts other than managerial or supervisory or confidential posts)—are subject, as regards freedom of association and industrial relations generally, to the P.C.N.E.L.R. Law and that consequently, by virtue of s. 40 of that Law, several of the provisions of the N.P.S. Law are made non-applicable to them. In the course of the examination of the provisions of the N.P.S. Law in the present chapter more precise indications will be given in the footnotes as to which sections do not apply to the said group of regular service personnel who work in national enterprises.

Authority has opinions concerning the enactment or amendment or revocation of laws and orders, it shall submit them to the Diet and to the Cabinet simultaneously (s. 23).

523. Section 3-3 [1] requires the National Personnel Authority to " develop, co-ordinate, integrate and order policies, standards, procedures, rules and programmes and recommend legislative and other necessary action for personnel " with respect to the matters specified in the said section.[2]

524. The Authority shall be composed of three Commissioners, who " shall be appointed, with consent of both Houses of the Diet, by the Cabinet from among persons 35 years old or more, who are of highest moral character and integrity, in known sympathy with the democratic form of government and efficient administration therein based on merit principles, and possessing a wide range of knowledge and sound judgment concerning personnel administration " (N.P.S. Law, ss. 4 and 5). Apart from disqualification on grounds of bankruptcy, previous conviction for certain criminal offences, previous disciplinary dismissal and membership of a subversive political party or organisation, " no person shall be appointed as a Commissioner who is or, within five years previous to the proposed date of appointment, has been an officer, political adviser or other similarly politically influential member of a political party or who, within five years previous to the proposed date of appointment, has been a candidate for national or prefectural elective public office, as provided by rules of the Authority " and no two commissioners " shall be members of the same political party or graduates of the same department of the same university " (ss. 5-4 and 5-5). No Commissioner shall hold concurrently any other government position (s. 15). The term of office is four years; it is renewable but not so as to permit more than 12 years' continuous service (s. 7). The President of the Authority shall be appointed by the Cabinet from among the commissioners (s. 11).

The Right to Form and Join Organisations

525. " Personnel shall be permitted to form or refrain from forming or to join or refrain from joining associations or other organisations . . . . No employee shall be denied the freedom to express dissatisfaction or voice opinions by reason of his

[1] Not applicable to persons in the regular service (other than those holding managerial or supervisory positions or employed in a confidential capacity) who are engaged in national enterprises (Public Corporation and National Enterprise Labour Relations Law, s. 40).

[2] That is to say—

(1) Position classification, compensation, dual compensation, pay plan, examination, qualifications, recruitment, employment eligibles list, certification of eligibles, appointment, conditional period, temporary appointment, part-time employment, dual employment, oath of office, promotion, demotion, transfer, reinstatement, reassignment, retirement, pension, dismissal, reduction in force, evaluation of work performance, the definition of terms of personnel administration and related matters.

(2) Hours of work, leave of absence, temporary retirement, health, safety, recreation, education and training, welfare, personal conduct, political activity, exclusion from private enterprise, preservation of secrecy, discipline, separation, equitable treatment, status guarantee, employee application for administrative action, grievance procedure, compensation for illness and injury while on official duty, and investigation, research and inspection regarding governmental personnel administration and related matters.

(3) Personnel records and statistics, control and audit of payrolls to ascertain whether or not the payment of compensation is made in conformity with the Law and rules and directives of the Authority.

(4) Administration of the National Personnel Council.

(5) Other matters placed under its jurisdiction on the basis of law.

non-membership in an employee organisation " (N.P.S. Law, s. 98-2).[1] Section 98-4 excludes from the right to form or join organisations " personnel of the police services and fire services (including personnel of the National Fire Defence Board) and personnel of the Maritime Safety Board and penal institutions ".

526. Only employees of the regular national public service may belong to an employees' organisation provided for in the law.

527. Nothing in the N.P.S. Law as it stands prevents employees regarded as representing the employers from joining the same organisations as other employees.[2]

The Right to Form and Join Federations

528. The N.P.S. Law itself makes no specific reference to federations. However, the provisions relating to the registration of organisations contained in Rule 14-2 of the National Personnel Authority, as will be observed when considering the registration of organisations, contain specific references to federations of " employee organisations ", which may even take the form of an employee organisation with " nation-wide affiliation " (s. 3 of the Rule), a federation formed solely of organisations of employees being held to be an employee organisation under the N.P.S. Law. However, the Government states, united organisations of employee organisations and other organisations " are not denied ... their existence and activities ".[3]

529. The constitution and rules of an organisation must make provision as to the conditions governing its affiliation with other organisations (Rule No. 14-2, s. 2 (8)).

Registration of Organisations and Acquisition of Legal Personality

530. In view of the interrelationship of the relevant provisions it is appropriate to deal with these two matters under the same head.

531. Registration of employee organisations formed under the N.P.S. Law is not compulsory under the Law. Section 1 of Rule No. 14-2 of the National Personnel Authority, put into effect on 3 June 1949, provides that " an organisation of employees must apply for and secure official notice of registration by the Authority in accordance with this Rule ".[4]

532. The manner of applying for registration is prescribed by section 3 of the said Rule, which reads as follows:

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[1] S. 98-2 is not applicable to persons in the regular service (other than those holding managerial or supervisory positions or employed in a confidential capacity) who are engaged in national enterprises (P.C.N.E.L.R. Law, s. 40). The said managerial, supervisory and confidential personnel therefore can join the organisation formed under s. 98-2 of the N.P.S. Law.

[2] A fact confirmed by the Government of Japan in a communication dated 14 February 1961 and mentioned by the Committee on Freedom of Association in para. 112 of its 54th Report.

[3] Observations of the Government on the draft analysis of the legislation.

[4] In its observations on the draft analysis the Government stated: " An organisation of employees may negotiate under s. 98, para. 2, of the National Public Service Law. However, in order to enter into a negotiation implied in the same provision, namely a negotiation with the authority concerned which will, by virtue of the provision, be placed in a position to respond positively to the request for negotiation by such an organisation, an employee organisation is required under the same provision to comply with the procedure laid down by the National Personnel Authority and must be registered *(Toroku)* in accordance with s. 1 of Rule 14-2 put into effect on 3 June 1949.

The employee organisation shall apply through its representatives to the Authority for registration by submitting an application in duplicate containing or annexing the following information:

(1) copies of the articles of association or agreement[1];

(2) names, addresses and official positions of directors, representatives or other officers (including those on leave of absence to be exclusively engaged in the business of an employee organisation);

(3) location of all offices of the organisation;

(4) in the case of a federation or union of employee organisations, the names of the various constituent organisations;

(5) in the case of an employee organisation which intends to be a juridical person, a statement to that effect;

(6) a certification to the effect that all officers, including directors and others, have been elected, and the articles of association or agreement adopted, by a majority vote of all members, conducted by direct secret ballot in which all constituent members were given equal opportunity to participate, as well as the date and place of that ballot. However, in the case of a federation of employee organisations, or employee organisations with nation-wide affiliation, if the above actions were taken pursuant to the provision of the proviso to section 4, a certification to that effect as well as the dates and places of those ballots;

(7) a certification of the qualification of the representatives to submit the application for registration.

533. According to section 4 of this Rule, in order to qualify for and maintain registration—

The organisation shall establish and carry out democratic procedures by majority vote of all members conducted by direct secret ballot in which all constituent members have an equal opportunity to participate for the adoption or change of the articles of association or agreement, election of officers and other similarly important actions. Provided that, in the case of the federation of employee organisations or the employee organisation with nation-wide affiliation, the representatives of each constituent organisation or the representatives of each geographical or occupational area, who shall be elected by a majority vote of the constituent members of such organisations conducted by direct secret ballot in which all constituent members are given equal opportunity to participate, may provide these procedures by a majority vote conducted by their direct secret ballot, in which all constituent members are given equal opportunity to participate.

534. If the Authority finds that the application and other particulars meet the requirements of the National Public Service Law and of Rule No. 14-2, the Authority " shall officially register the organisation and so notify the employee organisation in writing " (s. 5 of the Rule).

535. An organisation of employees may be incorporated as a juridical person under paragraph 7 of section 98 of the N.P.S. Law, but acquisition of legal personality is voluntary, provided that the organisation must first have obtained registration by the National Personnel Authority, by virtue of which registration it is considered to have been authorised to establish itself as a legal person, for which purpose it must further become registered under the Civil Code.

536. Thus, under section 5 of Rule No. 14-2 cited above, the organisation must specifically state, when applying for registration, whether " it intends to be a juridical person ". It is clear, however, that it cannot become a juridical person unless it registers, for the following reasons. Article 34 of the Civil Code provides that

[1] That is, the constitution and rules, referred to as " articles of association " in the case of an organisation voluntarily seeking legal personality, or as " agreement " in other cases. The constitution and rules, moreover, must contain the matters listed in s. 2 of the Rule (see below under " Constitutions and Rules of Organisations ").

" Associations . . . relating to the public welfare, and which do not have profit-making for their object, may become juridical persons with the permission of the competent authorities ". Now, section 6 of Rule No. 14-2 provides that " when an employee organisation which intends to be a juridical person has been registered it shall be regarded as having been approved under article 34 of the Civil Code ". Thus, the acquisition of legal personality is subject to authorisation, which, however, is automatic upon registration if—but only if—the organisation has applied for legal personality. In other words, the conditions to which the acquisition of legal personality is subject are the same as must be satisfied in order to obtain registration. And, as will be seen when considering the question of deregistration, cancellation of registration entails loss of legal personality.

537. Further requirements are laid down in Rule No. 14-3 of the Authority, also put into effect on 3 June 1949. Section 1 of this Rule requires any employee organisation which has changed its " articles of association or agreement " or has elected or re-elected directors, representatives or other officers, or made other changes in the facts in or annexed to its application for registration, or has voluntarily dissolved, within ten days from the effective date of such changes to apply to the Authority for registration of the change in the particulars of the registration. Such notice of changes shall be filed in duplicate and shall be accompanied by a certification that such changes were in accordance with the provisions of the articles of association or agreement as registered with the Authority, and a certification of the qualification of the representatives to submit the application (Rule No. 14-3, s. 2). If the National Personnel Authority deems that the particulars furnished in the application meet the requirements of the Law, Rule No. 14-3 and Rule No. 14-2, the Authority shall register such change and so notify the employee organisation in writing (Rule No. 14-3, s. 3). Where a change in the articles of association has been registered by the Authority, it shall be regarded as having been approved under article 38 of the Civil Code (Rule No. 14-3, s. 4).

Constitutions and Rules of Organisations

538. The " articles of association or agreement " of an employee organisation are required by section 2 of Rule No. 14-2 of the National Personnel Authority to contain at least the following particulars:

(1) name;

(2) objects and business of the organisation;

(3) location of headquarters office;

(4) regulations concerning scope of membership and the acquisition and loss of qualifications for membership;

(5) regulations concerning officers, including directors, representatives and others;

(6) regulations for execution of business, conducting meetings and voting, including the matters prescribed by section 4 [1];

(7) regulations relating to expenditures and accounts of the organisations;

(8) regulations concerning association or affiliation with other organisations;

(9) regulations concerning the revision of articles of association or agreement;

(10) regulations concerning the dissolution of the organisation.

[1] That is, provision must be made for direct secret ballots for the election of officers and certain other matters in accordance with the terms of ss. 3 (6) and 4 of Rule No. 14-2 (see paras. 532 and 533 above).

539. The provision for revising the constitution and rules must provide for revision by direct secret ballot in accordance with sections 3 (6) and 4 of Rule No. 14-2 cited in paragraphs 532 and 533 above.

Officers and Representatives of Employees' Organisations

540. Section 98-2 of the N.P.S. Law provides that the personnel, through their organisations, may " designate the representatives of their own choice ".

541. Only national public service employees can serve as officers. When application for registration is made the titles of the official positions of the officers must be entered in the application in accordance with Rule No. 14-2 of the National Personnel Authority.

542. All elections of officers must be conducted " by a majority vote of all members " by secret ballot, in accordance with section 4 of Rule No. 14-2 cited in paragraph 533 above.

543. According to section 101 (1) of the N.P.S. Law " personnel, except in cases authorised by Rules of the Authority, shall devote their full working time and occupational attention to the performance of their duties, and perform only those duties which it is the responsibility of the National Government to perform " and, according to section 101 (3) of the same Law, " personnel shall not, while receiving pay of the National Government, perform duties or carry on activities for or on behalf of employee organisations ".[1] The activities referred to herein are activities as a representative of an employee organisation.

Internal Administration of Organisations

544. The constitution and rules of an organisation under the N.P.S. Law must contain provisions as to the execution of its business, conduct of meetings and voting—including secret ballots for certain matters specified in section 4 of Rule No. 14-2 of the National Personnel Authority—and provisions as to expenditure and accounting (Rule No. 14-2, s. 2).

Objects, Activities and Programmes of Employee Organisations

545. No definition of the objects and activities of employee organisations is contained in the N.P.S. Law other than the reference, in section 98-2, to the right of employees to negotiate through such organisations. Section 102 prohibits employees as such from engaging in any political activity, as defined by the rules of the authority, other than to exercise their right to vote.

546. Section 2 (2) of Rule No. 14-2 of the National Personnel Authority requires the objects and business of an employee organisation to be defined in its constitution and rules.

International Affiliation of Organisations

547. The N.P.S. Law contains no provisions relating to the international affiliation of employees' organisations.

[1] Conditions governing retention of status (without salary) of persons allowed to take leave to serve as full-time officers of national civil servants' unions have been prescribed by Rule No. 15-3 of the National Personnel Authority.

Deregistration, Suspension and Dissolution of Organisations

548. There are no provisions in the N.P.S. Law relating to the suspension or dissolution of employee organisations. Section 2 (10) of Rule No. 14-2 of the National Personnel Authority requires the constitution and rules of an organisation to provide regulations concerning its dissolution. Voluntary dissolution is one of the changes of particulars of registration which must be notified within ten days to the National Personnel Authority, together with a certification to the effect that it is in accordance with the constitution and rules of the organisation and that the representative making the notification is qualified to do so, and be duly registered by the Authority (Rule No. 14-3 of the National Personnel Authority, ss. 1, 2 and 3).

549. As already noted in paragraph 544 above, when considering the question of registration of organisations, the establishment and carrying out by an organisation of democratic procedures for holding secret ballots for the election of officers and certain other matters, pursuant to section 4 of Rule No. 14-2 of the National Personnel Authority, is a condition not only of qualifying for registration but also of maintaining registration.

550. According to section 5 of Rule No. 14-3 of the National Personnel Authority the Authority may order appropriate corrective action by an employee organisation, or suspend for not more than 60 days or revoke the registration of such organisation, if it fails to conform with its registered constitution and rules or if it violates the N.P.S. Law or rules of the Authority, or if, in the case of a juridical person, it violates laws or orders applicable to such persons. Such revocation, in the case of an organisation which is a juridical person, is also to be regarded as revocation of its permission to be established as a juridical person (Rule No. 14-3, s. 6). Revocation of the registration of an organisation or of its status as a juridical person by the Authority may take place only after an opportunity for a hearing has been granted (s. 7); in such a case the provisions of sections 89 to 92 of the N.P.S. Law [1] shall apply correspondingly.

Collective Negotiation and Determination of Wages and Other Conditions of Employment

551. The wages, hours of work and other working conditions of the personnel of the regular service are established by law and not by collective agreement. Through their personnel organisations the " personnel may designate representatives of their own choice and negotiate, subject to the procedures of the Authority, with proper authorities for working conditions and for other lawful purposes including social and welfare activities, provided, however, that such negotiation does not include the right of collective agreement with the Government " (N.P.S. Law, s. 98-2). " A registered organisation of employees can open a negotiation with the authority concerned which will, by virtue of the provisions concerned, be placed in a position to respond positively to the request of negotiation by such an organisation; even non-registered organisations of employees are not denied either their existence and activities or their competence for negotiation." [2] Negotiation with respect to disciplinary dismissal is excluded by Rule No. 14-0 of the Authority, which proxides that " negotiation shall not include disciplinary matters ".

[1] See below, under " Protection of the Right to Organise ".

[2] Statement by the Government in its observations on the draft analysis of the legislation.

552. The compensation (i.e. pay) shall be effected under a pay plan prescribed by law and setting forth the rates to be paid to the different classes of personnel according to the position classification plan in respect to their government positions (N.P.S. Law, ss. 63 and 66). " The Authority shall at all times conduct necessary investigations and studies concerning the pay plan and shall, when it deems it necessary to raise or lower the rate of compensation, prepare and submit such revision without delay to the Diet and the Cabinet " (s. 67).

553. The pay plan must also provide for certain other matters, including standards for pay increases; compensation for overtime, night and holiday work; allowances for service in specially designated areas, for hazardous jobs and other extraordinary services; and adjustments in respect of dependants (s. 65). Further, section 28 of the Law provides that the standards concerning compensation, hours of work and other working conditions established under the Law may at any time be revised by the Diet to bring them into accord with general conditions of society, that it shall be the duty of the Authority to recommend such changes, and that the Authority shall report to the Diet and the Cabinet simultaneously on the propriety of salary and wage schedules not less than once each year.

554. The above provisions operate in any event, irrespective of whether or not representations are made to the Authority by or on behalf of the personnel, and in practice, the Government states, the employee organisation usually presents its views to the Authority prior to a recommendation mentioned in the preceding paragraph.

555. The right of the personnel to make requests to the Authority for administrative action on working conditions and the procedure for dealing with such requests are governed by sections 86, 87 and 88 of the N.P.S. Law, which read as follows:

> 86. Personnel may make requests to the Authority that appropriate administrative action be accorded by the Authority or the head of an employing agency of government relative to salary, wages, or any of the working conditions.
>
> 87. When the request specified in the preceding section is received, the Authority shall conduct such investigations, hearings or other fact-finding operations as it may deem necessary, and evaluate the case with due regard to fairness to the public and the persons concerned and in terms of developing and improving the efficiency of personnel.
>
> 88. When the Authority considers action necessary in regard to working conditions on the basis of the evaluation specified in the preceding section, it shall take its own action on the matters under its jurisdiction, and recommend to the head of an employing agency of government to take action in regard to other matters.

Statutory Regulation of Minimum Wages and Conditions of Employment

556. Section 16 of the Supplementary Provisions of the N.P.S. Law provides that the Labour Standards Law (Law No. 49 of 1947) and the Minimum Wages Law (Law No. 137 of 1959) and any orders issued thereunder shall not apply to any personnel of the regular service of the national public service as defined in section 2 of the N.P.S. Law (excluding employees covered by the P.C.N.E.L.R. Law). In the text of the Law published in English in 1952 by the Japanese Ministry of Labour [1], however, the said Supplementary Provisions were followed by further Supplementary Provisions, section 3 of which provides that the provisions of the Labour Standards

[1] *Japan Labour Code*, 1952.

Law and orders issued thereunder shall be applied correspondingly to personnel in the regular service, until a separate law has been enacted and enforced, as long as they are not in conflict with the spirit of the N.P.S. Law and not inconsistent with the matters provided by laws enacted pursuant to the N.P.S. Law or rules of the Authority issued thereunder, but that necessary determinations shall be provided by rules of the Authority.

Dispute Procedures

557. The N.P.S. Law contains no provisions relating to the conciliation, mediation or arbitration of disputes. By virtue of section 16 of the Supplementary Provisions to the Law, the coverage of the Trade Union Law and of the Labour Relations Adjustment Law and any orders issued thereunder shall not apply to personnel of the regular service.

Strikes

558. Strikes are prohibited under the N.P.S. Law. The Law makes no reference to lockouts.

559. Section 98-5 provides that—" Personnel shall not strike or engage in delaying acts or other acts of dispute against the public represented by the National Government as employer, or resort to delaying tactics which reduce the efficiency of governmental operations, nor shall personnel or other persons attempt, conspire to effect, instigate or incite such illegal actions." Any person who conspires to effect, instigates or incites such illegal actions provided in the first part of section 98-5, or attempts to do so, shall, under section 110, be sentenced to penal servitude for not more than three years or to a fine not exceeding 100,000 yen.

Protection of the Right to Organise

560. Section 98-3 of the National Public Service Law provides that " personnel shall not be subjected to adverse treatment on the ground that they are the constituent members " of the employee organisation referred to in section 98-2, " or have attempted to form or join it, or that they have performed lawful actions in such organisation ".

561. " When an employee, against his will, has his pay reduced, or is demoted, temporarily retired, dismissed or is otherwise subjected to greatly disadvantageous action, or is about to be administered disciplinary punishment, he shall at the time of such action be given by the person taking such action an explanatory written statement setting forth the reasons " (s. 89). In such an event—whether because he believes that the action was taken on the ground of his trade union membership or activities or on other grounds—he may appeal to the Authority, within 60 days of receiving the said statement, for a review (s. 90).

562. The matter then becomes the subject of investigation by or on behalf of the Authority, which shall then issue its order approving, revising or cancelling the action taken against the employee. These matters are governed by sections 91 to 92-2 of the N.P.S. Law, which read as follows:

(Investigation)

91. On receipt of the objection specified in paragraph 1 of the preceding section, the Authority, or any agency designated by the Authority, shall promptly investigate the case.

In the cases specified in the preceding paragraph, if the employee subject to the action requests it, a hearing shall be accorded. If so requested by the employee concerned, the hearing shall be a public hearing.

The person who took the action or his representative and the employee subject to the action may appear at all hearings, be represented by counsel of their own choosing, be heard and present witnesses, documents, records and any other pertinent facts and data.

Persons other than those mentioned in the preceding paragraph may present to the Authority any facts and data concerning the case.

(Action to Be Taken as a Result of Investigation)

92. If, as a result of the investigation specified in the preceding section, the validity of the charges is established, the Authority shall approve or in its discretion revise the action.

If, as a result of the investigation specified in the preceding section, it is established that there are no grounds for action against the employee, the Authority shall cancel the action and take such action as may be necessary and advisable to restore employment rights to the employee and correct any injustice that may have been done him by reason of such action. The Authority shall in such cases order that the employee be reimbursed for any salary lost by reason of such action.

Findings of the Authority in cases referred to in the preceding two paragraphs shall be final and subject to review only by the Authority under its rules.

(Relations between Filing of Objection and Lawsuit)

92-2. No lawsuit may be brought for cancellation of the actions which are provided in paragraph 1 of section 89 and from which or against which personnel may appeal for review or submit a protest to the Authority, until after the Authority has rendered a ruling or decision on the said appeal for review or the protest submitted.

563. The provisions of sections 89 to 92 of the N.P.S. Law and of the Law for the examination of objections against administrative acts do not apply to temporary personnel or to other personnel during their initial probationary period (N.P.S. Law, s. 81). Such personnel can bring a lawsuit for revocation of the action.

564. In revoking the registration or status as a juridical person of an employee organisation, the National Personnel Authority must accord an opportunity of hearing in advance; in this case the provisions of sections 89 to 92 of the N.P.S. Law shall apply *mutatis mutandis*.

CHAPTER 15

SITUATION UNDER THE LOCAL PUBLIC SERVICE LAW

Scope of Application of the Law

565. The Local Public Service Law (hereafter in this chapter referred to as " the L.P.S. Law," or " the Law " where the context is clear) is the enactment which lays down the standards for the operation of the local public service. Only a limited number of its provisions concern matters directly related to freedom of association and the exercise of trade union rights.

566. According to section 4 of the Law, its provisions shall apply to all the local public service personnel in the regular public service [1], but not (except for special cases provided for by law) to local public service personnel in the " special public service ".[2] By virtue of section 4 of the Supplementary Provisions of the L.P.E.L.R. Law (see paragraph 477 above) read together with section 57 of the L.P.S. Law, it would appear that the trade union rights and labour relations of all personnel employed for " simple labour " are governed by the former Law, whether they are employed in public enterprises or in offices, etc., otherwise subject to the L.P.S. Law.

567. The Trade Union Law (Law No. 174 of 1949) and the Labour Relations Adjustment Law (Law No. 25 of 1946) and orders issued thereunder shall not apply to persons in the local public service subject to the L.P.S. Law (L.P.S. Law, s. 58).

Authorities and Agencies Established by the Local Public Service Law

(a) *Appointing Authorities Generally*

568. The appointing authorities for the purpose of the Law are defined in section 6, which reads as follows:

The heads, the chairmen of the assemblies, the election administration committees, chief inspection commissioner (inspection commissioner in case the authorised number is one), boards of education, personnel commissions and equity commissions of the local public bodies, superintendent-

[1] Defined by s. 3-2 as comprising all positions in the local public service other than in the special public service. The Law does apply to temporary appointees (s. 22 (7)). It must be remembered, however, that the trade union rights and, in the general sense of the term, the industrial relations of persons in the regular local public service who are engaged in local public enterprises are governed by the L.P.E.L.R. Law. However, local public service employees engaged in local public enterprises in a supervisory or managerial or confidential capacity, and who are therefore not permitted by the L.P.E.L.R. Law to join organisations under that Law, can form and join organisations under the L.P.S. Law (confirmed by the Government of Japan in a communication dated 2 October 1961 and noted in para. 394 of the 58th Report of the Committee on Freedom of Association).

[2] As defined in s. 3-3. Essentially this comprises persons in elective offices, commissioners or members of various commissions and boards, expert advisers, consultants and investigators of public bodies, secretaries to the heads and chairmen of local public assemblies and the heads of other designated agencies, part-time members of fire-prevention corps and members of flood defence associations. It also includes persons whose duties are not technical, professional, supervisory or administrative and who are persons engaged, when technically " unemployed ", for unemployment relief works and public works.

general of the metropolitan police, chief of police headquarters of prefecture and chiefs of fire defence of cities, towns and villages (including the chief of fire defence of the fire defence maintained jointly by special wards) and other appointing authorities under laws and orders or by-laws shall have respectively the power to administer the appointment, temporary retirement, dismissal and disciplinary punishment, etc., of the personnel in accordance with this Law and such by-laws, regulations of the local public body and rules fixed by agencies of the local public body as may be issued thereunder, except for cases specially provided for by by-laws.

(b) *Personnel Commissions and Equity Commissions*

569. Section 7 of the Law requires the prefectures and the cities designated in section 252-19 (1) of the Local Autonomy Law (Law No. 67 of 1947) to enact by-laws to set up a personnel commission. Other cities having a population of more than 150,000 must set up either a personnel commission or an equity commission by by-law (s. 7 (2)); cities, towns, villages, special wards and associated local public bodies with a population of less than 150,000 may each set up an equity commission by by-law (s. 7 (3)).

570. The personnel commission shall administer the affairs specified in section 8-1 of the Law and the equity commission those specified in section 8-2.[1]

571. Section 9 of the Law prescribes the conditions governing membership of personnel and equity commissions. Each Commission shall consist of three members, appointed by the head of the local public body with the consent of the assembly from among " persons of highest moral character and integrity, in known sympathy

[1] S. 8 of the Law reads as follows

1. The Personnel Commission shall administer the following affairs:

(1) to investigate matters of personnel administration and to have charge of affairs concerning personnel records and to prepare statistical reports concerning personnel affairs;

(2) to make a continuous study on compensation, work hours and other working conditions and welfare and benefit systems, the system of compensation for accidents in line of duty and other systems concerning the personnel, and to submit the results thereof to the assembly or the head or the appointing authorities of the local public body;

(3) to state opinions to the assembly and the head of the local public body on the enactment, amendment or abolition of by-laws concerning the personnel agencies and the personnel;

(4) to make recommendations to the appointing authorities on the operation of personnel administration;

(5) to administer the competitive examination and selection of the personnel and affairs relating thereto;

(6) to formulate and put into practice plans concerning the position classification;

(7) to supervise and control the payment of compensation to the personnel to the extent necessary to determine that persons are paid, compensated or employed in compliance with this law and with by-laws issued thereunder;

(8) to formulate over-all plans for the training and evaluation of work performance of the personnel;

(9) to exercise and judge upon applications for action concerning compensation, work hours and other working conditions of the personnel and adopt necessary measures;

(10) to render a ruling or a decision on an objection concerning adverse actions towards the personnel and adopt necessary measures;

(11) besides the affairs enumerated in the preceding items, to administer such affairs as have been placed within its powers in accordance with laws or by-laws.

2. The Equity Commission shall administer the following affairs:

(1) to examine and judge upon applications for action concerning the compensation, work hours and other working conditions of the personnel and adopt necessary measures;

(2) to render a ruling or a decision on an objection concerning adverse actions towards the personnel and adopt necessary measures.

with the principle of local autonomy and democratic and efficient administration, and possessing knowledge and sound judgment concerning personnel administration ". Persons who have suffered certain convictions or disciplinary penalties, as set forth in section 16, or who have formed or joined a political party or any other organisation which advocates the overthrow by violence of the Constitution of Japan or the Government formed thereunder are not eligible for membership of a commission. No two members belonging to the same political party shall be appointed to a commission; if two or more sitting members come to belong to the same party, all but one of them shall be removed by the head of the local public body with the consent of the assembly, but a person who has not changed his political allegiance may not be removed. Members of a commission may not hold concurrently positions of membership of the assembly of the local public body or local public servicemen in the body concerned. The term of office is four years. Members of a personnel commission may serve full time or part time; the equity commission has only part-time members.

572. The commission elects its own chairman and he designates his deputy (s. 10). No commission may be in session without the attendance of all its members; decisions must be taken by a majority of those present (s. 11).

The Right to Form and Join Organisations

573. Section 52 of the L.P.S. Law provides that " the personnel may or may not form and may or may not join an organisation (hereinafter in this section referred to as a ' unit organisation '), the object of which is to negotiate with the authorities of the local public body concerned with regard to the compensation, work hours and other working conditions ", but " the police and fire defence personnel cannot form and join the personnel organisations " (s. 52-4).

574. Only " employees ", that is, employees of the regular local public service, can belong to the employee organisation provided for in this Law.[1]

The Right to Form and Join Federations

575. The right to form federations is governed by sections 52-2 and 52-3 of the L.P.S. Law, which read as follows:

> 2. The unit organisation may form a federation with other unit organisations of the local public body concerned or join a federation of unit organisations formed by other unit organisations of the local public body concerned. And the federation of unit organisations may form a federation with other federations or unit organisations of the local public body concerned or join another federation of unit organisations of the local public body concerned.
>
> 3. The provisions of the preceding paragraph shall not prevent a unit organisation or a federation of unit organisations (hereinafter in this section to be referred to collectively as " the personnel organisation ") from actually forming a united organisation with the personnel organisations of other local public bodies or with other organisations of public service personnel or actually joining a united organisation formed by the personnel organisations of other local public bodies or other organisations of the public service personnel.

[1] See para. 566 above. The Government of Japan has confirmed this to be the position in a communication dated 2 October 1961, as noted in para. 382 of the 58th Report of the Committee on Freedom of Association.

576. It is not immediately apparent from the above provisions just how far the process of federation can proceed. The Government itself, however, has stated [1] that a union formed in one municipality can negotiate with the municipal authority and that organisations of local public service educational personnel can federate within the limits of or up to the level of the prefecture and negotiate with the prefectural authority.[2] Beyond that limit it is not unlawful for them to form a nation-wide confederation[3], but such confederation is a *de facto* body only.[4] However, the Government states, it is not denied its freedom to carry out activities on behalf of its members.

Registration of Organisations and Acquisition of Legal Personality

577. Registration is not compulsory under the L.P.S. Law.

578. According to section 53 of the L.P.S. Law " the employees' organisation may apply, as provided for by the by-law, for registration by the Personnel Commission (in local public bodies not having personnel commissions the head of the local public body)[5], accompanying its application by a copy of its constitution (or articles of association, if it is to be a juridical person). In such case the Personnel Commission (in local public bodies not having personnel commissions the head of the local public body) shall, as provided for by by-laws, register the organisation together with the constitution (or articles of association) and so notify the employees' organisation concerned, if the applying organisation complies in all respects with the provisions of this law and by-laws issued thereunder."

579. In particular, the constitution, or articles of association, of the organisation must make provision for the matters referred to in section 53-2 of the L.P.S. Law.[6]

580. According to section 53-3—

in order to qualify for and maintain registration, an employees' organisation shall establish procedures stipulating that the adoption or alteration of the constitution, election of officers and other important actions comparable thereto shall be decided by a majority vote of all members through direct secret ballot in which all employees who are constituent members [7] shall have an equal opportunity to participate, and these important actions must actually be decided through such procedures. However, in the case of a federation of unit organisation, it shall suffice to establish, and decide actually through, procedures stipulating that such important actions shall be decided by a majority vote of all delegates through direct secret ballot in which all such delegates shall have an equal opportunity to participate, such delegates being elected by a majority vote through direct secret ballot conducted by each constituent organisation in which all employees who are its members shall have an equal opportunity to participate.

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[1] In communications dated 24 January and 14 February 1961 (see paras. 147 and 148 of the 54th Report of the Committee on Freedom of Association).

[2] On the other hand, the Government of Japan has stated that an organisation formed by regular local public service employees must be limited to one local public body in order to be able to register and negotiate and that if they unite in one prefectural organisation the latter cannot register and negotiate (communication from the Government dated 22 January 1962 noted in para. 344 of the 66th Report of the Committee on Freedom of Association).

[3] Loc. cit.

[4] Statement in a communication from the Government of Japan dated 2 October 1961, noted in para. 380 of the 58th Report of the Committee on Freedom of Association.

[5] But not, therefore, the equity commission.

[6] See below, under " Constitutions and Rules ".

[7] From a reading of the whole section, " constituent members " would seem to mean " members actually belonging to the union " and not " founder members ".

581. Under the L.P.S. Law only the employees' organisation formed solely of employees of one local public body can register.

582. Legal personality is not automatic upon registration. When applying for registration an organisation, as noted above, furnishes a copy of the articles of association " if it is to be a juridical person "; otherwise it furnishes a copy of its constitution. It seems clear, however, that only a registered organisation can have legal personality.

583. Thus, section 54-1 of the Local Public Service Law provides that employees' organisations " may be incorporated as juridical persons ". As in the case of national public service employees' organisations [1] registration by the competent authority of the organisation which has applied for legal personality means that it is considered as having received the permission to be a juridical person which is required in the case of all juridical persons under article 34 of the Civil Code (L.P.S. Law, s. 54-2).

584. The registered employees' organisation which changes its constitution (or articles of association) must notify the registering authority (s. 53-5); in the case of an organisation which is a juridical person registration of a change in the articles of association shall mean that approval of the change, for the purposes of article 38 of the Civil Code, is regarded as having been given (s. 54-4).

Constitutions and Rules

585. It is a condition for registration under section 53-2 of the L.P.S. Law that the constitution of the organisation or federation concerned shall contain at least the following matters:

1. name;
2. business;
3. location of the main office;
4. regulations concerning the scope of membership and the acquisition and loss of qualifications for membership;
5. regulations concerning officers, including directors, representatives and others;
6. regulations concerning the execution of business, meeting and voting, including the matters provided for in paragraph 3 [2];
7. regulations concerning expenditure and accounting;
8. regulations concerning union with other personnel organisations;
9. regulations concerning the alteration of the constitution;
10. regulations concerning dissolution.

586. Any changes in the constitution of a registered organisation must be notified to the personnel commission (or the head of the local public body, if there is no personnel commission) (s. 53-5).

587. The provisions relating to the holding of direct secret ballots to adopt or amend the constitution were cited in paragraph 580 above.

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[1] See para. 535 above.

[2] See para. 580 above.

Officers and Representatives of Employees' Organisations

588. As already observed, it is a condition for registration of an organisation under the L.P.S. Law that its constitution shall contain regulations concerning officers, including directors, representatives and others (s. 53-2 (5)).

589. The election of officers of the organisation, in order for it to qualify for and maintain registration, must be in accordance with a procedure established by the organisation which provides for such election to be " by a majority vote of all members [1] through direct secret ballot in which all personnel " who are members " shall have equal opportunity to participate "; in the case of a federation of unit organisations it is sufficient for the procedure to provide, firstly, that " each constituent organisation shall elect by a majority vote through direct secret ballot in which all personnel" who are its members " shall have equal opportunity to participate " delegates to vote in the federation election, and, secondly, that the officers of the federation shall be elected by those delegates " by a majority vote of all delegates . . . through direct secret ballot in which all such delegates shall have equal opportunity to participate "; in addition, those procedures must be used in actual fact (s. 53-3).

590. According to section 52-5, " the personnel must not administer the business of the personnel organisations "—including federations—" or conduct activities in the interest of such organisation while they are receiving compensation from the local public body ". This does not preclude them from acting freely, outside working hours, as part-time union officers; in order, however, to serve as full-time union officers, retaining their status but not drawing salary, they require to be granted leave of absence by the local public body, a matter which is currently regulated by the by-laws of the local public bodies concerned.[2]

591. Only " employees " can serve as officers of an organisation of local public servants who are employees of the local public body.

Internal Administration of Organisations

592. Section 53-2 of the L.P.S. Law requires the employees' organisation to make provision in its constitution concerning the execution of business, meetings and voting, expenditure and accounting and dissolution as a condition for registration.

Objects, Activities and Programmes of Employees' Organisations

593. No reference to the objects and activities of employee organisations is contained in the L.P.S. Law beyond the provision in section 52-1 which accords the right to form organisations " the object of which is to negotiate with the authorities of the local public body . . .".

594. Section 36 of the Law prohibits employees as such from engaging in various specified forms of political activity.

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[1] The Government of Japan has confirmed, in a communication dated 2 October 1961, that in its view the interpretation by local public bodies of the words " majority vote of all members " as meaning a " majority vote of all the members and not merely a majority of those casting votes " was consistent with existing law (see 58th Report of the Committee on Freedom of Association, para. 386).

[2] Statements contained in a communication dated 24 January 1961 from the Government of Japan, noted in para. 172 of the 54th Report of the Committee on Freedom of Association.

595. As mentioned earlier, section 53-2 (2) requires the " business " of the organisation to be defined in its constitution.

International Affiliation of Organisations

596. The L.P.S. Law contains no provisions relating to the international affiliation of employee organisations.

Deregistration, Suspension and Dissolution of Organisations

597. It is a condition for registration that the constitution of an organisation or federation shall contain regulations governing its dissolution (s. 53-2 (10)). Any registered organisation which has dissolved must notify the personnel commission (or the head of the local public body, if there is no such commission) (s. 53-6).

598. Similarly to the case of organisations of national public servants, compliance with the secret balloting requirements laid down by section 53-3 of the L.P.S. Law, in respect of important matters such as elections of officers and the making of changes in its constitution, is a condition not only for qualifying for registration but also for maintaining registration.

599. When the organisation has become no longer in conformity with the L.P.S. Law or by-laws issued thereunder, the personnel commission (or the head of the local public body, if there is no such commission), may, after conducting a hearing, cancel its registration in accordance with by-laws; the hearing must be conducted in public if the organisation so requests (s. 53-4). When the registration of an organisation having juridical personality has been cancelled in these circumstances, this shall also entail cancellation of its permission to be a juridical person, within the meaning of article 71 of the Civil Code (s. 54-3).

Collective Negotiation and Determination of Wages and Other Conditions of Employment

600. The wages, hours of work and other working conditions of local public employees are fixed by by-law (L.P.S. Law, s. 24 (6)) and not, therefore, by collective agreement; the purpose of the employee organisations formed pursuant to section 52 of the Law, however, is " to negotiate with the authorities of the local public body concerned with regard to the compensation, work hours and other working conditions ".

601. The precise limits of the negotiation—to be carried on by registered organisations—are clarified by the first three paragraphs of section 55 of the Law, which read as follows:

> 1. The registered employees' organisation may, under the conditions and circumstances as fixed by by-laws, negotiate with the authorities of the local public body concerned with regard to the compensation, work hours and other working conditions of the personnel. And, in conjunction therewith, negotiations for lawful purposes, including social and welfare activities, may be done. However, such negotiation does not include the right of collective agreement with the authorities of the local public body concerned.

2. In the case mentioned in the preceding paragraph, the employee organisation may conclude a written agreement [1] with the authorities of the local public body concerned, provided that such agreement shall not conflict with the laws and orders, or by-laws, or regulations of the local public body or rules fixed by agencies of the local public body.

3. The agreement mentioned in the preceding paragraph must be carried out with sincerity and upon responsibility by both the authorities of the local public body concerned and the personnel organisation.

602. The fixing of wages, work hours and other conditions by by-law, pursuant to section 24 (6) of the Law, is governed by certain standards: firstly, compensation (i.e. pay) must be fixed " by taking into consideration the cost of living, the compensation of the personnel of the National Government and other local public bodies and the employees of private enterprises and other circumstances " (s. 24 (3)); secondly, in fixing work hours and other conditions apart from pay, " adequate consideration must be given so that they may not be out of proportion to the personnel of the National Government and other local public bodies " (s. 24 (5)).

603. The Law provides for the application of a " pay schedule " and the provision of other standards relating to pay, which is analogous in many respects to the national public service " pay plan " considered in paragraphs 552 and 553 above.[2]

604. In regard to the fixing of the various standards described above, the personnel commissions (but not equity commissions) discharge a number of statutory functions, on a continuous or periodic basis, which are comparable with certain of those discharged at the national public service level by the National Personnel Authority.

605. With respect to the pay schedule mentioned above, " the personnel commission must conduct investigations and studies and formulate a plan concerning such pay schedule as is compatible with the position classification and submit it, simultaneously, to the assembly and the head of the local public body " (L.P.S. Law, s. 25-3). Further, in accordance with section 26 of the Law—

The personnel commission shall make a report simultaneously to the assembly and the head of the local public body at least once a year as to whether the pay schedule is adequate. It may make at the same time a suitable recommendation therewith if it considers appropriate to increase or decrease the sum of pays fixed by the pay schedule on account of a change in the conditions determining pays.

606. The more continuous action to be undertaken by the personnel commission (but not the equity commission) in the field of pay and other employment conditions is prescribed by section 8-1 (2) of the Law, which requires the commission—

[1] Such an agreement does not constitute a collective agreement within the meaning of the Trade Union Law (statement by the Government of Japan in a communication dated 2 October 1961, noted in para. 380 of the 58th Report of the Committee on Freedom of Association).

[2] According to s. 25-2 of the L.P.S. Law, the by-law which is required to be enacted with regard to pay must provide for the following matters:

(1) pay schedule;
(2) matters concerning the standards for increase of pay;
(3) matters concerning the compensation for overtime work, night work and holidays work;
(4) matters concerning the allowances for service in specially designated areas, hazardous jobs and other extraordinary services and the allowances for the personnel who have dependants, in cases where such allowances are given;
(5) matters concerning the adjustment of compensation with regard to the positions of the part-time service, functions of the personnel for which the facilities necessary for hiring are wholly or partially supplied at official expense and other positions with special working conditions, in cases where such positions are set up;
(6) in the local public bodies where position classification is adopted, matters concerning the compensation for positions on the occasion of the initial application of position classification to them;
(7) besides the provisions of the preceding items, matters concerning the means and conditions of payment of the compensation.

to make a continuous study on compensation, work hours and other working conditions and welfare and benefit systems, the system of compensation for accidents in line of duty and other systems concerning the personnel, and to submit the result thereof to the assembly or the head or the appointing authorities of the local public body.

607. These provisions need to be read together with section 14, which requires local public bodies to adopt suitable measures from time to time to see that the compensation, work hours and other working conditions fixed in accordance with the Law are adapted to prevailing social conditions.

608. The above provisions operate in any event, irrespective of whether or not representations are made by the employees' organisations concerned.

609. The personnel, however, can make application for action on pay or other conditions. It is a function of both personnel commissions, under section 8-1 (9) of the Law, and equity commissions, under section 8-2 (1), " to examine and judge upon applications for action concerning compensation, work hours and other working conditions of the personnel and adopt necessary measures ".

610. Such application may be made pursuant to section 46 of the Law, which provides that " the personnel may apply to the personnel commission or equity commission in connection with their compensation, work hours and other working conditions that appropriate action be taken by the authorities of the local public body ".

611. The application is then dealt with by the competent commission in accordance with sections 47 and 48 of the Law, which provide as follows:

> 47. When the application provided for in the preceding section has been filed, the personnel commission or equity commission must conduct examination of the case through oral inquiry or other means, pass judgment on the matter and, on the basis of the result thereof, take actions of its own accord with regard to matters within its powers, or, with regard to other matters, make necessary recommendations to the agency of the local public body which has powers over the matter under consideration.
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> 48. The necessary matters concerning the procedures of the application and examination and judgment as provided for in the preceding two sections must be fixed by rules of the personnel commission or equity commission.

Statutory Regulation of Minimum Wages and Conditions of Employment

612. Section 58-2 of the L.P.S. Law refers to certain provisions of the Labour Standards Law which shall not be applicable to local public service employees of the regular service. It would appear, however, that the basic provisions of the Labour Standards Law which were reviewed in paragraph 350 above are applicable with respect to local public service employees of the regular service, excepting the provisions relating to rules of employment.

613. The provisions of the Minimum Wages Law (Law No. 137 of 1959) and orders issued thereunder are not applicable to the local public service employees of the regular service (excluding employees of local public enterprises and " persons engaged in simple manual labour " covered by the L.P.E.L.R. Law) (L.P.S. Law, s. 58).

Dispute Procedures

614. The L.P.S. Law contains no provisions relating to the conciliation, mediation or arbitration of disputes. By virtue of section 58-1 of the L.P.S. Law the provisions of the Trade Union Law and of the Labour Relations Adjustment Law and orders issued thereunder shall not be applied to the personnel of the local public service subject to the L.P.S. Law.

Strikes

615. Strikes are prohibited under the L.P.S. Law. The Law makes no reference to lockouts. Section 37 of the Law provides that—

> 1. The personnel must not resort to strike, slow-down and other acts of dispute against their employer, who is the local people as represented by the agencies of the local public body, or to such idling tactics as will deteriorate the functional efficiency of the agencies of the local public body. Nor must any person attempt, or conspire, instigate or incite the perpetration of such unlawful acts.
>
> 2. Any member of the personnel who has acted in violation of the provisions of the preceding paragraph shall become unable, simultaneously with the commencement of such acts, to set up against the local public body the rights to appointment or employment he enjoys under laws and orders, or by-laws, or regulations of the local public body or rules fixed by agencies of the local public body.

616. In addition to the disciplinary sanctions (including dismissal) applicable to any employee under section 29 of the Law in respect of any violation by him of any provisions of the Law, any person who has conspired, instigated or incited the perpetration of, or attempted, the unlawful acts mentioned in the first sentence of section 37 (1) of the Law quoted above shall be liable to penal servitude for not more than three years or to a fine not exceeding 100,000 yen (s. 61 (4)).

Protection of the Right to Organise

617. Section 56 of the L.P.S. Law provides that " the personnel shall not be subjected to adverse treatment on account of the fact that they are members of the personnel organisation, or that they have attempted to form or join it, or that they have acted legitimately for the personnel organisation ".

618. When a member of the personnel is subjected by the appointing authorities to a " disciplinary punishment or to adverse action as is considered to be against his will ", such authorities must deliver to him at the same time a written statement setting forth the reasons for the action (s. 49 (1)); when a member of the personnel " considers that he has been subjected to an adverse action againt his will ", he may ask the authorities for such a statement, which they must deliver within 15 days (s. 49 (2) and (3)). In such cases, under section 49-2 (1) of the Law—

> An employee who has been subjected to an act provided in paragraph 1 of the preceding section may submit an objection (request for review or lodging of a protest) only to the personnel or equity commission in accordance with the Law for the examination of objections against administrative acts.

619. These provisions do not apply to personnel serving an initial probationary period or to temporary personnel (s. 29-2 (1)). However, such personnel can, states the Government, seek a remedy from a court of law.

620. The appeal is then dealt with by the competent commission in accordance with the provisions of sections 50 and 51 of the Law[1], which read as follows:

50. (1) When the appeal provided for in paragraph (1) of section 49-2 has been received, the personnel commission or equity commission must promptly examine the case. In such case, a hearing must be conducted if the person subjected to the action so requests. The hearing must be conducted in public, if he so requests.

(2) The personnel commission or the equity commission may, when it deems necessary, delegate part of the business relating to review, excepting the ruling or decision on the objection in question, to a member of the personnel commission or its executive director or to a member of the equity commission.

(3) The personnel commission or equity commission shall, on the basis of the results of the examination provided for in paragraph (1) above, approve, revise or cancel the action and, if necessary, give direction for the correction of any unjust treatment that may have been suffered by the member of the personnel on account of the action, such as to cause the appointing authority to take necessary and appropriate measures for the recovery of the pay and other claims due to him.

51. Necessary matters concerning the procedures for submission of objections and the action to be taken following the review shall be provided for by rules of the personnel commission or equity commission.

51-2. No lawsuit may be brought for revocation of the actions which are provided in paragraph (1) of section 49 and from which or against which personnel may appeal for review or submit a protest to the personnel commission or equity commission, until after the personnel commission or equity commission has rendered a ruling or decision on the said appeal for review or the protest submitted.

[1] These provisions may be compared with ss. 91 and 92 of the N.P.S. Law cited in para. 562 above.

CHAPTER 16

AMENDMENTS TO THE LEGISLATION PROPOSED IN 1963 AND AMENDMENTS ADOPTED IN 1965

621. On 13 March 1963 the Government forwarded to the I.L.O. the texts of five Bills to amend certain of the legislation referred to above which had been submitted to the Diet on 2 March 1963. None of these Bills related to the Trade Union Law. Four Bills related respectively to the Public Corporation and National Enterprise Labour Relations Law, the Local Public Enterprise Labour Relations Law, the National Public Service Law and the Local Public Service Law. It would also appear from certain references in some of the complaints and replies of the Government of Japan in this case that another relevant law—the Local Public Enterprise Law (Law No. 292 of 1952)—was intended to be revised. No English text of this law or of any proposed amendments thereto being available, it has not been possible to take account of it either in the present chapter or in the preceding chapters of this part, except with respect to the reference made in paragraph 666 below. The remaining Bill, which was to amend the Railway Business Law, has not been submitted to the Diet since its session in October 1963.[1]

622. In 1965 Bills to amend the four major laws relating to the public sector mentioned above were submitted to the Diet and enacted, although certain of their provisions, as indicated below, were referred for further consideration to the Advisory Council on the Public Service Personnel System before being put into effect. Account is taken in this chapter of any differences between the Bills proposed in 1963 and those adopted in 1965.

623. The main effects of the amending legislation are analysed below. As far as possible, in order to facilitate the making of comparisons, the same subject headings are used as were used in the preceding chapters of this part of the report.

624. The present chapter takes account of developments up to May 1965, but it will be appreciated that different stages had been reached at the different stages in the examination of the case by the Commission.

625. When the Commission held its hearings in Geneva, in September 1964, it had before it the legislative amendments proposed to be made in 1963, and they were the basis of much of the discussion.

626. In the course of the visit of the Commission to Japan in January 1965 the points which it was intended to include in the new Bills to be submitted to the Diet were made known to it, although it still did not have before it the final text of the Bills as submitted.

627. When the Commission met in Geneva in July 1965 the texts of the 1965 Bills, as adopted by the Diet, were before it.

[1] Information furnished by the Government in its observations on the draft analysis of the legislation.

Bill to Amend the Railway Business Law

628. The 1963 Bill would have stiffened the penalties for having recourse to acts of dispute.

629. Secondly, the provisions of section 25 of the Law relating to violation of obligations and neglect of duty by employees and to the punishment thereof by a term of imprisonment not exceeding three months or a fine not exceeding 500 yen (see paragraph 467) would have been replaced by the following text:

> When a railway employee has failed to carry out work relating to the operation of trains, passengers, hand baggage or cargo without good reasons, or has improperly handled his work, he shall be punished with penal servitude for a period not exceeding one year or a fine not exceeding 20,000 yen.

Bills to Amend the Public Corporation and National Enterprise Labour Relations Law

630. The main provisions of the Bills are examined below according to the subjects to which they relate.

(a) *Scope of Application of the Law*

631. As noted in paragraphs 400 and 401 above, section 40 of the previously existing P.C.N.E.L.R. Law rendered national public service personnel in the regular government service who were employed in national enterprises subject to the P.C.N.E.L.R. Law, so far as the regulation of their trade union rights and industrial relations were concerned, instead of to the National Public Service Law. However, those among such personnel as held managerial or supervisory positions and those employed in confidential posts are prohibited from belonging to " trade unions " by the proviso to section 4 (1) of the P.C.N.E.L.R. Law, and so remained, pursuant to section 40, entirely subject to the National Public Service Law; they could, however, join a " personnel organisation " within the provisions of the National Public Service Law.[1]

632. As will be explained below [2], the 1963 Bill proposed to remove the ineligibility for trade union organisation attaching to such managerial staff and the like. The said proviso to section 4 (1) was to be deleted by the Bill. Consequently, the proposed new text of section 40 would have excluded the existing reference to them and they, too, would have been removed from the scope of the National Public Service Law, in respect of their trade union rights and industrial relations, and brought within the application of the P.C.N.E.L.R. Law.

633. These proposals have been carried into effect by the Bill enacted in 1965.

(b) *Public Corporation and National Enterprise Labour Relations Commission*

634. Section 21-2 (2) of the Law rendered ineligible for appointment as a public commissioner of the Commission any person who was " an employee or an official of a public corporation ".[3] The 1963 Bill would have replaced the words in quotation marks by the words " an employee, an official of the public corporation or a member or officer of a union ". The same amendment has been effected by the 1965 Bill.

[1] See para. 412 above.

[2] See para. 638 below.

[3] See para. 407 above.

(c) *The Right to Form and Join Organisations*

635. The previous text of section 4, subsections (1) and (2), of the P.C.N.E.L.R. Law was as follows:

(1) Employees may organise or refrain from organising trade unions or may affiliate with or refrain from affiliating with such unions, provided that those holding managerial or supervisory positions and those employed in a confidential capacity shall not be permitted to organise or affiliate with unions.

(2) The categories of employees rendered ineligible for union affiliation by the proviso to the preceding paragraph shall be designated and made public in notification by the Minister of Labour, based on the resolution of the Public Corporation and National Enterprise Labour Relations Commission.

636. The new text of these subsections in the 1963 Bill was as follows:

(1) Employees may organise or refrain from organising a union or affiliate with or refrain from affiliating with such union.

(2) The Public Corporation and National Enterprise Labour Relations Commission shall, with respect to a union, recognise the categories of those among employees provided for in section 2, paragraph 1, of the Trade Union Law and shall give a public notice thereof.

637. Section 2, paragraph 1, of the Trade Union Law provides that " trade unions ", for the purposes of that Law, shall not include those—

which admit to membership officers, workers at the supervisory post having direct authority to hire, fire, promote or transfer, workers at the supervisory post having access to confidential information relating to the employer's labour relations plans and policies so that their official duties and obligations directly conflict with their loyalties and obligations as members of the trade union concerned and other persons who represent the interest of the employer.

638. Thus, the outright prohibition of trade union membership of all managerial, supervisory and confidential personnel prescribed by section 4 (1) of the P.C.N.E.L.R. Law was to be repealed under the 1963 Bill. Consequently, the existing text of section 4 (2) would also have been amended. On the other hand, item 1 of section 2 of the Trade Union Law was and apparently would still have been applicable to trade unions formed or joined by employees of public corporations and national enterprises by virtue of section 3 of the P.C.N.E.L.R. Law.

639. Consequently managerial staff and the like and general employees would apparently still have been unable to belong to the same trade union.

640. The 1963 Bill would have provided, in section 4 (2), for the P.C.N.E.L.R. Commission to determine the categories of persons in this public sector falling within the terms of section 2 (1) of the Trade Union Law.

641. Section 4 (3) of the P.C.N.E.L.R. Law, which provided that " only the employees of the public corporation and national enterprise shall be eligible to become members of the employees' unions of the said public corporation and national enterprise or to be elected as officers of such unions ", would have been repealed by the Bill.

642. All the above proposals contained in the 1963 Bill have been carried into effect by the Bill enacted in 1965.

(d) *Officers and Representatives of Organisations*

643. As a consequence of repealing section 4 (3) of the P.C.N.E.L.R. Law and so making it possible for persons other than employees to serve as union officers,

the 1963 Bill would also have repealed section 7, which empowered the public corporation and national enterprise, on the request of a union, to " permit a limited number of its employees to engage exclusively in union activities as officers thereof ".

644. The old section 7 has now been replaced by a new section 7 as the result of the enactment of the 1965 Bill.

645. The new section 7 reads as follows:

1. An employee may not engage exclusively in the business of a union. However, he may engage exclusively in the business of a union as its officer, in case the public corporation and national enterprise has given a permission therefor.

2. The public corporation and national enterprise may, if it considers proper, give the permission mentioned in the proviso to the preceding paragraph and shall fix the term of validity of the permission, when it gives it.

3. The term during which an employee engages exclusively in the business of a union as its officer in accordance with the provision of the proviso to paragraph 1 may not exceed, when he is an employee provided for in article 2, paragraph 2, item (1), a total of three years through his term of service as an employee of the public corporation concerned and may not exceed, when he is an employee provided for in item (2) of the same paragraph, a total of three years through his term of service as an employee under the said item (in case the employee is one who in the past engaged exclusively in the business of an employees' organisation in accordance with the provision of the proviso to article 108-6, paragraph 1, of the National Public Service Law (Law No. 120 of 1947), the term obtained by deducting from three years the term during which he engaged exclusively in the business).

4. The permission mentioned in the proviso to paragraph 1 shall be withdrawn, when the employee to whom the permission was given ceases to be one who engages exclusively in the business of the union as its officer.

5. The employee who obtained the permission mentioned in the proviso to paragraph 1 shall be treated as a temporarily retired employee so long as the permission is valid, and shall not be paid any kind of remuneration.

646. It is to be observed that, subject to the substitution of the public corporation and national enterprise for the National Personnel Authority as the authority competent to give leave of absence, the wording of the new section is similar, *mutatis mutandis*, to that of the first five paragraphs of the new section 108-6 of the amended National Public Service Law cited in paragraph 708 below. In the present case, however, no distinction is made between registered and non-registered organisations, registration not being provided for under the P.C.N.E.L.R. Law.

647. The new section 7 of the P.C.N.E.L.R. Law has been referred for consideration to the Advisory Council on the Public Service Personnel System.

(e) *Collective Bargaining and Collective Agreements*

648. As a consequence of the aforesaid amendments to the provisions of the P.C.N.E.L.R. Law relating to the situation of supervisory employees, the 1963 Bill would have removed the previously subsisting clause in section 8, which excluded from the scope of collective bargaining by the unions matters with respect to managerial, supervisory and confidential employees hitherto ineligible for union affiliation by virtue of section 4 (1). This amendment has been carried into effect by the 1965 Bill.

(f) *Strikes*

649. The previous text of section 17 (1) of the P.C.N.E.L.R. Law, which prohibited strikes by employees of public corporations and national enterprises, was in the following terms:

Employees and their unions shall not engage in a strike, slow-down or any other acts of dispute hampering the normal course of operation of the public corporation and national enterprise, nor shall any employees conspire to effect, instigate or incite such prohibited conduct.

650. The 1963 Bill would have substituted the following text:

Employees and unions shall not engage in a strike, slow-down or any other acts of dispute hampering the normal course of operation of the public corporation and national enterprise against it, nor shall any employees as well as union members and union officers conspire to effect, instigate or incite such prohibited conduct.

651. The same amendments were carried into effect by the 1965 Bill.

652. The 1963 Bill would also have clarified the fact that the effectiveness of any decisions or instructions by a union running counter to section 17 (1) would be null and void by adding a new section 17-2, reading as follows:

Decisions and instructions of a union aiming, in their contents, at carrying out the acts prohibited by the provisions of paragraph 1 of the preceding section shall not be binding on the union concerned and its members and officers.

653. It is not clear from the text furnished by the Government whether this particular amendment was retained in the 1965 Bill.

Bills to Amend the Local Public Enterprise Labour Relations Law

654. The 1963 Bill contained several proposed amendments which corresponded essentially to similar provisions in the Bill to amend the P.C.N.E.L.R. Law; it contained also a number of further amendments.

(a) *The Right to Form and Join Organisations*

655. The previously existing proviso to section 5 (1) of the L.P.E.L.R. Law, prohibiting " those holding managerial or supervisory positions and those in charge of confidential affairs " from organising or affiliating with trade unions, would have been repealed by the 1963 Bill to amend the Law. Such personnel, however, would not have been allowed to join the same union as the general employees.[1]

656. As in the case of the 1963 Bill to amend the P.C.N.E.L.R. Law[2], however, this repeal would have meant, by virtue of section 4 of the L.P.E.L.R. Law, that section 2 (1) of the Trade Union Law would have applied fully, that is a trade union would not have been legally recognised as such if it admitted to membership the supervisory and confidential personnel specified in the said section 2 (1).[3]

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[1] Statement by the Government in its communication dated 2 October 1961 (see doc. No. 48) noted in para. 394 of the 58th Report of the Committee on Freedom of Association.

[2] See para. 638 above.

[3] S. 2 (1) of the Trade Union Law is cited in para. 637 above.

657. Consequently, section 5-2 of the 1963 Bill, replacing the former section 5-2, provided that " the Labour Relations Commission shall, with regard to trade unions organised by employees or with which employees are affiliated . . . recognise the categories of those among employees provided for in section 2, paragraph 1, of the Trade Union Law and give a public notice thereof ". Only the public members of the Labour Relations Commission would have participated in the making of such determinations (s. 16-2 of the Bill).

658. Section 5 (3) of the L.P.E.L.R. Law, providing that " only the employees shall be eligible to become members or officers of the employees' trade unions ", would have been repealed by the Bill.[1]

659. All the above proposed amendments were carried into effect in the Bill enacted in 1965.

(b) *Officers and Representatives of Organisations*

660. As a consequence of repealing section 5 (3) of the L.P.E.L.R. Law and so making it possible for persons other than employees to serve as union officers, the 1963 Bill would also have repealed section 6, which empowered the local public enterprise " to permit employees to engage exclusively in union activities as officers thereof, provided that the number of such employees shall be limited by designation of the said enterprise ".[2]

661. As a result of the enactment of the 1965 Bill, the old section 6 of the L.P.E.L.R. Law has been replaced by a new section 6, reproducing *mutatis mutandis* the provisions of the new section 7 of the P.C.N.E.L.R. Law cited in paragraph 645 above.

662. The new section 6 of the L.P.E.L.R. Law has been referred to the Advisory Council on the Public Service Personnel System.

(c) *Collective Bargaining and Collective Agreements*

663. Whereas section 7-2 of the previous law, listing [3] the matters which might be the subject of collective bargaining, provided that such matters " shall be appropriately provided for in a collective agreement ", the provision which would have replaced this as section 7 under the 1963 Bill provided that these matters " may be provided for in a collective agreement ".

664. In consequence of the aforesaid amendments relating to the position of supervisory personnel, the clause in section 7-2 of the L.P.E.L.R. Law excluding such personnel from the scope of collective bargaining was not retained in the 1963 Bill to amend the Law.

665. In these respects the text of the Bill enacted in 1965 followed that in the 1963 Bill.

666. It has been alleged by the All-Japan Prefectural and Municipal Workers' Union, in a communication dated 10 February 1962 [4], that section 39 (1) of the Local

[1] See para. 641 above for the corresponding provisions which would have been repealed by the 1963 Bill to amend the P.C.N.E.L.R. Law.

[2] Similarly to the proposed 1963 amendment to the P.C.N.E.L.R. Law (see para. 643 above).

[3] The full text of s. 7-2 is cited in para. 498 above.

[4] Doc. No. 54.

Public Enterprise Law (Law No. 292 of 1952), as it was proposed to be revised, would have maintained the application to supervisory personnel in local public enterprises of section 24 (6) of the Local Public Service Law, prescribing that " the compensation, work hours and other working conditions of the personnel shall be fixed by by-laws ", so that it would have been practically impossible for the said personnel to fix their working conditions by collective agreement. In its communication dated 16 May 1962[1] the Government referred to this point. The Government stated that, when the Bill to amend the L.P.E.L.R. Law had been enacted and supervisory personnel were therefore given the right to form trade unions, their compensation and other working conditions would " in principle " be fixed by collective agreements through trade unions, and that they would therefore be excluded from the application of section 24 (6) of the Local Public Service Law, except for those holding " positions to be determined by the head of the local public body in accordance with the standards laid down by a cabinet order "; these positions, said the Government, would be limited to positions held by " top-class " managerial staff representing " only a small part of the supervisory staff and the like so classified under the existing Law ".

(d) *Dispute Procedures*

Joint Grievance Adjustment Council.

667. The function of the joint grievance adjustment council, the establishment of which is required by section 13 of the L.P.E.L.R. Law (see paragraph 505 above), was under the former text to " properly settle grievances of the employees arising from daily working conditions ". Section 13 as drafted in the 1963 Bill would have provided for its establishment " in order to settle grievances of the employees ", without further qualification. The wording of the 1963 Bill was retained in the Bill enacted in 1965.

Arbitration.

668. One of the cases in which, pursuant to section 15 of the Law [2], the labour relations commission " shall undertake arbitration ", with regard to labour relations of the local public enterprise, was formerly specified in section 15 (4), as being " when mediation has not been effected within two months (a period exceeding two months, in case the said period is fixed by the agreement of the parties concerned and communicated to the labour relations commission within two months) ". In the new draft of section 15 (4) contained in the 1963 Bill these words were to be replaced by the words " when one of the parties concerned applies for arbitration in a case where the labour dispute has not been settled after the lapse of two months following the commencement of conciliation or mediation by the labour relations commission ". The 1963 text has been carried into effect by the 1965 Bill.

Implementation of Arbitration Awards.

669. The former text of section 16 of the Law provided that—

The provisions of section 8 shall apply *mutatis mutandis* to the arbitration award the terms of which are in conflict with the by-law of the local public body concerned, the provisions of section 9 to the arbitration award the terms of which are in conflict with the regulations or other rules of the local

[1] Doc. No. 63.

[2] S. 15 of the Law is cited in full in para. 513 above.

public body concerned and the provisions of section 10 to the arbitration award involving the expenditure of funds not available from the budget or funds of the local public enterprise concerned.[1]

670. In the 1963 Bill to amend the Law sections 8, 9 and 10 remained unchanged. Section 16 of the Law was redrafted to include a provision to the effect that both parties " shall abide by the arbitration award as the final decision " and requiring the head of the local public body to " make the utmost efforts " to ensure that the award may enter into effect. It did not appear, however, that this would force the assembly of the local public body to take measures to give full effect to an award in the circumstances referred to in section 8 or section 10. This appears to ensue from the new section 16 as contained in the 1963 Bill, reading as follows:

> 1. Both of the parties concerned shall abide by the arbitration award as the final decision, and the head of the local public body shall make the utmost efforts so that the arbitration award may be put into effect, provided that the provisions of section 10 shall apply *mutatis mutandis* to the arbitration award involving the expenditure of funds not available from the budget or funds of the local public enterprise concerned.
>
> 2. The provisions of section 8 shall apply *mutatis mutandis* to the arbitration award the terms of which are in conflict with the by-law of the local public body concerned, and the provisions of section 9 to the arbitration award the terms of which are in conflict with the regulations or other rules of the local public body concerned.[2]

(e) *Strikes*

671. The former section 11 of the L.P.E.L.R. Law provided that—

> The employees and their trade unions shall not resort to a strike, slow-down and any other acts of dispute hampering the normal course of operations, nor shall any employees conspire, instigate or incite to effect such prohibited acts.

672. The 1963 Bill to amend this Law contained a new draft of section 11 and the addition of a new section 11-2 which were identical (except for the substitution of the words " local public enterprise " for the words " public corporation and national enterprise ") with the provisions of sections 17 (1) and 17-2 of the 1963 Bill to amend the P.C.N.E.L.R. Law cited in paragraphs 650 and 652 above.

673. The new draft of section 11 has been carried into effect by the 1965 Bill but the proposed section 11-2 does not appear to have been retained.

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[1] The full text of ss. 8, 9 and 10 is given in para. 500 above. In brief, s. 8 provides that when a collective agreement is concluded which conflicts with " a by-law of the local public body ", the head of the local public body shall submit it to the assembly of the local public body for decision within a stipulated time; " unless there is revision or abrogation of the by-law " the agreement does not take effect to the extent that it conflicts with the by-law. Section 9 provides that, when a collective agreement is concluded which conflicts with " regulations and other rules " made by the chief of the local public body or other agencies of the local public body, the latter shall immediately take measures to revise the said regulations or rules to give effect to the agreement. Section 10 of the Law provides that when an agreement is concluded which involves the expenditure of funds not available from the budget or funds of the local public enterprise concerned, the chief of the local public body shall submit the agreement to the assembly of the local public body "for its approval", within a specified time, but the agreement " shall not be binding upon the local public body concerned, and no funds shall be disbursed pursuant thereto, until appropriate action has been taken by the assembly of the local public body concerned ".

[2] In this connection the following observations are pertinent. In a communication dated 2 October 1961 (see doc. No. 48), the Government of Japan stated that the Bill to amend the L.P.E.L.R. Law would make arbitration awards " final and binding on both parties ", a matter of which the Governing Body took formal note when it adopted paragraph 431 *(f)* (i) of the 58th Report of the Committee on Freedom of Association. It was subsequently alleged by the All-Japan Prefectural and Municipal Workers' Union, in a communication dated 10 February 1962 (see doc. No. 54), that the Bill to amend the P.L.E.L.R. Law did not give effect to the aforesaid statement of the Government. In its further reply dated 16 May 1962 (see doc. No. 63) the Government did not refer to this allegation, a fact of which the Committee on Freedom of Association took note in paragraph 222 of its 66th Report.

674. The provision in the former section 12-2 of the L.P.E.L.R. Law to the effect that employees who had violated the provisions of section 11 might not avail themselves of the procedures or remedies provided for in that Law, the Trade Union Law and the Labour Relations Adjustment Law was not maintained in the 1963 Bill to amend the Law nor in the 1965 Bill.

675. Instead, the 1963 Bill introduced a new section 16-3, providing that, if a complaint in terms of section 27 (1) of the Trade Union Law (that is, a complaint of " unfair labour practice ") had been filed in respect of a dismissal of an employee for violating the provisions of section 11, the labour relations commission should not receive the complaint if it was filed more than two months after the date on which the dismissal was effected.[1] The proposed new section 16-3 has been carried into effect by the 1965 Bill.

Bills to Amend the National Public Service Law

676. The 1963 Bill to amend the N.P.S. Law would have changed many of the fundamental provisions, including those relating to the powers of the National Personnel Authority and to the formation and functioning of employees' organisations, which were analysed in Chapter 14 above.

(a) *The National Personnel Authority*

677. Several sections of the then existing Law were to be amended by the 1963 Bill so as to transfer some of the powers of the Authority to the Prime Minister and to render certain matters determined by rules of the Authority subject to determination by cabinet order.[2]

678. The power of the Authority under section 2-4 (see paragraph 519 above) to determine whether positions are in the national public service or not and, if so, to determine whether such positions are in the regular service (to which the Law applies) or in the special service (to which the Law does not apply) were to disappear, as was the general responsibility for enforcement of the Law entrusted to the Authority under section 3. The Authority was no longer to have its general duty " to administer the national civil service " (s. 3-2).

679. Section 3-3 of the previously subsisting Law, cited above in paragraph 523 and the second footnote thereto, detailed the many matters (including pay, hours and conditions governing employment in the civil service generally) concerning which the Authority developed, co-ordinated, integrated and ordered policies, standards, procedures, rules and programmes and recommended legislative and other necessary

[1] This amendment, in fact, would bring the situation into line with what already subsists under the existing s. 25-5 (4) of the P.C.N.E.L.R. Law.

[2] A summary of the proposed amendments in this connection is given in the following paragraphs, in view of the allegations made by certain complainants to the effect that the Government intended to deprive the National Personnel Authority of powers which had been entrusted to it under the Law in order to afford some measure of safeguard to public service employees who were not granted the right to strike or the right to bargain collectively. In its communication dated 14 February 1961 (see doc. No. 37), the Government stated that the intention was to transfer from the National Personnel Authority and Minister of Finance to the Prime Minister matters relating to salary, efficiency, training, accident compensation, mutual aid, retirement, etc., but that such matters as recommendations to the National Diet and Cabinet concerning maintenance and improvement of wages and other conditions of work, requests for administrative action thereon, procedures for administrative remedy of actions disadvantageous to employees and their organisations would remain within the purview of the Authority.

action for personnel. This long section was to be replaced under the 1963 Bill by the following much shorter text:

Subject to pertinent legal provisions, the Authority shall make recommendations relating to improvements in compensation and other conditions of work as well as to improvements in personnel administration, ensure fairness in such matters as personnel administration affect employees [1], including examinations and settlement of grievances, and administer affairs concerned with the protection of interests of employees.

680. A new section 17-2 in the 1963 Bill would have made the Prime Minister generally responsible for administering affairs relating to personnel administration and, in this connection, for co-ordinating, integrating and ordering policies, standards, procedures and programmes concerning personnel administration of the national public service.

681. The duties of the Authority concerning control of payment of compensation to personnel (s. 18 of the previous Law), personnel records (s. 19), establishment of a system of statistical reporting concerning employment in the service (s. 20), the making of investigations and studies concerning the development and improvement of efficiency of personnel and the taking of appropriate measures (s. 71 (3)), evaluation of work performance (s. 72) and developing of programmes for improving efficiency (s. 73) were all to be transferred to the Prime Minister by the Bill, as was its function under section 29 of developing the " position classification plan ", although in this latter connection the Prime Minister was to be required to ascertain the opinion of the Authority beforehand.

682. Basic standards for appointment and dismissal, previously fixed by the Law and rules of the Authority (s. 33 (1)), were to be fixed by the Law and orders issued thereunder; determinations in this connection previously made by rules of the Authority (s. 33 (2)) were as a general rule to be fixed according to the 1963 Bill, by cabinet order. Exemptions from the provisions concerning disqualification for appointment to a government position at present prescribed by rules of the Authority (s. 38) were to be provided for by cabinet order. The Bill would also have made subject to cabinet order instead of, as before, to the rules of the Authority: the making of rules concerning the conditional period of employment (s. 59), temporary employment (s. 60), temporary retirement, reinstatement, retirement and dismissal of personnel (s. 61), enforcement of basic standards of efficiency (s. 71 (2)), determinations for enforcing basic standards in regard to status and disciplinary punishment (s. 74), exceptions to the provisions concerning forfeiture of office due to disqualification (s. 76), provisions for separation of personnel from the service (s. 77), making of rules governing demotion or dismissal against the will of the person concerned (s. 78), determinations regarding the status of persons subjected to temporary retirement (s. 81), determination of period of suspension ordered as a disciplinary punishment (s. 83).

683. Section 22 (1) of the previous Law provided that " the Authority may make recommendations to the appropriate Minister or head of any other agency of government concerning improvements in personnel administration "; the 1963 Bill was to qualify this by adding the words " where such actions are deemed necessary in order to ensure fairness in personnel administration and to protect the interests of employees ". Section 22 (2), empowering the Authority to make recommendations concerning transfer of personnel and related matters, was to be repealed. While the

[1] This part of the text furnished by the Government would appear to involve a slight mistranslation.

Authority had power under section 23 to submit to the Diet and the Cabinet its opinions concerning the enactment or amendment or revocation of laws or orders " with a view to achieving the objectives of this Law ", the Bill replaced the words quoted by the words " with a view to ensuring fairness in personnel administration or protecting the interests of employees ".

684. Under section 5-4 of the previous Law the rules of the Authority defined the public offices candidature for which would render a person ineligible for the next five years to serve as a commissioner of the Authority; the Bill caused this matter to be provided for by cabinet order.

685. In substance, similar amendments—subject to rearrangement and renumbering of certain sections—appear to have been carried into effect by the Bill enacted in 1965. The amended section 3-3 as it appeared in the 1963 Bill (cited in paragraph 679 above) became section 3-2 under the 1965 Bill, reading as follows:

Subject to the provisions of laws, the Authority shall administer matters concerning recommendations for improvements in personnel administration as well as in compensation and other conditions of work; position classification, examination, appointment and dismissal; compensation; training; status; disciplinary punishment; grievance procedure and concerning the ensuring of fairness in personnel administration and the protection of employee interests.

686. Section 17-2 of the 1963 Bill (see paragraph 680 above) is section 18-2 in the 1965 Bill, slightly reworded so as to provide that the Prime Minister shall administer matters concerning efficiency, welfare and performance of duty of personnel and shall administer matters concerning such co-ordination and integration of personnel policies, programmes, etc., developed by ministries and agencies of the government, as may be necessary to maintain their uniformity.

(b) *The Right to Form and Join Organisations*

687. The right of national public service personnel to belong or not to belong to an employee organisation was previously provided for by section 98-2 of the N.P.S. Law in the following terms:

Personnel shall be permitted to form or refrain from forming or to join or refrain from joining associations or other organisations. . . . No employee shall be denied the freedom to express dissatisfaction or voice opinions by reason of his non-membership in an employee organisation.

688. Section 98-4 excluded from enjoyment of the right to form or join such employee organisations personnel of the police services and fire services (including personnel of the Fire Defence Agency) and personnel of the Maritime Safety Board and penal institutions.

689. The Law applied only to persons who were " employees ", and only they could belong to an employee organisation which was the object of the Law. Employees regarded as representing the employers could belong to the same organisations as other employees.[1]

690. The 1963 Bill would have changed the Law in respect of all the points mentioned above.

691. The Bill would have repealed section 98-2 and section 98-4 and replaced them by a new section 108-2 reading as follows:

[1] See para. 527 above.

1. As used in this Law, " employee organisation " shall mean an organisation or a federation of organisations which is formed by personnel for the purpose of maintaining and improving their working conditions.

2. The " personnel " referred to in the preceding paragraph shall mean personnel or employees other than those stipulated in paragraph 5.

3. Personnel shall be permitted to form or refrain from forming or to join or refrain from joining employee organisations: provided that employees holding managerial or supervisory positions and those handling confidential matters (hereinafter referred to as " the managerial staff and the like ") may not join an employee organisation formed by personnel other than the managerial staff and the like.

4. The categories of the managerial staff and the like as stipulated in the proviso to the preceding paragraph may be designated by rules of the National Personnel Authority, or, briefly, the Authority.

5. Personnel of the police services and personnel of the Maritime Safety Agency and of prisons shall not organise or join an organisation which aims at the maintenance and improvement of the working conditions of the employees in general and conducts negotiations thereon with the authorities.

692. The principal change effected by the new section cited above, therefore, would have been to require managerial staff and the like to form organisations separate from those of the other personnel. According to the text of paragraph 5 thereof, personnel of the fire services were to be granted the right to organise.[1]

693. In the 1965 Bill as enacted these provisions were maintained. Paragraph 3 of section 108-2 contained the further proviso that an organisation formed jointly by managerial personnel and the like and other personnel would not be an employee organisation within the meaning of the Law.

694. The new section 108-2 has been referred for further consideration to the Advisory Council on the Public Service Personnel System.

(c) *The Right to Form and Join Federations*

695. As observed in paragraph 528 above, the right to form federations was not provided for in the Law, but was implicit as a consequence of the terminology of Rule No. 14-2 of the National Personnel Authority. The 1963 Bill would have formally recognised the right to form federations by reason of the definition of an " employee organisation " in the first paragraph of the new section 108-2 cited in paragraph 691 above, a provision maintained in the Bill enacted in 1965.

(d) *Registration of Organisations and Acquisition of Legal Personality*

696. The registration of organisations and acquisition of legal personality by organisations were previously governed by Rules Nos. 14-2 and 14-3 of the National Personnel Authority and also, so far as the question of legal personality was con-

[1] " Fire service personnel " who come under the definition of national public service personnel are employees employed in the Fire Defence Agency. These employees only perform the function of co-ordination or guidance and advice in respect of the business handled by fire service personnel who are local public service personnel and whose duty is to maintain security in the local public body. In the amending Bill of 1963 it was proposed to give them the right to organise, stated the Government, with a view to giving fuller effect to the purport of the Convention (statement by the Government in its observations on the draft analysis of the legislation). The prohibition that fire service personnel cannot become members of employee organisations was retained in the 1963 Bill to amend the Local Public Service Law (see para. 730 below) and also in the 1965 Bill as enacted.

cerned, by section 98 (7) of the N.P.S. Law.[1] The 1963 Bill would have repealed section 98 (7) of the Law and would also have dealt with registration in the text of the actual Law.

697. Registration would also not have been compulsory according to that Bill. The first paragraph of the new section 108-3 would have provided that—

> An employee organisation may, as provided by rules of the Authority, apply for registration with the Authority by submitting an application giving the names of directors and other officers as well as matters required by rules of the Authority, together with its constitution (articles of incorporation in the case of a juridical person; to be construed accordingly hereinafter in this section).

The constitution was to deal with the matters enumerated in paragraph 2 of the new section 108-3.[2]

698. In order to qualify for and maintain registration the organisation would have had to comply under the 1963 Bill with the requirements concerning voting set forth in paragraph 3 of the new section 108-3, which reproduced the wording of the previously existing section 4 of Rule No. 14-2 of the National Personnel Authority.[3] The organisation would also have had to comply with paragraph 4 of the new section 108-3, reading as follows:

> 4. In addition to the provisions of the preceding paragraph, an employee organisation, in order to qualify for and maintain registration, shall be required to be one consisting of personnel other than the personnel stipulated in paragraph 5 of the preceding section [4] and, in the case of an employee organisation formed by personnel other than the managerial staff and the like, be required to be one in which managerial staff and the like have not joined. However, those who have been personnel other than the personnel stipulated in the same paragraph (in the case of an employee organisation formed by personnel other than the personnel and managerial staff and the like provided in the same paragraph) and who have been dismissed from the service against their will or by disciplinary action and for whom a period of one year has not elapsed after their dismissal, or who have submitted an appeal for review or brought a suit against such dismissal as provided by law before the expiration of the above-mentioned period and for whom the evaluation or judgment on the appeal or suit has not become final, shall not be precluded from remaining as members.

699. In the event of the organisation satisfying the requirements of the aforesaid paragraphs of the new section 108-3 and of the new section 108-2 cited in paragraph 691 above, the Authority would have been required to register the constitution of the organisation (paragraph 5 of new section 108-3). When a registered organisation effected a change in its constitution or in any of the matters concerning which it was required to give particulars when it applied for registration, it would have been required to notify the Authority accordingly. Under the proposed new section 108-4 the acquisition of legal personality was still to be voluntary and subject substantially to the same conditions and having the same effects as previously (see paragraphs 535 to 537 above).

700. All the foregoing provisions were retained in the 1965 Bill, as enacted, with the important difference that section 108-3 was further amended in respect to the majority vote required for the election of officers (see paragraph 705 below) and with regard to the question of appeals against deregistration (see paragraph 713 below).

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[1] These provisions were analysed in paras. 530 to 537 above.

[2] See para. 702 below.

[3] Cited in full in para. 533 above.

[4] That is, the police and other categories referred to in the fifth paragraph of the new s. 108-2 cited in para. 691 above.

701. Section 108-3 has been referred in its entirety for further consideration by the Advisory Council on the Public Service Personnel System.

(e) *Constitutions and Rules of Organisations*

702. As a condition for registration, the employee organisation would, under section 108-3 (2) of the 1963 Bill, have had to make provisions in its constitution for the same matters as were previously listed in section 2 of Rule No. 14-2 of the National Personnel Authority cited in paragraph 538 above. These provisions of the 1963 Bill were retained in the 1965 Bill, as enacted, but referred for further consideration to the Advisory Council on the Public Service Personnel System.

(f) *Officers and Representatives of Employees' Organisations*

703. Whereas previously only persons who were " employees " could become or continue to be officers of employees' organisations, an important change was to be made under the 1963 Bill, according to section 108-3 (5) of which " an employee organisation which allows persons other than personnel to become or remain its officers shall not be considered to be disqualified for registration merely on that account ".

704. Under the new section 108-3 (3) in the 1963 Bill, the election of officers would have been required to be made by direct secret ballot under the same conditions as had been laid down by the rules of the National Personnel Authority (see paragraph 533 above), i.e. by a majority vote of all the membership or of the delegates representing the membership, as the case might be.

705. The 1965 Bill, as enacted, shows the following important changes as compared with the 1963 Bill. Section 108-3 (3) now provides that for the election of officers it shall be sufficient to have a majority vote of the members voting or, in the case of a federation or of an organisation with nation-wide affiliations, of the delegates voting. Section 108-3 (5) has been maintained.

706. Section 101 (1) of the National Public Service Law previously provided that " personnel, except in cases authorised by rules of the Authority, shall devote their full working time and occupational attention to the performance of their duties, and perform only those duties which it is the responsibility of the National Government to perform ", and section 101 (3) of the same Law provided that " personnel shall not, while receiving pay of the National Government, perform duties or carry on activities for or on behalf of employee organisations ". Paragraph 3 went on to provide, however, that personnel might perform such activities on conditions laid down in rules of the National Personnel Authority (which in fact, permitted leave of absence without salary but with retention of status for personnel serving as full-time officers). Section 101 (3) was to be repealed by the 1963 Bill. Instead, a new section 108-6 would have provided that—

1. Personnel shall not engage exclusively in the business of an employee organisation.

2. Personnel shall not, while receiving pay of the National Government, engage in the business or carry on activities for or on behalf of employee organisations, except where it is provided by cabinet order.

707. With the adoption of the new provision permitting persons other than personnel to serve as union officers, the 1963 Bill would have abolished, after a

further three-year period, the existing system of granting leave of absence—without pay but with retention of status—to personnel serving as full-time officers.

708. Important further changes have been brought about by the adoption of the 1965 Bill. Section 108-6 now provides that—

1. Personnel shall not engage exclusively in the business of an employee organisation, except for the case where the employee, with the permission of the head of his employing agency, engages exclusively as an officer of a registered employee organisation.

2. The head of an employing agency may, when he deems it appropriate, grant the permission as provided in the process of the preceding paragraph, and, in such a case, he shall fix the effective period of such permission.

3. The period for which the employee engages exclusively in the activities of the registered organisation as its officer as provided in the proviso to paragraph 1 may not exceed three years (in case of the employee who has formerly engaged exclusively in the activities of a trade union as provided in the proviso to section 7, paragraph 1, of the Public Corporation and National Enterprise Labour Relations Law—Law No. 257 of 1948—as the person stipulated in paragraph 2 (2) of section 2 of the said Law, this three-year period shall be reduced by substituting the period during which he has formerly engaged exclusively in such activities) throughout the period of his service as an employee.

4. The permission as provided in the proviso to paragraph 1 shall be cancelled, if the employee granted the permission no longer engages exclusively in the activities of the employee organisation concerned as the officer of a registered employee organisation.

5. The employee granted the permission as provided in the privoso to paragraph 1 shall, during the period the permission is effective, be one in temporary retirement.

6. No employee shall carry on the business of or act on behalf of an employee organisation while receiving compensation, except for the case where rules of the Authority prescribe otherwise.

709. These provisions have been referred for consideration to the Advisory Council on the Public Service Personnel System.

(g) *Internal Administration of Organisations*

710. Under the new section 108-3 (2) of the 1963 Bill, the position would have been the same as it was previously under section 2 of Rule No. 14-2 of the National Personnel Authority (see paragraph 538 above). The 1965 Bill carried the same provisions into effect. They have been referred for further consideration to the Advisory Council on the Public Service Personnel System.

(h) *Deregistration, Suspension and Dissolution of Organisations*

711. The constitution and rules of an organisation would have continued, under section 108-3 (2) of the Bill, to be required to contain regulations concerning the dissolution of an organisation. The registered organisation which dissolved would have been required, as before, to notify the National Personnel Authority (new s. 108-3 (8)). The 1965 Bill carried the same provisions into effect. They have been referred for further consideration to the Advisory Council on the Public Service Personnel System.

712. The position regarding suspension of registration or deregistration would not have been materially changed by section 108-3 (3) and (6) of the 1963 Bill from that which subsisted previously (see paragraphs 548 to 550). However, it would not

appear that deregistration would, as previously, have entailed revocation of permission to exist as a legal person within the meaning of article 71 of the Civil Code, because the new section 108-4 would have excluded employees' organisations from the application of the said article 71.

713. The 1965 Bill has brought about one further change as compared with the previous position. Section 108-3 (9) now provides that, in the event of deregistration, no objection under the Law for the examination of objections against administrative acts may be filed. This provision also has been referred for consideration to the Advisory Council on the Public Service Personnel System.

(i) *Collective Negotiation and Determination of Wages and Other Conditions of Employment*

714. Section 98-2 of the National Public Service Law previously provided that, through their personnel organisations—

personnel may designate representatives of their own choice and negotiate, subject to the procedures of the Authority, with proper authorities for working conditions and for other lawful purposes including social and welfare activities, provided, however, that such negotiation does not include the right of co lective agreement with the Government.

715. The 1963 Bill would have repealed section 98-2 and replaced it by a new section 108-5 which, while reproducing the above text with some modifications, would have stipulated how and by whom negotiations should be conducted. The proposed section 108-5 read as follows:

1. A registered [1] employee organisation may negotiate with proper authorities for compensation, work hours and other working conditions of personnel. Further, this provision shall not be construed to preclude the employee organisation from negotiating for lawful purposes including social and welfare activities in connection with the foregoing negotiation.

2. Negotiations between employee organisations and proper authorities shall not include the right to conclude a collective agreement.

3. Matters affecting the management and operation of government business shall be excluded from the scope of negotiation.

4. The proper authority with whom an employee organisation may negotiate shall be the authority who is invested by law to manage or decide on the matters to be negotiated.

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[1] The retention of the word " registered " in the 1963 Bill and the absence of any reference to the exercise of rights of negotiation by non-registered organisations gave rise to certain difficulties of interpretation, having regard to certain statements in this connection made by the Government of Japan. In its communication dated 9 May 1961 (doc. No. 45), the Government stated that under the Bill the intention was to permit the registration only of organisations whose scope of membership complied with the law and regulations, but that non-registered public employees' organisations would also be able to exist. Under the Bill, said the Government, the competent authorities would be " required . . . to enter into negotiations, unless there are justifiable reasons to refuse so to do, with a registered employees' organisation, when the latter has so proposed ", but " a non-registered employees' organisation under the Bill may equally present its demands to and negotiate with the authorities with a view to furthering and defending the interests of its members ". In that connection the Government referred to the text of s. 108-5 of the 1963 Bill here cited. In para. 130 of its 54th Report the Committee on Freedom of Association took formal note of this assurance given by the Government. In its communication dated 16 September 1961 (doc. No. 47) the Government affirmed that, although an existing Rule of the National Personnel Authority based on the existing Law provided that negotiation could be conducted only by employees' organisations registered with the Authority, the Bill would make no distinction between registered and non-registered employees' organisations either with regard to the situation in which employees' organisations might negotiate with the authorities or with regard to the conditions under which the employees' organisations negotiated in practice with the authorities. In these circumstances the Committee, in para. 431 *(g)* of its 58th Report, recommended the Governing Body " to note that the provisions of the proposed Bill to amend the National Public Service Law as explained by the Government would involve rescinding the present rule of the National Personnel Authority which provides that negotiation shall be conducted only by the employees' organisations registered with the National Personnel Authority ".

5. Negotiations shall be conducted between the persons designated by the employee organisation from among its officers and those designated by the proper authority, within the number of such representatives as mutually agreed upon in advance. In conducting the negotiation, the employee organisation and the proper authority shall make it a rule to determine beforehand the agenda, time and place of meeting and other necessary matters concerning the negotiation.

6. If there are special circumstances in the case of designation specified in the preceding paragraph, the organisation may designate persons other than its officers: provided that the persons so designated shall be prepared to show in writing that they have been duly authorised by the executive body of the employee organisation concerned to negotiate on specific matters that are the subject of the negotiations concerned.

7. Negotiations shall be conducted peacefully and quietly and, moreover, the conduct of any negotiation shall not interfere with the work performance of other personnel nor hamper the regular operation of government business.

8. Negotiations may be terminated if the provisions of any of the preceding three paragraphs have not been properly observed.

9. Lawful negotiations specified in this section may take place even during work hours.

10. No employee shall be denied the freedom to express grievances or to voice opinions of any of the matters stipulated in paragraph 1 above by reason of his non-membership in an employee organisation.

716. The 1965 Bill carried the above provisions into effect with very minor changes of wording apart from a redraft of paragraph 1 thereof in the following terms:

When a registered employee organisation lawfully proposes to negotiate with proper authorities on compensation, work hours or other conditions of work of personnel or, in conjunction therewith, on matters concerning lawful activities, including social and welfare activities, the authorities concerned shall place themselves in the position to respond to such proposal.

717. Section 108-5 in its entirety has been referred for consideration to the Advisory Council on the Public Service Personnel System.

718. Previously Rule No. 14-0 of the National Personnel Authority provided that " negotiation shall not include disciplinary matters " (see paragraph 551 above). In paragraph 384 (2) *(c)* of its 66th Report the Committee on Freedom of Association took note of a statement by the Government of Japan, in a communication dated 22 January 1962 [1], that Rule No. 14-0 " will be rescinded when the Bill to amend the National Public Service Law is enacted, and that no such restrictive provisions will exist thereafter ". The 1965 Bill, however, does not appear to contain any provision relating to the right to negotiate on disciplinary matters.

719. Section 63 (1) of the previous Law provided that pay shall be effected in accordance with a pay plan prescribed by law (see paragraph 552 above). The 1963 Bill would have retained this provision, but would have repealed section 63 (2), pursuant to which " the Authority shall conduct necessary investigations and studies, develop a pay plan conforming to the position classification plan and submit it to the Diet and to the Cabinet ". The previous section 67 of the Law provided that—

The Authority shall at all times conduct necessary investigations and studies concerning the pay plan and shall, when it deems it necessary to raise or lower the rate of compensation, prepare and submit such revisions without delay to the Diet and the Cabinet.

The 1963 Bill would have reworded section 67 as follows:

[1] Doc. No. 52.

The Authority shall conduct investigations and studies concerning the pay plan and may present appropriate opinions to the Diet and to the Cabinet.

720. It is not clear from the text of the 1965 Bill furnished by the Government whether these proposed revisions of sections 63 and 67 have been carried into effect.

721. The 1963 Bill maintained sections 86, 87 and 88 of the Law (cited in paragraph 555 above) concerning requests by the personnel to the Authority for administrative action on working conditions. Two slight changes were made by the Bill. In section 86 of the previous Law the request was for action " by the Authority or the head of an employing agency of government "; the Bill would have changed these words to " by the Authority, the Prime Minister, or the head . . . ". Again, section 88, which provided for the Authority to make recommendations on the request " to the head of an employing agency of government ", was to be amended to read " to the Prime Minister or the head of an employing agency of government ".

722. These amendments to sections 86 and 88 were maintained in the Bill enacted in 1965.

(j) *Protection of the Right to Organise*

723. Section 98-3 of the Law, prohibiting adverse treatment of personnel because of union membership or lawful union activity, which was cited in paragraph 560 above, was to be repealed by the 1963 Bill and replaced by a new section 108-7, the first sentence of which reproduced the text of the old section 98-2, while the second sentence thereof was new. The proposed section 108-7 read as follows:

Personnel shall not be subjected to adverse treatment on the ground that they are members of an employee organisation, or have attempted to form or join it, or that they have performed lawful actions in an employee organisation. Under no circumstances, however, shall an act of an employee which is contrary to his obligations prescribed by law and order be deemed to be a lawful action in an employee organisation.

724. Section 108-7 of the 1965 Bill reproduces only the former of the two sentences cited in the preceding paragraph. This section has been referred for consideration to the Advisory Council on the Public Service Personnel System.

Bills to Amend the Local Public Service Law

725. The 1963 Bill to amend the Local Public Service Law was, in many of its essentials, intended to effect changes at the local level corresponding with proposed changes in the National Public Service Law.

(a) *Authorities and Agencies Established by the Local Public Service Law*

726. Sections 8-1 and 8-2 of the Local Public Service Law, cited in full in the footnote to paragraph 570 above, prescribed the 11 various functions of personnel commissions and the two functions of equity commissions respectively. The two existing functions of the equity commissions were—

to examine and judge upon applications for action concerning the compensation, work hours and other working conditions of the personnel and adopt necessary measures;

to render a ruling or a decision on an objection concerning adverse actions towards the personnel and adopt necessary measures.

727. The 1963 Bill would have made the equity commission responsible also for administering " such matters as may be brought under its powers in accordance with laws ", a change which was carried into effect by the Bill enacted in 1965.

(b) *The Right to Form and Join Organisations*

728. The right to organise was provided for under section 52-1 of the L.P.S. Law as follows:

> The employees may or may not form and may or may not join an organisation the object of which is to negotiate with the authorities of the local public body concerned with regard to the compensation, work hours and other working conditions (hereinafter in this section to be referred to as " primary organisation ").

Section 52-4 provided that " the police and fire defence personnel cannot form and join the personnel organisations ". Only " employees ", that is, persons who actually were employees of the regular local public service, could belong to an employees' organisation.[1]

729. The 1963 Bill would have made changes in these provisions comparable in many ways with those contained in the 1963 Bill to amend the National Public Service Law referred to in paragraph 691 above.

730. The existing sections 52-1 and 52-4 [2] were to be replaced by the following new sections 52-1, 52-2, 52-3, 52-4 and 52-5:

> 1. The employees' organisations as used in this Law shall mean an organisation or a federation thereof formed by employees for the purpose of maintaining and furthering their working conditions.
>
> 2. The " employees " referred to in the preceding paragraph shall mean employees other than those mentioned in paragraph 5.
>
> 3. The employees may or may not form and may or may not join an employees' organisation. However, the employees holding managerial or supervisory positions or those employed in a confidential capacity (hereinafter referred to as " managerial staff and the like ") may not join the employees' organisation formed by the employees other than the managerial staff and the like.
>
> 4. The scope of the managerial staff and the like provided for in the preceding item shall be determined by regulations of the personnel commission or of the equity commission.
>
> 5. The employees of the police and fire services shall not form or join an organisation which aims at the maintenance and improvement of the working conditions of the employees and conducts negotiations with the authorities of the local public body.

731. The 1965 Bill carried the same amendments into effect and added to paragraph 3 of the section a proviso that a joint organisation of managerial personnel and the like and other employees would not satisfy the definition of " employees' organisation " for the purposes of the Law.

732. These provisions have been referred for further consideration to the Advisory Council on the Public Service Personnel System.

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[1] See para. 573 above.

[2] The existing ss. 52-2, 52-3 and 52-5 dealt with other matters considered subsequently.

(c) *The Right to Form and Join Federations*

733. The right to form and join federations was governed by sections 52-2 and 52-3 of the L.P.S. Law (see paragraph 575). These provisions were to be repealed by the 1963 Bill, as they have been by the 1965 Bill, the new section 52-1 defining an employees' organisation as " an organisation or a federation thereof ".

(d) *Registration of Organisations and Acquisition of Legal Personality*

734. Registration was governed by sections 53-1, 53-2 and 53-3 of the Law considered in paragraphs 578 to 580 above. The 1963 Bill would have made the following changes. Under the previous section 53-1 application for registration might be made to the personnel commission (or to the head of the local public body concerned, where there was no personnel commission). The Bill provided for application to be made to the personnel commission or equity commission and no longer to the head of the local public body. Further, under the amended section 53-1, the application was to be accompanied by particulars giving the names of the directors and other officials of the organisation. In order to qualify for and maintain registration, the organisation had also under the Bill, as previously, to comply with the rules regarding voting set forth in section 53-3 [1]; under the Bill, however, instead of providing for voting procedures in which " all employees who are members " should have equal opportunity to participate, as previously, provision was to be made simply for " all members " to have equal opportunity to participate. The reason for this was that, thenceforth, section 53-4 of the Bill would have made it possible for members to retain union membership for one year after dismissal, i.e. for one year during which they were no longer employees. This new section 53-4, with which the organisation would have had to comply in order to qualify for and maintain registration, was in precisely the same terms as the new section 108-3 (4) of the 1963 Bill to amend the National Public Service Law cited in full in paragraph 698 above.

735. In the event of the organisation satisfying the definition of an " employees' organisation " in section 52-1 and meeting the requirements of sections 53-2 [2] and also of sections 53-3 and 53-4 referred to above, the personnel commission or equity commission, according to section 53-1 of the 1963 Bill, " shall, under the provisions of the by-law, register the matters entered in the applications as well as the constitution " and so notify the organisation.

736. When a registered organisation effected a change in its constitution or in any of the matters of which it was required to give particulars when applying for registration, it would have been required to notify the personnel commission or equity commission accordingly (s. 53-7 of the Bill).

737. The 1965 Bill has carried the above amendments into effect with the same modifications as were observed in the case of the 1965 Bill to amend the National Public Service Law. Thus, a simple majority of those voting is now sufficient under the L.P.S. Law, as amended, for the election of officers (s. 53-3), while the new section 53-9 provides that, in the event of cancellation of registration by a personnel commission or equity commission, no objection may be filed under the Law for the examination of objections against administrative acts.

[1] Cited in para. 580 above.

[2] Prescribing the matters to be dealt with in its constitution and rules (see para. 585 above).

738. Section 53 has been referred for consideration to the Advisory Council on the Public Service Personnel System.

(e) *Constitutions and Rules*

739. The matters with which, as a condition of registration, the organisation had to deal in its constitution were listed in section 53-2 of the Law, cited in full in paragraph 585 above. The only changes under the 1963 Bill would have been to replace the word " business " in item 2 by the words " purpose and business ", and the words " regulations concerning officers, including directors, representatives and others " in item 5 by the words " regulations concerning the directors and other officers ".

740. Section 53-2 in the 1965 Bill makes the same provision. It has been referred for consideration to the Advisory Council on the Public Service Personnel System.

(f) *Officers and Representatives of Employees' Organisations*

741. As in the case of the national public service, the previous requirement that a person must be an " employee " in order to be eligible to become or remain an officer of an organisation was not to be maintained under the 1963 Bill, section 53-5 of which provided that " an employees' organisation which allows the appointment of persons other than the employees to officers' posts shall not be regarded as not complying with the registration requirements on that ground ".

742. This amendment was carried into effect by the 1965 Bill, the section having been referred for consideration to the Advisory Council on the Public Service Personnel System.

743. Section 52-5 of the Law provided that " the personnel must not administer the business of the personnel organisation or conduct activities in the interest of such organisation while they are receiving compensation from the local public body ". This did not preclude them from acting as part-time union officers outside working hours, and it was also current practice for a number of employees, in accordance with by-law, to be granted leave of absence, without pay but with retention of status, to serve as full-time union officers. Section 52-5 would have been replaced by section 55-8 of the 1963 Bill, in similar terms but with the addition of the words " unless otherwise provided for by by-law ". This, however, had to be read with other amending provisions intended, as in the case of the 1963 Bill to amend the National Public Service Law, to abolish after three years the system of granting leave to employees to serve as full-time union officers. Section 2-3 of the Supplementary Provisions as contained in the 1963 Bill to amend the Local Public Service Law provided that " the employing authorities . . . may, in so far as no obstacles shall take place in the public service, allow employees to engage exclusively in the business of the registered employees' organisation as its officers, for three years computed from the effective date of this Law . . . ".

744. The 1965 Bill has brought the position into line with that now prevailing under the N.P.S. Law, as amended. Section 55-2 of the amended L.P.S. Law introduces *mutatis mutandis* section 108-6 of the amended National Public Service Law (see paragraph 708 above). The new provisions have been referred for consideration to the Advisory Council on the Public Service Personnel System.

(g) *Deregistration, Suspension and Dissolution of Organisations*

745. Under section 53-6 of the previous Law the registered organisation which had dissolved must notify the personnel commission (or the head of the local public body, if there was no personnel commission). This was to be replaced by section 53-8 of the 1963 Bill, requiring notification to be made to the personnel commission or equity commission.

746. Under section 53-4 of the previous Law, " when a registered employee organisation has become inconformable with the provisions of this Law and by-laws issued thereunder, the personnel commission (or the head of the local public body, where there is no personnel commission) may, after conducting a hearing, cancel its registration in compliance with by-laws. The hearing must be conducted in public if it so requests." If the organisation was a legal person such cancellation was regarded as cancellation of its permission to have legal personality within the meaning of article 71 of the Civil Code (section 54-3).

747. Section 53-4 of the Law was to be repealed by the 1963 Bill and replaced by a new section 53-6 providing that, in the event of an organisation no longer complying with the definition of an " employees' organisation " in the new section 52-1 or with the provisions of the new sections 53-2 (matters to be provided for in its constitution [1]), 53-3 (voting procedures of the organisation [2]) and 53-4 (permitted scope of membership [2]) or, again, in the event of its failing to make the notifications prescribed by the new section 53-7 [3]—

the personnel commission or equity commission may, as provided for by the by-law, suspend the effect of the registration of the employees' organisation for a period not exceeding 60 days or cancel its registration. The personnel commission or equity commission shall, in case it cancels the registration of the employees' organisation, hold hearings in advance, and such hearings shall be public if so requested by the employees' organisation.

748. It appeared that the existing provision of section 54-3 of the Law, according to which cancellation of the registration of an employees' organisation which had legal personality entailed cancellation of its permit to be a legal person pursuant to article 71 of the Civil Code, would no longer have applied. Section 54-3 was to be repealed by the 1963 Bill, the new section 54 of which provided that article 71 of the Civil Code would not apply to employees' organisations.

749. In substance the same amendments have been carried into effect by the 1965 Bill, but further, under the new section 53-9, in the event of deregistration no objection may be filed under the Law for the examination of objections against administrative acts. Sections 53 and 54 of the Law, as amended by the 1965 Bill, have been referred for consideration to the Advisory Council on the Public Service Personnel System.

(h) *Collective Negotiation and Determination of Wages and Other Conditions of Employment*

750. Section 52-1 of the previous Law provided that the purpose of an employees' organisation was " to negotiate with the authorities of the local public

[1] See para. 739 above.
[2] See para. 734 above.
[3] See para. 736 above.

body concerned with regard to the compensation, work hours and other working conditions ". The scope of such negotiation was defined by section 55 (see paragraph 601 above).

751. Sections 52-1 and 55 were to be replaced under the 1963 Bill by new texts. The new section 55 defined the scope of and manner of conducting collective negotiation in terms very similar to those contained in section 108-5 of the 1963 Bill to amend the N.P.S. Law (see paragraph 715 above).[1]

752. Section 55 of the 1965 Bill has now carried the 1963 proposals into effect in terms parallel to those cited in the case of the N.P.S. Law (see paragraph 716 above), that is to say the first paragraph of the section has been redrafted as follows:

The authorities of the local public body shall be in the position to respond to the proposal of negotiation, in case such proposal is made lawfully by the registered employees' organisation, with regard to the compensation, work hours and other working conditions of the employees, and, in conjunction therewith, to the matters on lawful activities including social and welfare activities.

753. Although under the new section 55, paragraph 8, negotiation does not include the right to conclude a collective agreement, paragraph 9 thereof provides for the conclusion of " written agreements " in so far as they do not conflict with laws, by-laws and regulations of the local public body concerned and rules fixed by its agencies.

754. Section 55 has been referred for consideration to the Advisory Council on the Public Service Personnel System.

(i) *Check-off*

755. Section 25-2 of the 1965 Bill, as did the 1963 Bill, would appear to permit a voluntary check-off in certain circumstances by providing that the compensation of the employees shall be paid in currency, directly and in full, to the employees, except as otherwise specially required by laws or by-laws.

(j) *Protection of the Right to Organise*

756. Section 56 of the Law provides that " the personnel shall not be subjected to adverse treatment on account of the fact that they are members of the personnel organisation, or that they have attempted to form or join it, or that they have acted legitimately for the personnel organisation ". The 1963 Bill would have added the following words to section 56: " However, any acts which violate the duties of the employee as provided for by the laws, by-laws, regulations of the local public body and rules fixed by agencies of the local public body shall not be regarded as legitimate acts for the employees' organisation, under any circumstances."

757. This provision in the 1963 Bill does not appear to have been retained in the Bill enacted in 1965.

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[1] As observed in the footnote to para. 715 above, this section, reproduced *mutatis mutandis* in the Bill to amend the Local Public Service Law, refers to the negotiating rights of the registered organisation only. The Government declared in a communication dated 16 May 1962 (doc. No. 63) that under the Bill to amend the Local Public Service Law " non-registered organisations may negotiate with the authorities ".

CHAPTER 17

THE LEGISLATION IN THE LIGHT OF THE FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 1948 (No. 87), AND THE RIGHT TO ORGANISE AND COLLECTIVE BARGAINING CONVENTION, 1949 (No. 98)

758. In the present chapter account is taken of the essential considerations raised by the provisions of the legislation analysed above, as amended in 1965, when viewed in the light of the principles enunciated in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), both ratified by Japan.

The Right to Form and Join Trade Unions

759. Article 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), guarantees the right of workers, without distinction whatsoever, to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation. This is reinforced by Article 8, which provides that 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 the Convention.

1. *Without Distinction Whatsoever*

760. In the laws governing all the four public sectors under review, as well as in the Trade Union Law, certain provisions relate specifically to the organising rights of supervisory personnel and persons employed in a confidential capacity.

761. In the private sector of the economy, an organisation does not fulfil the statutory definition of a " trade union ", and is not therefore able to avail itself of procedures and remedies provided in the Trade Union Law, if it admits to membership supervisory personnel with the right to hire, fire, promote or transfer, or supervisory personnel employed in a confidential capacity.

762. In the public corporation and national enterprise and in the local public enterprise sectors, managerial and supervisory personnel and those employed in a confidential capacity were, prior to the 1965 amendments, formally prohibited from organising or joining trade unions [1] (although, among them, those employed in national enterprises and local public enterprises could join the employee organisations formed by employees of the regular public service). The enactment of the 1965 Bills removed this outright discrimination by repealing the provisions in question.[2] Consequently, though they are not permitted to join the same organisations as the other employees, they can form or join trade unions of their own.

[1] See paras. 412 and 481 above.

[2] See paras. 633 and 656 above.

763. In the national and local public service sectors the position is clear. Supervisory employees, who could join the same employee organisations as the other employees prior to the 1965 amendments, are now required to form separate organisations of their own.[1]

2. *Organisations of Their Own Choosing*

764. The freedom of choice of organisation has necessarily been limited in the four public sectors by the provisions limiting membership of organisations to employees of the undertakings or services concerned. The 1965 amendments to the National and Local Public Service Laws now permit dismissed employees to remain members for a limited period and allow officers who are not employees to be admitted to membership. On the other hand, as the right not to organise is guaranteed in these sectors, as well as the right to organise, and the union or closed shop is prohibited by law, there would appear to be no obstacle to employees setting up a rival organisation to an existing one or to any sub-category of employees setting up a separate organisation of their own.

765. As noted below [2], while both the registered and the non-registered organisation are competent to negotiate under the National and Local Public Service Laws, it is only in the former case that the competent authority is required " to respond positively " to the proposal to negotiate, a fact which might influence the worker in his choice of organisation. The situation thus arising might call for examination in the light of its compatibility with Article 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

3. *Without Previous Authorisation*

766. In the private sector and the public corporation and national enterprise and the local public enterprise sectors registration is voluntary; it in no way affects the right of the organisation to represent its members or take part in the statutory industrial relations procedures or to avail itself of statutory measures protecting the exercise of trade union rights; in fact, it is resorted to only by a minority of unions which wish to have legal personality. In these sectors registration in no way amounts to a requirement of previous authorisation.

767. The important requirement for trade unions in the said three sectors, in order to participate in the procedures provided in the Trade Union Law and avail themselves of the remedies provided therein (the P.C.N.E.L.R. Law and the Trade Union Law in the case of public corporations and national enterprises) is certification of their compliance with the Trade Union Law (P.C.N.E.L.R. Law and Trade Union Law in the case of public corporations and national enterprises). This certification cannot be withheld in the discretion of the certifying authority, but must be withheld if the organisation has not complied with certain requirements, in particular with the requirement that supervisory employees must form organisations of their own.

768. Registration is voluntary in the national and local public services. In the national public service registration is effected by the National Personnel Authority and can be refused if the organisation does not comply both with the National Public Service Law and with the Rules of the same Authority. In the local public service registration is now to be effected by the personnel commission or equity commission;

[1] See paras. 693 and 731 above.

[2] See para. 774 below.

to obtain registration the organisation must comply both with the L.P.S. Law and with by-laws of the public body.

769. Under the National and Local Public Service Laws, while both the registered and non-registered organisations have competence to negotiate, it is only in the case of the former—and this has not been changed by the amending Bills—that the competent authority is placed in a position of having " to respond positively " to a request for negotiation, as was confirmed on several occasions by the government witnesses in the hearings before the Commission in September 1964.

Functioning of Organisations

770. Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), provides that workers' 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, and that the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof. This guarantee is also reinforced by Article 8 of the Convention, according to which 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 the Convention.

1. *Constitutions and Rules*

771. The requirements as to matters to be dealt with in the constitutions and rules of trade union organisations would not appear to be incompatible with their right to draw up their constitutions and rules.

2. *The Right to Elect Representatives in Full Freedom*

772. It has been admitted by the Government that the previous provisions permitting only serving employees to become or remain officers of workers' organisations in the four public sectors were not compatible with Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The respective amending Bills have repealed this restriction, and persons other than employees may henceforth serve as trade union officers.

773. The provisions of the laws affecting the public corporation and national enterprise and local public enterprise sectors require the constitutions of trade union organisations to provide for the election of officers by direct secret ballot of the members, a requirement which in itself would not appear to be incompatible with the Convention. In the case of the national and local public services, officers, prior to the 1965 amendments, had to be elected " by a majority vote of all members " [1]; this provision had been interpreted in practice—that interpretation having been approved by the Government—as meaning a majority vote of all the members and not merely a majority of those casting votes.[2] The question as to the compatibility of a provision applied so as to require such a high majority vote in an election with Article 3 of the Convention no longer arises, in view of the fact that the 1965 amendments render a majority of the votes cast sufficient for this purpose. The 1965 amendments to the National and Local Public Service Laws give rise to a situation which may call for examination in the light of Article 3 of the said Convention, by reason of the fact

[1] See paras. 533 and 589 above.

[2] See footnote to para. 589 above.

that it is only in the case of the *registered* organisation that leave may be given to serve as a full-time union officer.

3. *The Right of Trade Unions to Organise Their Administration and Activities and to Formulate Their Programmes*

774. A question as to compatibility with Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), might arise by reason of the fact that, under the National and Local Public Service Laws, the competent authority is requested " to respond positively " to proposals for negotiation only if they are made by registered organisations.

Dissolution, Suspension and Deregistration of Organisations

775. Article 4 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), provides that workers' organisations shall not be liable to be dissolved or suspended by administrative authority.

776. Nothing in the legislation examined would appear to render a trade union organisation liable to dissolution or suspension by administrative authority.

777. In the national and local public service sectors registration may be cancelled or suspended, if the organisation no longer satisfies the requisites for registration considered above, by the registering agency [1]—National Personnel Authority or personnel commission or equity commission, as the case may be. The Government stated, on the basis of the laws prior to amendment, that in such cases an opportunity of hearing was accorded in advance and that a lawsuit could be brought under the Administrative Suit Cases Law. Such lawsuits, however, are now excluded by virtue of the 1965 amendments, although it is not fully clear whether this means that no appeals to the court can now be brought in the event of deregistration.

778. The effect of a registered organisation becoming a non-registered organisation, as regards the duty of the competent authority to respond positively to its request for negotiation, both under present law and under the amending Bills, has already been explained.[2] Moreover, only the registered organisation can acquire legal personality. If in fact the position now is that no appeal lies to the courts against deregistration a question arises as to the compatibility of the legislation with Article 4 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

The Right to Form Federations and Confederations and to Affiliate with International Organisations of Workers

779. Article 5 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), guarantees the right of workers' organisations to establish and join federations and confederations, and also guarantees the right of such organisations, federations and confederations to affiliate with international organisations of workers. According to Article 6, such federations and confederations shall enjoy the same guarantees as are applied to organisations by Articles 2, 3 and 4 of the Convention considered earlier.

[1] See paras. 712 and 747 above.

[2] In its observations on the draft analysis of the legislation the Government expressed the view that, as non-registered organisations are not denied their existence and activities, deregistration does not substantially affect the functioning of the organisation as a body representing the workers in labour relations.

1. *The Right to Form Federations and Confederations*

780. The legislation governing industrial relations in the private sector and in the public corporation and national enterprise and local public enterprise sectors defines a trade union as including a federation.

781. The position in the national and local public service sectors is more complicated. While the N.P.S. Law, prior to amendment, made no reference to federations, the Rules of the National Personnel Authority enabled organisations of employees of the national public service to federate with one another and to form a nation-wide organisation.[1] Such a federation could also form a *de facto* united organisation with an organisation not formed under that Law, for example, with an organisation of public corporation and national enterprise employees.[1] Under the L.P.S. Law it appeared that organisations of local public service employees in the employ of different local public bodies could unite in a *de facto* united organisation, but an organisation of employees formed beyond the same local public body was a *de facto* organisation.[2] However, an organisation of employees of schools established in a prefecture or in municipalities within the prefecture could equally form a federation of employees' organisations within the prefecture.

782. The 1965 Bill to amend the National Public Service Law has widened the definition of an organisation formed by national public service employees to include a federation of such organisations.[3] A similar change has been made by the Bill to amend the Local Public Service Law.[4] This, the Government states, will enable the federation or confederation of local public service employees which extend beyond a local public body to become an employees' organisation under the Law.

783. A united organisation or federation including organisations of national public servants employed both in the sector covered by the N.P.S. Law and in the sector covered by the P.C.N.E.L.R. Law, or one including organisations of local public servants employed both in the sector covered by the L.P.S. Law and the L.P.E.L.R. Law (which is the situation of the prefectural federations of the All-Japan Prefectural and Municipal Workers' Union), is still not qualified for registration.

2. *The Right of International Affiliation*

784. The legislation appears to contain no provisions relating to the right to affiliate with international organisations of workers. In fact, several Japanese trade unions in various sectors have such affiliations.

Acquisition of Legal Personality

785. Article 7 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), provides that the acquisition of legal personality by workers' 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 of the Convention.

786. Acquisition of legal personality is a voluntary act and is not necessary for the normal functioning of an organisation in Japan, although it is necessary if an

[1] See para. 528 above.

[2] That is, one which cannot register.

[3] See para. 691 above.

[4] See para. 733 above.

organisation is not to suffer certain disadvantages in the property-owning and fiscal fields. It is, however, subject to the same conditions as registration, by reason of the fact that an organisation can choose to acquire legal personality only if it is registered. It follows that a federation or confederation of public servants' organisations which is of such a character that it cannot register under the N.P.S. Law or the L.P.S. Law cannot acquire legal personality either.

Definition of a Workers' Organisation

787. Article 10 of the said Convention No. 87 defines a workers' organisation as an organisation for furthering and defending the interests of workers.

788. The legislation appears to be compatible with this definition.

Protection of the Right to Organise

1. *Protection of the Rights of Individuals*

789. Article 1, paragraph 1, of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), provides that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment. According to Article 1, paragraph 2, such protection shall apply more particularly in respect of acts calculated to—

(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;

(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities, outside working hours or, with the consent of the employer, within working hours.

790. In the private sector it is an unfair labour practice (except in pursuance of a union security arrangement) to commit any of the acts mentioned in Article 1, paragraph 2, of the Convention.[1] The position is the same in the public corporation and national enterprise and local public enterprise sectors, with the difference that union security agreements are not permitted.[2] Complaints of unfair labour practices may be submitted to the competent labour relations commission, which can make an appropriate order, including an order to reinstate the person dismissed or to cancel the measure taken to his prejudice.

791. In the national public service and local public service sectors, the relevant enactments, in more general terms, prohibit the adverse treatment of personnel on the ground of their being members of the employees' organisation, or having attempted to form or join it, or having performed lawful actions therein.[3] Application for review of such adverse treatment may be made to the National Personnel Authority or to the personnel or equity commission, as the case may be, and an appropriate remedy may be ordered.

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[1] See para. 389 above.

[2] See paras. 469 and 517 above.

[3] See paras. 723 and 756 above.

2. *Protection of the Rights of Organisations*

792. Article 2, paragraph 1, of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), provides that workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration. In particular, according to paragraph 2 thereof, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute such acts of interference.

793. The " unfair labour practice " provisions applicable to the private sector and to the public corporation and national enterprise and local public enterprise sectors prohibit employers from controlling or interfering with the formation or management of a trade union by workers or from giving financial support to it in defraying the union's operational expenditure. As noted above, the respective labour relations commissions are competent to hear complaints of such practices and to order appropriate remedies. No comparable provisions are contained in the laws governing the national and local public service sectors.

794. The question of the compatibility of the legislation applicable to public corporations and national enterprises and to local public enterprises with paragraph 1 of Article 2 of the Convention has been considered by the I.L.O. Committee of Experts on the Application of Conventions and Recommendations. This Committee, noting that the provisions of this legislation (prior to amendment) required officers of a trade union to be employees of the undertaking in which the trade union recruited its members and that, consequently, in the event of the dismissal of a trade union officer the trade union must appoint a successor to him, made the observation that these provisions might facilitate acts of interference on the part of the managements of such undertakings and that, in order to ensure fuller application of Article 2 of the Convention, it would be desirable for such provisions to be repealed or amended.[1]

795. The 1965 Bills have effected the repeal of these provisions.

3. *Machinery for the Protection of the Right to Organise*

796. Article 3 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), provides that machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in Articles 1 and 2.

797. In the private sector and the public corporation and national enterprise and local public enterprise sectors machinery exists in the form of the competent labour relations commissions, as indicated in the foregoing paragraphs. In the national and local public services, so far as alleged cases of anti-union discrimination against individuals are concerned, filing of objections to adverse treatment lies to the National Personnel Authority or to the personnel or equity commissions, as the case may be.

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[1] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 43rd Session, Geneva, 1959 (Geneva, I.L.O., 1959), p. 56.

Voluntary Negotiation

798. Article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), provides that measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

799. The legislative measures taken for this purpose in the private sector and in the public corporation and national enterprise and local public enterprise sectors have already been described[1], as have the legislative provisions defining the extent of negotiating rights (not with a view to the conclusion of collective agreements but with a view to seeking legislative action) in the national and local public services.[2]

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[1] See paras. 341, 433 and 498 above.

[2] See paras. 716 and 752 above.

Section 2

International Labour Conventions and Recommendations Relating to Freedom of Association and Attitude of Japan towards Them

800. Having surveyed the relevant national legislation in Japan, it is now proposed to consider the international instruments relating to freedom of association.

801. International labour Conventions and Recommendations are international instruments adopted by the International Labour Conference. Conventions are instruments which are intended, upon ratification, to create binding legal obligations. Recommendations are not open to ratification, but are meant to provide guidance in the development of policy, legislation and practice.

802. Article 22 of the Constitution of the International Labour Organisation provides that " each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request." Article 23 of the Constitution provides that the Director-General shall lay before the next meeting of the Conference a summary of the reports communicated to him by Members in pursuance of article 22, and that each Member shall communicate copies of these reports to the representative organisations of employers and workers.

803. Article 19 of the Constitution of the International Labour Organisation provides that Members shall " report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body " on the position of their law and practice in regard to the matters dealt with in unratified Conventions and in Recommendations. The obligations of Members as regards Conventions are laid down in paragraph 5 *(e)* of the above-mentioned article; paragraph 6 *(d)* deals with Recommendations. Pursuant to the above-mentioned provisions, the Governing Body of the International Labour Office selects each year the Conventions and Recommendations on which Members are requested to supply reports. Since 1950 the summaries of these reports have been submitted each year to the Conference.

804. The reports furnished under article 22 of the Constitution form the basis for the international supervision of ratified Conventions which, since 1927, has been entrusted to two special committees: the Committee of Experts on the Application of Conventions and Recommendations, and the tripartite Committee on the Application of Conventions and Recommendations established each year by the Conference itself.

805. The Committee of Experts considers the annual reports made by Members, compares their legislation and practice with the requirements of the Conventions and draws attention to any apparent discrepancies and any points on which additional

information appears to be necessary. At present, the Committee consists of 18 experts, drawn from all parts of the world. They are persons of the highest standing, possessing an intimate knowledge of labour and social questions. They are chosen taking account as far as possible of the varying degrees of industrial development and varying industrial methods to be found among the Organisation's membership. The experts are appointed in their individual capacity, and not as representatives either of their countries or of occupational interests. Their task is to make an expert examination of the reports referred to them.

806. The summary of governments' reports and the report of the Committee of Experts are considered each year by the Conference Committee on the Application of Conventions and Recommendations[1], in which governments, employers and workers are all represented. Representatives of governments in respect of whose countries discrepancies have been noted appear before the Conference Committee to provide any explanations which they may deem appropriate, to discuss and obtain guidance as to the solution of any difficulties which may have been encountered in implementing international labour standards, and to indicate the further measures which their governments propose to take to ensure compliance with their obligations. The Conference Committee submits a report on its deliberations to the Conference for adoption.

807. In the following chapter a survey is made of the relevant international instruments relating to freedom of association. In a further chapter consideration is given to the reports furnished by the Government of Japan in respect of these instruments, pursuant to article 19 or 22 of the I.L.O. Constitution, and to their examination by the Committee of Experts and the Conference Committee

CHAPTER 18

PROVISIONS OF THE RELEVANT INTERNATIONAL INSTRUMENTS

808. The international labour Conventions and Recommendations relating to freedom of association are the Right of Association (Agriculture) Convention, 1921 (No. 11); the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); the Collective Agreements Recommendation, 1951 (No. 91); the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92); the Co-operation at the Level of the Undertaking Recommendation, 1952 (No. 94); and the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113). Of these, the Right of Association (Agriculture) Convention, 1921 (No. 11), is not directly relevant to the issues raised in the present case and need not, therefore, be considered further. The two other Conventions, however, are directly relevant—the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), because many of the issues raised have been linked with the possible ratification of the Convention by Japan, and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Japan, because some of the issues raised relate to the fulfilment of the obligations undertaken by such ratification.

[1] The Committee of Experts also submits to the Conference its general conclusions on reports furnished, pursuant to art. 19 of the Constitution, on unratified Conventions and on Recommendations.

A. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

809. This Convention defines the basic principles which, in view of the International Labour Conference, are essential for the guarantee of the exercise of freedom of association. The preamble to the text of the Convention adopted by the Conference in 1948 recalls 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, that the Declaration of Philadelphia reaffirms that " freedom of expression and of association are essential to sustained progress ", and that these principles had already been endorsed by the General Assembly of the United Nations.

810. The Convention was adopted by the 31st Session of the International Labour Conference, in June 1948, by 127 votes to 0, with 11 abstentions. Thus the principles and guarantees embodied in the Convention were endorsed by an overwhelming majority of the delegates to the Conference.

811. The first fundamental guarantee provided for in the Convention is that of the right of individuals, workers and employers, without distinction whatsoever, to form and join organisations of their own choosing without previous authorisation. This guarantee is embodied in Article 2 of the Convention in the following terms:

> 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.

The 1947 Conference Committee, during the discussion of what subsequently became in 1948 this provision of the Convention, stressed in its report that according to this provision " freedom of association was to be guaranteed not only to employers and workers in private industry, but also to public employees, and without distinction or discrimination of any kind as to occupation, sex, colour, race, creed, nationality or political opinion ".[1]

812. The only permitted exclusion from the enjoyment of this and the other guarantees provided for in the Convention is that of the armed forces and police, by virtue of Article 9 of the Convention, but even in their case ratification of the Convention shall not be deemed to affect any existing law, award, custom or agreement by virtue of which they enjoy any of the guarantees provided for in the Convention.[2]

813. The second basic guarantee relates to the independence of the organisations themselves in exercising their rights of drawing up their constitutions and rules, freely electing their representatives, organising their administration and activities and formulating their programmes, without interference on the part of the public authorities which would restrict or impede the lawful exercise of these rights. This guarantee is embodied in Article 3 of the Convention, which reads as follows:

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[1] See *Record of Proceedings*, International Labour Conference, 30th Session, Geneva, 1947 (Geneva, I.L.O., 1948), Appendix X, p. 570.

[2] Art. 9 of the Convention reads 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.

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.

The report on the Convention submitted to the Conference by its Committee on Freedom of Association indicated that States would remain free to provide such formalities in their legislation as appeared appropriate to ensure the normal functioning of industrial organisations, and that it followed that the formalities provided for by national regulations concerning the constitution and operation of employers' and workers' organisations were in conformity with the provisions of the Convention, provided that these regulations did not impair the guarantees granted by the Convention.[1]

814. The third guarantee, designed to ensure that the compulsory dissolution of a workers' or employers' organisation shall be pronounced only by ordinary courts of law, according to normal judicial procedure, and not by decision of the administrative authorities, is provided for in Article 4 as follows:

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

815. The fourth principal guarantee relates to the right of workers' and employers' organisations to establish and join federations and confederations—which, in turn, shall enjoy the guarantees provided for in Articles 2, 3 and 4 cited above—and to the right of organisations, federations and confederations to affiliate with international organistions of workers and employers.

816. This guarantee is provided by Article 5 of the Convention as follows:

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.

and by Article 6:

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

817. Articles 7 and 8 of the Convention are intended to prevent the impairment of the application of the foregoing guarantees.

818. The purpose of Article 7 is to prevent the impairment of the enjoyment of the rights guaranteed by the Convention by means of conditions attaching to the acquisition of legal personality by organisations, a guarantee which is of particular importance in cases in which legal personality is compulsory or necessary to enable an organisation to function normally. Article 7 provides as follows:

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.

819. Article 8, while recognising that workers and employers and their organisations must respect the law of the land in the same way as other persons or collectivities, is designed essentially to prevent the need to maintain public order being used as a

[1] See *Record of Proceedings*, International Labour Conference, 31st Session, San Francisco, 1948 (Geneva, I.L.O., 1950), Appendix X, p. 477.

pretext for restricting the enjoyment of the basic guarantees provided for in the Convention. Article 8 provides as follows:

> 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.

The report submitted to the Conference by its Committee on Freedom of Association records that this Article is not to be interpreted as involving any interference with the independence and authority of the judiciary.[1] Broadly speaking, the effect of this Article is to give each party to the Convention a reasonable discretion to take such action as may be necessary to secure respect for the general law but to make this discretion subject to review by the international procedures governing the application of international labour Conventions.

820. Article 10 of the Convention makes it clear that the guarantees provided for in the Convention are to be enjoyed by organisations formed by workers or employers for occupational purposes, that is, the promotion and defence of the interests of workers or employers, as distinct from associations in general. Article 10 defines an organisation as follows:

> 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.

821. Finally, the protection of the right to organise is provided for by Article 11 of the Convention, in the following terms:

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

822. The Government of Japan has furnished reports pursuant to article 19 of the Constitution of the I.L.O. in regard to the matters dealt with in the Convention. These reports are considered subsequently, in Chapter 19.

823. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), has been ratified by the following 70 countries: Albania, Algeria, Argentina, Austria, Belgium, Bolivia, Bulgaria, Burma, Byelorussia, Cameroon, Central African Republic, Chad, Congo (Brazzaville), Costa Rica, Cuba, Czechoslovakia, Dahomey, Denmark, Dominican Republic, Ethiopia, Finland, France, Gabon, Federal Republic of Germany, Ghana, Greece, Guatemala, Guinea, Honduras, Hungary, Iceland, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kuwait, Liberia, Luxembourg, Malagasy Republic, Mali, Malta, Mauritania, Mexico, Netherlands, Niger, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Rumania, Senegal, Sierra Leone, Sweden, Syrian Arab Republic, Togo, Trinidad and Tobago, Tunisia, Ukraine, U.S.S.R., United Arab Republic, United Kingdom, Upper Volta, Uruguay and Yugoslavia. Its provisions have been accepted without modification by Denmark, in respect of the Faroe Islands and Greenland; by France, in respect of the overseas departments of French Guiana, Guadeloupe, Martinique and Réunion, and the overseas territories of Comoro Islands, French Polynesia, French Somaliland, New Caledonia and St. Pierre and Miquelon; by the Netherlands, in respect of the Netherlands Antilles and Surinam;

[1] See *Record of Proceedings*, International Labour Conference, 31st Session, San Francisco, 1948 (Geneva, I.L.O., 1950), Appendix X, p. 475.

by the United Kingdom, in respect of Aden, Antigua, Barbados, Basutoland, Bechuanaland, Bermuda, British Honduras, British Virgin Islands, Dominica, Falkland Islands, Montserrat, St. Christopher-Nevis-Anguilla, St. Lucia, Seychelles and Swaziland. The ratification by Japan was registered on 14 June 1965.

B. The Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

824. The purpose of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), was to guarantee freedom of association against interference by the public authorities. The essential purpose of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), was to supplement the guarantees of the 1948 Convention by further guarantees, intended to protect the exercise of the workers' right of association against possible interference by employers or employers' organisations. The Right to Organise and Collective Bargaining Convention (No. 98) was adopted at the 32nd Session of the International Labour Conference (June 1949).

825. This Convention embodies two basic guarantees: one intended to protect the individual worker, and one intended to protect the workers'—and, in more general terms, the employers'—organisations.

826. The first guarantee is embodied in Article 1 of the Convention, which, firstly, expresses the general principle that workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment, and, secondly, defines some of the specific kinds of acts against which protection shall be most particularly afforded. The text of Article 1 is as follows:

> 1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
>
> 2. Such protection shall apply more particularly in respect of acts calculated to—
>
> *(a)* make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
>
> *(b)* cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours.

The report on the Convention submitted to the Conference by its Committee on Industrial Relations records the view that these provisions are not to be interpreted as authorising or prohibiting union security arrangements, such questions being matters for regulation in accordance with national practice.[1] It follows that countries, and more particularly countries with more than one trade union movement, are in no way bound by the Convention to recognise or tolerate *de jure* or *de facto* union security clauses providing for a closed shop, a union shop, or preferential employment of trade union members, whereas countries where such clauses are recognised by law or admitted in practice are equally in a position to ratify and apply the Convention.

827. The second guarantee is embodied in Article 2 of the Convention. The first part of this guarantee provides for the protection of both workers' and employers' organisations against mutual acts of interference. The second part of

[1] See *Record of Proceedings*, International Labour Conference, 32nd Session, Geneva, 1949 (Geneva, I.L.O., 1951), Appendix VII, p. 468.

the guarantee defines certain acts which, if committed against workers' organisations, shall be deemed to constitute such acts of interference. The full text of Article 2 is as follows:

> 1. Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.
>
> 2. In particular, acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute acts of interference within the meaning of this Article.

828. These guarantees are reinforced by Article 3, which provides that " machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organise as defined in the preceding Articles ".

829. Finally, Article 4 of the Convention calls upon governments to take appropriate measures, where necessary, to encourage and promote machinery for voluntary negotiation with a view to the conclusion of collective agreements. The text of Article 4 is as follows:

> Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.

830. The extent of the application of the Convention to the armed forces and the police is to be determined by national laws or regulations, in accordance with Article 5 of the Convention, which is in precisely the same terms as Article 9 of Convention No. 87, cited in the footnote to paragraph 812 above.

831. The Convention, as provided in Article 6, " does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way ".

832. The Right to Organise and Collective Bargaining Convention, 1949 (No. 98), has been ratified by the following 75 countries: Albania, Algeria, Argentina, Austria, Belgium, Brazil, Bulgaria, Byelorussia, Cameroon, Central African Republic, Chad, China, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Ethiopia, Finland, France, Gabon, Federal Republic of Germany, Ghana, Greece, Guatemala, Guinea, Haiti, Honduras, Hungary, Iceland, Indonesia, Iraq, Ireland, Israel, Italy, Ivory Coast, Jamaica, Japan, Kenya, Liberia, Libya, Luxembourg, Malawi, Malaysia, Mali, Malta, Morocco, Niger, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Rumania, Senegal, Sierra Leone, Sudan, Sweden, Syrian Arab Republic, Tanzania, Trinidad and Tobago, Tunisia, Turkey, Uganda, Ukraine, U.S.S.R., United Arab Republic, United Kingdom, Upper Volta, Uruguay, Viet-Nam, Yugoslavia. Its provisions have been accepted without modification by Denmark in respect of the Faroe Islands; by France in respect of the overseas departments of French Guiana, Guadeloupe, Martinique and Réunion; and by the United Kingdom in respect of Aden, Antigua, Bahamas, Barbados, Bermuda, British Guiana, British Honduras, British Virgin Islands, Brunei, Dominica, Falkland Islands, Gibraltar, Grenada, Mauritius, Montserrat, St. Christopher-Nevis-Anguilla, St. Lucia, St. Vincent and Swaziland.

833. The Right to Organise and Collective Bargaining Convention, 1949 (No.98), was ratified by Japan on 20 October 1953. The Government has furnished reports on the application of the Convention pursuant to article 22 of the Constitution of the I.L.O. These reports and certain observations made by the I.L.O. Committee of Experts on the Application of Conventions and Recommendations are considered in Chapter 19 below.

C. The Collective Agreements Recommendation, 1951 (No. 91)

834. This Recommendation was adopted by the International Labour Conference at its 34th Session (Geneva, June 1951).

835. Paragraph 1 of this instrument recommends the establishment, by means of agreement or laws or regulations, of machinery appropriate to national conditions for the purpose of negotiating, concluding, revising or renewing collective agreements, or to be available to assist the parties in such negotiation, etc. The text of the Paragraph is as follows:

> 1. (1) Machinery appropriate to the conditions existing in each country should be established, by means of agreement or laws or regulations as may be appropriate under national conditions, to negotiate, conclude, revise and renew collective agreements, or to be available to assist the parties in the negotiation, conclusion, revision and renewal of collective agreements.
>
> (2) The organisation, methods of operation and functions of such machinery should be determined by agreements between the parties or by national laws or regulations, as may be appropriate under national conditions.

836. " Collective agreements " are defined in Paragraph 2 of the Recommendation in such a manner as to ensure that, on the workers' side, they shall be concluded by one or more representative workers' organisations, where such organisation or organisations exist; the definition is not to be interpreted as implying the recognition of any workers' association established, dominated or financed by employers. Paragraph 2 of the Recommendation reads as follows:

> 2. (1) For the purpose of this Recommendation, the term " collective agreements " means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other.
>
> (2) Nothing in the present definition should be interpreted as implying the recognition of any association of workers established, dominated or financed by employers or their representatives.

837. Paragraphs 3 and 4 of the Recommendation enunciate the essential principles governing the effects of collective agreements. In brief, agreements should bind the signatories and those on whose behalf they are concluded, contracts of employment should not be able to derogate from an agreement, and any conditions in a contract of employment contrary to a collective agreement should be replaced automatically by the corresponding provisions of the agreement except in so far as such conditions are more favourable to the workers. Unless the agreement provides to the contrary, it should apply to all workers of the classes concerned employed in the undertakings covered by the agreement. The full text of Paragraphs 3 and 4 is as follows:

> 3. (1) Collective agreements should bind the signatories thereto and those on whose behalf the agreement is concluded. Employers and workers bound by a collective agreement should not be able to include in contracts of employment stipulations contrary to those contained in the collective agreement.

(2) Stipulations in such contracts of employment which are contrary to a collective agreement should be regarded as null and void and automatically replaced by the corresponding stipulations of the collective agreement.

(3) Stipulations in contracts of employment which are more favourable to the workers than those prescribed by a collective agreement should not be regarded as contrary to the collective agreement.

(4) If effective observance of the provisions of collective agreements is secured by the parties thereto, the provisions of the preceding subparagraphs should not be regarded as calling for legislative measures.

4. The stipulations of a collective agreement should apply to all workers of the classes concerned employed in the undertakings covered by the agreement unless the agreement specifically provides to the contrary.

838. The first part of Paragraph 5 provides as to the extension of application of all or certain stipulations of a collective agreement to all the employers and workers within its industrial and territorial scope. Some of the conditions which it is appropriate to attach to such extension are mentioned in the second part of the Paragraph: it should already cover a sufficiently representative number of the employers and workers concerned; generally the request for extension should be made by an organisation which is a party to the agreement; prior to extension, the employers and workers to whom the application of the agreement would be extended should have an opportunity to submit their observations. The text of Paragraph 5 reads as follows:

5. (1) Where appropriate, having regard to established collective bargaining practice, measures, to be determined by national laws or regulations and suited to the conditions of each country, should be taken to extend the application of all or certain stipulations of a collective agreement to all the employers and workers included within the industrial and territorial scope of the agreement.

(2) National laws or regulations may make the extension of a collective agreement subject to the following, among other, conditions:

(a) that the collective agreement already covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative;

(b) that, as a general rule, the request for extension of the agreement shall be made by one or more organisations of workers or employers who are parties to the agreement;

(c) that, prior to the extension of the agreement, the employers and workers to whom the agreement would be made applicable by its extension should be given an opportunity to submit their observations.

839. With regard to questions as to the interpretation of a collective agreement Paragraph 6 of the Recommendation provides that—

6. Disputes arising out of the interpretation of a collective agreement should be submitted to an appropriate procedure for settlement established either by agreement between the parties or by laws or regulations as may be appropriate under national conditions.

840. As regards the supervision of the application of collective agreements by the parties thereto or by other bodies set up for that purpose, Paragraph 7 provides that—

7. The supervision of the application of collective agreements should be ensured by the employers' and workers' organisations parties to such agreements or by bodies existing in each country for this purpose or by bodies established ad hoc.

841. Finally, Paragraph 8 makes provision as to the bringing to the notice of the workers the terms of agreements which are applicable to them, the registration of

agreements and the minimum duration of agreements where no provisions to the contrary are made therein. This Paragraph reads as follows:

8. National laws and regulations may, among other things, make provision for—

(a) requiring employers bound by collective agreements to take appropriate steps to bring to the notice of the workers concerned the texts of the collective agreements applicable to their undertakings;

(b) the registration or deposit of collective agreements and any subsequent changes made therein;

(c) a minimum period during which, in the absence of any provision to the contrary in the agreement, collective agreements shall be deemed to be binding unless revised or rescinded at an earlier date by the parties.

842. In 1955 and again in 1958, the Government of Japan furnished reports on the position of its law and practice in respect of the matters dealt with in this Recommendation, pursuant to article 19 of the Constitution of the I.L.O. These reports are considered in Chapter 19 below.

D. The Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)

843. This Recommendation was adopted by the International Labour Conference at its 34th Session (Geneva, June 1951). It enunciates a few of the elementary principles of voluntary conciliation and voluntary arbitration.

844. Paragraph 1 recommends that " Voluntary conciliation machinery, appropriate to national conditions, should be made available to assist in the prevention and settlement of industrial disputes between employers and workers ". According to Paragraph 2 " Where voluntary conciliation machinery is constituted on a joint basis, it should include equal representation of employers and workers ".

845. The principle that voluntary conciliation procedure should be free of charge and expeditious and the principle that it should be possible for the procedure to be initiated by either party to a dispute or by the voluntary conciliation authority are embodied in Paragraph 3 of the Recommendation, as follows:

3. (1) The procedure should be free of charge and expeditious; such time limits for the proceedings as may be prescribed by national laws or regulations should be fixed in advance and kept to a minimum.

(2) Provision should be made to enable the procedure to be set in motion, either on the initiative of any of the parties to the dispute or ex officio by the voluntary conciliation authority.

846. If all the parties to a dispute have agreed to its submission to conciliation, they should refrain from strikes or lockouts during the procedure. Paragraph 4 of the Recommendation provides that—

4. If a dispute has been submitted to conciliation procedure with the consent of all the parties concerned, the latter should be encouraged to abstain from strikes and lockouts while conciliation is in progress.

847. An agreement reached during or through conciliation should be regarded as equivalent to an agreement concluded in the normal way. This principle is set forth in Paragraph 5 of the Recommendation:

5. All agreements which the parties may reach during conciliation procedure or as a result thereof should be drawn up in writing and be regarded as equivalent to agreements concluded in the usual manner.

848. Voluntary arbitration is the subject of Paragraph 6 of the Recommendation, according to which—

> 6. If a dispute has been submitted to arbitration for final settlement with the consent of all parties concerned, the latter should be encouraged to abstain from strikes and lockouts while the arbitration is in progress and to accept the arbitration award.

849. In conclusion, Paraphagr 7 stipulates that no provision of the Recommendation " may be interpreted as limiting, in any way whatsoever, the right to strike ".

E. The Co-operation at the Level of the Undertaking Recommendation, 1952 (No. 94)

850. This Recommendation was adopted at the 35th Session of the International Labour Conference (Geneva, June 1952).

851. Paragraph 1 of the Recommendation advocates the promotion of consultation and co-operation between employers and workers, but not with respect to matters within the scope of collective bargaining. The full text is as follows:

> 1. Appropriate steps should be taken to promote consultation and co-operation between employers and workers at the level of the undertaking on matters of mutual concern not within the scope of collective bargaining machinery, or not normally dealt with by other machinery concerned with the determination of terms and conditions of employment.

852. The methods of facilitating or promoting consultation and co-operation, by collective agreements and/or laws or regulations, are defined in Paragraph 2 in the following terms:

> 2. In accordance with national custom or practice, such consultation and co-operation should be—
>
> *(a)* facilitated by the encouragement of voluntary agreements between the parties, or
>
> *(b)* promoted by laws or regulations which would establish bodies for consultation and co-operation and determine their scope, functions, structure and methods of operation as may be appropriate to the conditions in the various undertakings, or
>
> *(c)* facilitated or promoted by a combination of these methods.

853. A report on its law and practice in respect of the matters dealt with in the Recommendation was furnished by the Government of Japan in 1958, pursuant to article 19 of the Constitution of the I.L.O. This report is considered in Chapter 19 below.

F. The Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113)

854. This Recommendation was adopted at the 44th Session of the International Labour Conference (Geneva, June 1960). It enunciates the basic principle of promoting joint consultation and co-operation at the industrial and national levels, the principle of non-discrimination as regards participation therein and the principle that it should not derogate from freedom of association or the right of collective bargaining, and defines the methods of providing for or facilitating consultation and co-operation and the objects to be attained by these means.

855. The principles mentioned above are embodied in Paragraphs 1 and 2 of the Recommendation as follows:

1. (1) Measures appropriate to national conditions should be taken to promote effective consultation and co-operation at the industrial and national levels between public authorities and employers' and workers' organisations, as well as between these organisations, for the purposes indicated in Paragraphs 4 and 5 below, and on such other matters of mutual concern as the parties may determine.

(2) Such measures should be applied without discrimination of any kind against these organisations or amongst them on grounds such as the race, sex, religion, political opinion or national extraction of their members.

2. Such consultation and co-operation should not derogate from freedom of association or from the rights of employers' and workers' organisations, including their right of collective bargaining.

856. The alternative methods of providing for or facilitating consultation and co-operation are set forth in Paragraph 3 in the following terms:

3. In accordance with national custom or practice, such consultation and co-operation should be provided for or facilitated—

(a) by voluntary action on the part of the employers' and workers' organisation; or

(b) by promotional action on the part of the public authorities; or

(c) by laws or regulations; or

(d) by a combination of any of these methods.

857. The objects of consultation and co-operation are first defined in general terms in Paragraph 4 of the Recommendation as follows:

4. Such consultation and co-operation should have the general objective of promoting mutual understanding and good relations between public authorities and employers' and workers' organisations, as well as between these organisations, with a view to developing the economy as a whole or individual branches thereof, improving conditions of work and raising standards of living.

858. More particularly, the objectives to be attained are the solution by agreement of matters of mutual concern to employers' and workers' organisations, and ensuring that the public authorities seek the views, advice and assistance of such organisations in respect, for example, of the preparation and implementation of laws and regulations affecting their interest or of flows of economic or social development, and of the establishment and functioning of various national bodies. These principles are contained in Paragraph 5 of the Recommendation, which reads as follows:

5. Such consultation and co-operation should aim, in particular—

(a) at joint consideration by employers' and workers' organisations of matters of mutual concern with a view to arriving, to the fullest possible extent, at agreed solutions; and

(b) at ensuring that the competent public authorities seek the views, advice and assistance of employers' and workers' organisations in an appropriate manner, in respect of such matters as—

(i) the preparation and implementation of laws and regulations affecting their interests;

(ii) the establishment and functioning of national bodies, such as those responsible for organisation of employment, vocational training and retraining, labour protection, industrial health and safety, productivity, social security and welfare; and

(iii) the elaboration and implementation of plans of economic and social development.

859. No reports on this Recommendation have so far been requested from member States under article 19 of the I.L.O. Constitution.

CHAPTER 19

EXAMINATION BY THE COMMITTEE OF EXPERTS AND THE CONFERENCE COMMITTEE ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS OF REPORTS IN RESPECT OF INTERNATIONAL LABOUR CONVENTIONS AND RECOMMENDATIONS FURNISHED BY THE GOVERNMENT OF JAPAN

A. Examination by the Committee of Experts and the Conference Committee on the Application of Conventions and Recommendations of the Reports Furnished by the Government of Japan, Pursuant to Article 22 of the Constitution of the I.L.O., on the Application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

860. The Right to Organise and Collective Bargaining Convention, 1949 (No. 98), was ratified by Japan on 20 October 1953 and entered into force for Japan on 20 October 1954.

861. The first report [1] of the Government, received on 4 January 1956, covered the period 20 October 1954 to 30 June 1955. All the provisions of the legislation referred to by the Government as ensuring the application of the Convention are cited under the particular subject heads to which they relate in the analysis of the legislation contained in Chapters 11 ff. above. The report did not give rise to any comments by the Committee of Experts or to any special mention in the report of the Conference Committee on the Application of Conventions and Recommendations.

862. In its report in respect of the period 1 July 1955 to 30 June 1956 minor changes in the legislation were reported [2] by the Government, which again gave rise to no comment. The reports furnished in respect of the periods 1 July 1956 to 30 June 1957 and 1 July 1957 to 30 June 1958 announced no changes in the situation.

863. In March 1959, however, referring to certain provisions in the legislation which had not been mentioned in the Government's reports in respect of this Convention, but which it had mentioned in its report under article 19 of the Constitution of the I.L.O. in respect of matters dealt with in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Committee of Experts made the following observation [3]:

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[1] See *Summary of Reports on Ratified Conventions (Articles 22 and 35 of the Constitution)*, Report III (Part I), International Labour Conference, 39th Session, Geneva, 1956 (Geneva, I.L.O., 1956), pp. 162-163.

[2] Ibid., 40th Session, Geneva, 1957 (Geneva, I.L.O., 1957), pp. 197-198.

[3] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), idem, 43rd Session, Geneva, 1959 (Geneva, I.L.O., 1959), p. 56. For further comments by the Committee of Experts on these legal provisions see para. 875 below.

The Committee has noted that, under section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law and section 5 (3) of the Local Public Enterprise Labour Relations Law, officers of a trade union must be employed in the undertaking in which the trade union recruits its members. Consequently, in the event of the dismissal of a trade union officer, the trade union must appoint a successor to him. It has appeared to the Committee that this provision may facilitate acts of interference on the part of the managements of such undertakings and that, in order to ensure fuller application of Article 2 of the Convention, which provides that, in particular, workers' organisations shall enjoy adequate protection against any acts of interference, it would be desirable for the provisions in question to be repealed or amended. The Committee would be grateful if the Government would indicate in its next report the measures that it intends to take in this connection.

864. The matter was then discussed in the Conference Committee on the Application of Conventions and Recommendations, on the occasion of the 43rd Session of the International Labour Conference (Geneva, June 1959). The following passage [1] was contained in the report of that Committee:

A Government representative made the following statement:

In Japan freedom to dismiss workers was restricted in law and practice, particularly as regards workers employed by enterprises covered by the Public Corporation and National Enterprise Labour Relations Law and the Local Public Enterprise Labour Relations Law. The status of workers of these enterprises was guaranteed by law; they could be dismissed only on one of specified grounds (e.g. negligence, breach of laws, etc.) and no arbitrary dismissal was possible. Under the Trade Union Law dismissal on account of union membership or proper union activities was prohibited and there existed special remedial procedures. The Government considered that there already existed adequate protection against acts of interference, as required by Article 2 of the Convention, and that there was no room for interference by managements in union affairs under section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law or section 5 (3) of the Local Public Enterprise Labour Relations Law. The Government had, however, decided as its basic position to abrogate these two subsections, after having examined them independently of Convention No. 98. It was expected that the internal conditions necessary for this abrogation would be fulfilled in the near future.

The Workers' members made the following statement:

This case was very serious; it concerned not only the non-application of Article 2 of Convention No. 98 but also the existence of legislation which permitted actual interference in the trade unions. The dismissal of a trade union leader automatically made it impossible for the dismissed worker to carry out his duties as a trade union leader. In these circumstances it was easy for the employer, and in this case this meant the Government, to leave a union without its leader in order to make its functioning difficult and, if the trade union refused to change its leader, to refuse to negotiate with this trade union under the pretext that the law would be violated by the trade union. The representative of the Japanese Government had stated that his Government was prepared to revoke section 5 (3) of the Local Public Enterprise Labour Relations Law, as well as section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law. This change was necessary to ensure the application of Article 2 of Convention No. 98. It would also permit ratification of Convention No. 87.

The Government representative stated in reply:

The Government was convinced that the legislation, and in particular section 7 of the Trade Union Law, ensured adequate protection against the acts of interference envisaged by Article 2 of Convention No. 98. Furthermore, the Government was free to refuse to take part in collective bargaining. Finally, under the law, a worker dismissed because of his trade union activities could be reinstated if the facts were established according to the procedure laid down.

The Japanese Workers' member stated that up to the present many workers in the public sector had been dismissed but there was no case where one had been reinstated.

The Workers' members added that the Government's reply was not satisfactory. In fact the employer was trying to force a trade union to exclude certain leaders, which was contrary to Conven-

[1] See *Record of Proceedings*, International Labour Conference, 43rd Session, Geneva, 1959 (Geneva, I.L.O., 1960), Appendix VI, pp. 692-693.

tion No. 98. The Minister of Labour of Japan had himself stated in the Diet on 27 March 1959 that it would be difficult to ratify Convention No. 87 as long as the Postal Workers' Union retained its present leadership. But it should be known whether the Japanese Government intended to apply Convention No. 98 by revoking the contrary legislative provisions; and thus trade unions in nationalised undertakings, and in particular that for postal workers, could operate under protection from acts of interference by the management of these undertakings and the Government. The Committee should note in its report that Japan did not ensure the application of Article 2 of Convention No. 98.

The Committee expressed the hope that the legislative provisions mentioned in the Committee of Experts with observations would be revoked as proposed by the Government.

865. In reply to the aforesaid observation of the Committee of Experts the Government of Japan furnished a report, received on 17 November 1959, the summary [1] of which is as follows:

In reply to the observation made by the Committee in 1959 the Government gives the following details.

Section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law was enacted in 1948 in order to counteract the then strong extreme left-wing influences in the trade union movement; it entailed no interference in union affairs. No arbitrary dismissal of workers is possible; the permissible reasons for dismissing public employees are defined by law, while dismissal on account of membership or holding office in a union or of proper trade union activities is prohibited by virtue of the twofold application of section 7 of the Trade Union Law and section 3 of the Public Corporation and National Enterprise Labour Relations Law. Remedial procedures for wrongful dismissal are available in the courts and also before the Labour Relations Commission. Hence, section 4 (3) could not conceivably facilitate acts of interference by management as suggested by the Committee. In the event of dismissal on a ground specified by law an employee who is an officer in a public employees' union ceases to be a member and becomes ineligible to continue as an officer; this is not " interference " by the management. Section 4 (3) has been examined, however, in the light of Convention No. 87, with Articles 2 and 3 of which it is considered to be incompatible. For this reason, with a view to the ratification of Convention No. 87, the repeal of section 4 (3) has been decided upon in accordance with the terms of the notification made by the Government to the I.L.O. on 25 February 1959.

866. This report was examined in March 1960 by the I.L.O. Committee of Experts, which made the following observation [2]:

The Committee has taken note with interest of the information given verbally by the Government at the Conference and of the detailed report forwarded by the Government. According to the Government, section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law, which provides that officers of trade unions must be persons employed in the undertaking in which the union operates, leaves no room for interference by managements in union affairs. It states, in this connection, that workers in the undertakings in question can be dismissed only on one of the grounds specified in the Law and that there exist various remedial procedures. The Government states that, consequently, no arbitrary dismissal is possible and, in particular, no dismissal with the intention of interfering in trade union affairs.

It appears to the Committee that certain of the grounds for dismissal are expressed in somewhat general terms and might permit of abuse; further, as the Committee pointed out in its General Remarks in 1959, in such cases " it may often be difficult, if not impossible, for a worker to furnish proof " of the real reason for his dismissal; moreover—except in cases in which the lodging of an appeal suspends the dismissal and makes the reinstatement of the worker possible—the mere fact of the dismissal (which may subsequently be found to be arbitrary) has the result that the law prohibits him from carrying on his activities as a trade union officer, since he is no longer employed in the undertaking. Such a provision, therefore, makes it possible for the managements of undertakings to paralyse or at least hinder the activities of a trade union by obliging it to choose new officers.

[1] See *Summary of Reports on Ratified Conventions (Articles 22 and 35 of the Constitution)*, Report III (Part I), International Labour Conference, 44th Session, Geneva, 1960 (Geneva, I.L.O., 1960), p. 111.

[2] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), idem, (Geneva, I.L.O., 1960), p. 62.

The Committee must observe that section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law and section 5 (3) of the Local Public Enterprise Labour Relations Law, which is drafted in similar terms, thus run counter to Article 2 of the Convention, according to which " workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration ". As the Government, according to the report, intends to repeal section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law, the Committee expresses the hope that this repeal will be effected as soon as possible and that section 5 (3) of the Local Public Enterprise Labour Relations Law will also be repealed.

867. The matter was then further discussed in the Conference Committee on the Application of Conventions and Recommendations, on the ocasion of the 44th Session of the International Labour Conference (Geneva, June 1960). The following passages [1] were contained in the report of the Committee:

A Government representative made the following statement:

The Government had on 28 April 1960 submitted to the Diet a Bill to ratify Convention No. 87, together with amendments, including the repeal of section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law and section 5 (3) of the Local Public Enterprise Labour Relations Law, which the Government considered to be contrary to Convention No. 87. The Government, however, maintained the point of view regarding the conformity of these two provisions with Convention No. 98 which it had expressed in its report and in its statement to the Conference Committee last year. In no case had these provisions led to abuse. All dismissals which had occurred had been based on grounds laid down by the legislation. The burden of proof of the grounds for dismissal lay on the management of undertakings when the courts or other bodies were required to decide whether dismissals were justified. The Government hoped that the Committee of Experts would re-examine the legal aspects of the matter. However, if the amendments proposed in connection with the ratification of Convention No. 87 were adopted, the problem would disappear.

The Japanese Workers' member made the following statement:

It was to be regretted that the Government had not yet taken the necessary measures to meet the Committee of Experts' observations and that the two legislative provisions in question had still continued to apply to railwaymen and postal workers. The Diet had not yet approved the ratification of Convention No. 87. Moreover, the amendments put forward by the Government in this connection would restrict existing trade union rights. This would be contrary to article 19 (8) of the I.L.O. Constitution, since the ratification of Convention No. 87 would indirectly affect existing customs and agreements. The Government interpreted the words " public servants engaged in the administration of the State " as covering all workers in receipt of wages from the Government or local authorities without distinction. Consequently, some 1,200,000 workers were subject to different legislation than that applicable to workers in the private sector and had not the right to negotiate collectively. This right should be granted to all state and local authority employees who were not civil servants in the strict sense. The workers hoped that the trade unions would be consulted before the adoption of amendments to the legislation and that their views should be duly taken into account, as demanded by the Committee a few years ago.

The Employers' members stated that, whatever the reasons might be, it was to be hoped that the repeal of the two provisions in question would settle the question, which had been discussed by the Committee for several years. The Committee could express a view on the proposed legislative provisions only when they became available.

The Workers' members stated that it was to be hoped that these provisions would be communicated by next year. The existing provisions were contrary to Article 2 of Convention No. 98 in several respects. Thus, it was provided that trade union leaders must belong to undertakings whose workers they represented; consequently, if they were dismissed, they could no longer take part in collective bargaining. Even if all possible measures were taken to prevent dismissals on the ground of trade union activities, they would not provide adequate protection, because everyone knew that employers could always find some other reason to justify the dismissal. Furthermore, nearly 2 million workers

[1] See *Record of Proceedings*, International Labour Conference, 44th Session, Geneva, 1960 (Geneva, I.L.O., 1961), Appendix VI, p. 630.

were regarded as public servants engaged in the administration of the State, including railwaymen and postal workers, and as such could not bargain collectively; 800,000 of them also were not allowed to strike. The legislation should be brought into conformity with Convention No. 98, quite apart from the ratification of Convention No. 87.

In reply, the Government representative stated that the provisions mentioned by the Committee of Experts would be repealed in connection with the ratification of Convention No. 87. The legislation applicable to railway workers, postal, telegraph and telephone workers, workers in public undertakings, etc., provided that the trade unions might negotiate with management and conclude collective agreements in the same way as those in the private sector. The National Public [Service] Law provided that trade unions might negotiate with the authorities on conditions of work. However, they could not conclude collective agreements, since their conditions of work were laid down by law. The Government had no intention to interfere in any way in the organisation, administration or activities of trade unions.

The Committee noted this information and expressed the hope that the proposed amendments and all other necessary measures would be taken without delay to ensure the full application of Convention No. 98. The Committee also expressed the hope that the Government would in its next report supply detailed information and provide a copy of the relevant legislation.

868. In reply, the Government furnished a further report in 1960, the summary [1] of which is as follows:

In reply to the observation made by the Committee of Experts in 1960 the Government reaffirms its view that section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law is not contrary to the Convention.

This section was enacted in order to protect the trade union movement in public corporations and national enterprises from subversive elements and not for the purpose of interfering in the election of union officers or in trade union administration.

Employees in the categories concerned may not be dismissed except on one of the grounds concretely and specifically defined by law; hence, a management cannot, by taking advantage of the provisions of the said section 4 (3), dismiss employees in order to interfere in the election of union officers. Section 7 of the Trade Union Law prohibits dismissal because of holding of office in a trade union or of membership or participation in proper trade union activities. By virtue of section 3 of the Public Corporation and National Enterprise Labour Relations Law, section 7 of the Trade Union Law is applicable in respect of public corporations and national enterprises. In the event of any dismissal in such establishments by reason of membership or holding of office in a trade union or of participation in proper trade union activities, the persons dismissed can seek a remedy in the courts or before the Labour Relations Commission. If a person is dismissed on one of the grounds specified in the Law and thereby loses his right to remain an officer of a trade union by virtue of section 4 (3), this is merely the consequence of the policy of the State in enacting section 4 (3) and does not mean that a management has interfered in union administration. None of the grounds for dismissal are specified in general terms, as indicated by the Committee. The Government and public corporations are very cautious with regard to the dismissal of employees and do not act even in cases falling within the provisions specifying justifiable grounds for dismissal unless the facts are clear and there are no extenuating circumstances. In illustration of this argument, statistics concerning dismissals in the Ministry of Postal Services during 1958 and 1959 are given. In a number of cases dismissals have been effected by public corporations or national enterprises where persons have committed acts expressly prohibited by law, but in no case have the courts declared such dismissals unlawful.

It is not difficult for a worker to furnish proof of the real reason for his dismissal because, when the courts or other remedial bodies examine a case of dismissal, the onus is on the management to furnish proof of the reason therefor in order to make the dismissal valid.

As one of the measures leading to the proposed ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948, proposed legislative amendments include repeal of section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law, and also of section 5 (3) of the Local Public Enterprise Labour Relations Law, which is in similar terms.

[1] See *Summary of Reports on Ratified Conventions (Articles 22 and 35 of the Constitution)*, Report III (Part I), International Labour Conference, 45th Session, Geneva, 1961 (Geneva, I.L.O., 1961), p. 87.

869. This report was examined by the Committee of Experts in March 1961, when the Committee made the following observations [1]:

The Committee has taken note with interest of the information furnished orally by a Government representative to the Conference and also of the detailed report furnished by the Government.

1. According to the Government, section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law, providing that trade union officers must be persons employed in the undertaking in which the trade union carries on its activities, is intended to protect the trade union movement in this sector of the economy against " subversive elements "; further, this section cannot afford a pretext for acts of interference because the grounds for dismissal are defined in the Law and various appeal procedures are available to the persons concerned; finally, the onus of proving the reason for dismissal falls upon the employer.

2. The Committee observes, however, that it would be extremely difficult for a worker who was dismissed by an employer invoking, for example, " neglect of duty " (section 31 (2) of the Japanese National Railways [Act]) to prove that the real motive for his dismissal was to be found in his trade union activities. Further, as lodging of an appeal does not suspend the decision taken, a dismissed trade union leader must, under the provisions of the Law, resign his trade union post when he is dismissed. As the Committee emphasised in 1959, section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law and section 5 (3) of the Local Public Enterprise Labour Relations Law, which is in similar terms, make it possible for the managements of these undertakings to hinder the activities of a trade union and thus run counter to Article 2 of the Convention, according to which " workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration ".

The Committee therefore expresses the hope that, in order to secure the full application of the Convention, the Government, which has expressed its intention to repeal the provisions referred to above, will be able to effect this repeal in the near future.

870. The matter was then considered by the Conference Committee on the Application of Conventions and Recommendations, on the occasion of the 45th Session of the International Labour Conference (Geneva, June 1961). The following passages [2] were contained in the report of the Committee:

The Government communicated the following information:

With a view to developing a free and democratic labour movement, the Government had decided on a policy to ratify Convention No. 87. In April 1960 it presented to the Diet Bills for amendment of the Public Corporation and National Enterprise Labour Relations Law and the Local Public Enterprise Labour Relations Law (hereinafter referred to respectively as the " Public Law " and the " Local Law "), including the repeal of the provisions of article 4, paragraph 3, of the former and article 5, paragraph 3, of the latter, which seem to run counter to the principles of joining organisations without distinction and electing representatives in full freedom as provided for in Articles 2 and 3 of Convention No. 87. It also presented a Bill for ratification of Convention No. 87. Owing to exceptional circumstances in the Diet, these Bills were not passed. The present Cabinet, which was formed subsequently, maintains the same policy and on 25 March 1961 presented to the Diet Bills for amendment of the Public Law and the Local Law, the contents of which are the same as of those presented last year, together with a Bill for ratification of Convention No. 87. These Bills are at present pending in the Diet.

However, as has been reiterated in the Government's reports on Convention No. 98, and as was stated by the Government representatives in the conference Committee, the Government considers that the provisions of article 4, paragraph 3, of the Public Law and article 5, paragraph 3, of the Local Law do not run counter to Convention No. 98. The Government also cannot agree to the observations made by the Committee of Experts this year, for the following reasons:

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[1] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 45th Session, Geneva, 1961 (Geneva, I.L.O., 1961), p. 98.

[2] See *Record of Proceedings*, idem (Geneva, I.L.O., 1962), Appendix VI, pp. 758-760.

(1) As previously stated, the requirements in article 4, paragraph 3, of the Public Law that only the employees of the public corporation and national enterprise shall be eligible as members of the employees' union in the said public corporation and national enterprise or as officers of such union and the corresponding provisions of article 5, paragraph 3, of the Local Law with regard to the employees' trade union in the local public enterprise operated by the local public body, were enacted to protect against subversive elements in the trade union movement those public enterprises having a serious influence on the public welfare.

Moreover, the grounds for dismissal of employees of these enterprises are prescribed by law. Further, article 7 of the Trade Union Law—under which the employer is disallowed, as an unfair labour practice, to discharge a worker for his having performed proper acts of a trade union or as a means of dominating or interfering in the establishment, functioning and administration of a trade union—is applicable to the employees of these enterprises. Therefore, such dismissal is void, and the employee may appeal to a court of law for remedies through the formal procedures or apply to the Public Corporation and National Enterprise Labour Relations Commission or the Labour Relations Commissions for remedies through informal procedures.

Therefore, article 4, paragraph 3, of the Public Law and article 5, paragraph 3, of the Local Law do not make it possible for the managements of these undertakings to interfere in the establishment, functioning or administration of a trade union, in the event of the dismissal by the managements of union officers who are not to their liking.

(2) The officers of the employees' unions in the public corporation and national enterprise concerned were dismissed in all cases for having resorted to acts of dispute expressly prohibited by the provisions of the Public Law. Employees have never been dismissed by the managements for the purpose of interfering in the election of union officers. Consequently, there has been no case of a decision by the court and the Public Corporation and National Enterprise Labour Relations Commission that the dismissal by these managements was an act of interference in the operation of a union and, therefore, an unfair labour practice.

(3) As stated in last year's report, when the court or other remedial machineries review the legality of dismissal, and especially if the grounds for dismissal are defined specifically by law as in the case of the public corporation and national enterprise or the local public enterprise operated by the local public body, the employer is required to prove the ground on which he has dismissed his employee, for such dismissal to be valid. For example, when the employer has dismissed his employee for " neglect of duty ", he must prove an act of " neglect of duty " so obvious and serious that it deserves such dismissal as definitely established in the interpretation and application of the law. If the employee asserts that the real motive for the dismissal was his trade union activities, the employer must produce counter-evidence and prove that the real motive was " neglect of duty " by the employee.

(4) If, upon dismissal for having performed proper acts of a trade union or as a means of interfering in the establishment, functioning or administration of a trade union, the employee claims remedies for such unfair labour practices, it is sufficient for him only to prove the unjustifiableness of the reasons for dismissal put forth by the employer and the facts suggesting that there has been on the side of the employer the intention of dismissing the employee through detestation of his proper trade union acts or the intention of dominating or interfering in the establishment, functioning and administration of a trade union.

In a number of cases, the Labour Relations Commissions have dealt with appeals by workers in private undertakings who asserted that the dismissals by employers were unfair labour practices committed against proper union activities or with the intention of dominating or interfering in the establishment, functioning or administration of trade unions. The cases in which the Commissions found that the dismissal was on the ground of union activities reach a considerably high rate. For example, in 1959, in 98 cases of dismissal considered, remedies against dismissal were granted in 69 cases (or 70.4 per cent.). The 1959 figures for trade union officers only are 72 cases, with remedies granted in 55 cases (or 76.4 per cent.). These facts show that it is not so difficult for a worker to prove that he was dismissed on the ground of union activities as the Committee of Experts appears to believe, and the Government considers that there is no reason for the observations made by the Committee.

(5) When a worker who has lodged an appeal against his dismissal suffers serious damage from the continuance of the dismissal before a decision on such appeal, he may be protected by the temporary suspension of the dismissal as a provisional disposition under the Code of Civil Procedure or as the suspension of the execution of an administrative disposition under the Law for Special Regulations concerning the Procedure of Administrative Litigations.

The Government considers that, to comply with Convention No. 98, it is not necessary that the legislation should provide for the temporary suspension of dismissal whenever union officers who assert that they have been dismissed on the ground of proper union activities lodge an appeal against such dismissal, but that the systems established by the codes of legal procedure, including the above-mentioned ones, suffice.

(6) Moreover, when the above-mentioned Bills presented to the Diet in connection with the ratification of Convention No. 87 have been passed, any problems as to the relationship between article 4, paragraph 3, of the Public Law and article 5, paragraph 3, of the Local Law and Convention No. 98 will also be completely settled.

In addition, a Government representative made the following statement:

When addressing the Conference, the Minister of Labour had referred to the Government's decision to ratify Convention No. 87, and he had confirmed the Government's intention to continue its effort to ratify the Convention as early as possible. The Government hoped that the difference of opinion concerning the application of Convention No. 98 would be dispelled following the ratification of Convention No. 87.

The Workers' members noted the Government's assurance concerning the forthcoming ratification of Convention No. 87 and made the following statement:

The existing problems concerned above all the rights of organisation of civil servants, teachers, railwaymen and other workers in public undertakings. The facts noted in the 54th report of the Governing Body Committee on Freedom of Association (June 1961) revealed a very serious situation. The crucial point was the requirement that trade union officers must work in the administrative service or undertaking concerned; when they left their employment, either voluntarily or as a result of dismissal by their employer, they must vacate their office. Such provisions made it possible for managers to interfere in the working of trade unions, and were contrary to Article 2 of Convention No. 98, which provided for adequate protection against acts of interference. The Workers' members considered that, if such provisions existed, when a trade union leader harassed the employer (as he must occasionally do to press his union's claims), the employer would dismiss him for some alleged reason unconnected with his trade union activities, thus compelling him to resign his trade union office. This practice was not in conformity with the Convention, and the Government should provide suitable guarantees to ensure its application.

In reply, the Government representative made the following statement:

As already indicated, there had never been a case of dismissal of a trade union officer in a public enterprise on account of his trade union activities, and accordingly there had been no decision by the bodies including judicial courts to whom claims for relief would have to be presented. Therefore, the fears voiced by the Workers' members were groundless.

The Employers' members made the following statement:

The Employers' members agreed with the comments made by the Workers' members. If an employer wanted to find an excuse for dismissal, he would very often be able to do so without difficulty. The very fact that there was no case in which it had been held that a worker in a public enterprise had been dismissed for trade union activities might be an indication of a worker's difficulty in proving the true cause of dismissal.

In reply to a question, the Government representative stated that the Government would seek to obtain approval of the Bills by Parliament as quickly as possible.

The Japanese Workers' member made the following statement:

The Japanese workers greatly regretted that the Government did not accept the Committee of Experts' conclusions. The Government had indicated that, in connection with the ratification of Convention No. 87, Bills had been presented to repeal article 4 (3) of the Public Corporation and National Enterprise Labour Relations Law and article 5 (3) of the Local Public Enterprise Labour

Relations Law. However, the Bills were not limited to repealing these provisions; they imposed a whole series of further restrictions on trade union rights. The Japanese workers were opposed to these new restrictions, and insisted upon the adoption of legislation which would fully respect Conventions Nos. 87 and 98. In its reply, the Government had quoted statistics of appeals against dismissals in private undertakings. Such undertakings were, however, governed by entirely different legislation from public undertakings, and the figures mentioned were therefore not relevant. The law left it to the employer to decide whether trade union activities were proper. Views varied from one employer to another, and even among managers of different departments in the same undertaking. When a manager of a public undertaking or the head of an administrative service did not wish to negotiate with a particular trade union officer, he would find some ground for dismissing him. Moreover, trade union officers might be prosecuted because of trade union activities. Two-hundred-and-seventy trade union leaders had recently been prosecuted in this way. This was an infringement of Convention No. 105. A few months ago trade unions in the public sector took action in support of wage claims; disciplinary action against the leaders was taken, and 70 dismissed. The Japanese workers hoped that the Committee would insist upon the Government's observance of Convention No. 98 and Convention No. 87. Tripartite consultative machinery had been set up in Japan some years ago with a view to developing good labour relations and also for consideration of ratification of I.L.O. Conventions. The Japanese workers hoped that this machinery would continue to function and not be abolished, as had recently been threatened.

The Government representative made the following statement:

The Government did not consider it proper to discuss its particular domestic matters in the Committee. In his address to the Conference, the Minister of Labour had confirmed his Government's wish to continue creating an atmosphere for tripartite consultation using the existing consultation system. As to the operation of certain advisory committees, the Government would consult with the workers' and employers' organisations concerned.

Convention No. 105 had been mentioned. The Government was seriously considering its ratification. Certain points, however, appeared to require clarification, and it was proposed to await the results of the special study on forced labour which the Committee of Experts would make at its next session.

The Committee urges the Government to bring the legislation into conformity with the Convention at an early date.

871. A further report on the question was furnished by the Government of Japan in 1962, the summary [1] of which is as follows:

The Bill for the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Bills to effect related changes in the legislation, including the repeal of section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law and section 5 (3) of the Local Public Enterprise Labour Relations Law, were submitted to the Diet on 13 April 1962, but were not passed.

872. At its meeting in March 1963, the Committee of Experts made the following observations [2]:

The Committee takes note of the remarks made at the 45th Session of the Conference by a Government representative but observes that, while repeating in more detailed form the earlier comments of the Government, they add no new elements to the information before the Committee when it made its observation in 1961.

The Committee therefore can only reaffirm its observation that section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law and section 5 (3) of the Local Public Enterprise Relations Law, which is drafted in similar terms, run counter to Article 2 of the Convention, according to which " workers' and employers' organisations shall enjoy adequate protection against any acts of interference . . . ".

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[1] See *Summary of Reports on Ratified Conventions (Articles 22 and 35 of the Constitution)*, Report III (Part I), International Labour Conference, 47th Session, Geneva, 1963 (Geneva, I.L.O., 1963), p. 179.

[2] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), idem (Geneva, I.L.O., 1963), pp. 111-112.

It expresses regret that the Bill to repeal the provisions criticised did not pass the Diet in April 1962. It notes, however, from paragraph 67 of the 68th Report of the Committee on Freedom of Association, that the Government declared, in a communication dated 13 February 1963, its intention to submit the amending Bill to the current session of the Diet. The Committee expresses therefore its firm hope that the provisions in question will now be repealed.

873. The matter was examined by the Committee on the Application of Conventions and Recommendations on the occasion of the 47th Session of the International Labour Conference (June 1963). The following passage [1] appeared in its report:

A Government representative made the following statement:

The Government maintained its views which were indicated in the Committee of Experts' report. However, progress had been made. The Government had submitted to the Diet a Bill for the ratification of Convention No. 87. Once this Bill was adopted, the observations made by the Committee of Experts would be met.

The Committee took note of this statement.

874. A further report was furnished by the Government of Japan in 1964, the summary [2] of which is as follows:

In reply to the observations of the Committee of Experts, the Government states as follows.

The developments made since the submission of the previous report concerning the Bills to amend the Public Corporation and National Enterprise Labour Relations Law and the Local Public Enterprise Labour Relations Law in connection with the proposed ratification of the Convention No. 87, including the abrogation of section 4, paragraph 3, of the former law and section 5, paragraph 3, of the latter law are as follows.

On 2 March 1963 the Cabinet submitted to the 43rd ordinary session of the Diet Bills to amend these two laws, etc., which were of the same contents as those submitted to the 40th Diet session, as well as a Bill for the ratification of the Convention No. 87. On 14 June of the same year a special Committee on the International Labour Convention No. 87 and Related Matters was established at the House of Representatives and the House of Councillors, with a view to deliberating on the proposals related to the ratification of the Convention. Although there was a good deal of discussion, the debate was not completed before the end of the session and the proposals related to the ratification of the Convention were not approved.

On 17 October 1963 the Cabinet submitted to the 44th extraordinary session of the Diet a Bill for the Ratification of the Convention No. 87 and Bills to amend the two laws, etc., which were of the same contents as those submitted to the previous Diet session. During this session also, a Special Committee on the International Labour Convention No. 87 and Related Matters was established at the House of Representatives on 17 October and at the House of Councillors on 18 October. However, as the House of Representatives was dissolved on 23 October the same year, bringing the Diet session to a close, the proposals related to the ratification of the Convention were not approved.

On 20 December 1963 the Cabinet submitted to the 46th ordinary session of the Diet a Bill for the ratification of the Convention No. 87 and Bills to amend the two laws, etc., which were of the same contents as those submitted to the 44th Diet session. During the session a Special Committee on the International Labour Convention No. 87 and Related Matters was established at the House of Representatives on 23 April 1964 and at the House of Councillors on 24 April 1964, with a view to making deliberations on the proposals related to the ratification of the Convention. The House of Representatives Special Committee made detailed and enthusiastic deliberations in a total of 17 sittings on and after 27 April, but the proposals related to the ratification of the Convention failed to be approved during that session.

875. At its meeting in March 1965 the Committee of Experts made the following observation [3]:

[1] See *Record of Proceedings*, idem (Geneva, I.L.O., 1964), Appendix V, p. 540.

[2] See *Summary of Reports on Ratified Conventions (Articles 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 49th Session, Geneva, 1965 (Geneva, I.L.O., 1965), pp. 218-219.

[3] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), idem (Geneva, I.L.O., 1965), p. 109.

The Committee takes note of the statement made before the Conference Committee, at its 47th Session, by a representative of the Government, and of the information furnished by the Government in its report.

While reaffirming its earlier observation to the effect that section 4, paragraph 3, of the Public Corporation and National Enterprise Labour Relations Law, and section 5, paragraph 3, of the Local Public Enterprise Labour Relations Law, which is in similar terms, run counter to Article 2 of the Convention, according to which " workers' and employers' organisations shall enjoy adequate protection against any acts of interference . . . ", the Committee notes that, according to the statement made by the representative of the Government, the observations of the Committee of Experts will be met when the Diet has approved the Bill for the ratification of Convention No. 87 which has been submitted to it. The Committee strongly hopes that the adoption of this Bill will bring the legislation into conformity with the Convention in the near future.

B. Examination of Reports Furnished by the Government of Japan pursuant to Article 19 of the Constitution of the I.L.O. in regard to the Matters Dealt with in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

876. Member States were requested by the Governing Body to furnish reports concerning the Convention in July 1952. A report was received from the Government of Japan on 23 July 1952.

877. The report [1] indicated certain of the provisions of the Constitution and of the Trade Union Law giving effect to some of the provisions of the Convention, others being implemented in practice. The Government stated that the necessary procedure for the ratification of the Convention had not yet been completed but considered that substantial effect was given to its provisions under the existing legislation.

878. Member States were requested by the Governing Body to furnish further reports concerning the Convention in July 1956. A report was received from the Government of Japan on 14 August 1956.

879. The report [2] referred to the situation under the provisions of the various enactments which are analysed in Chapters 11 to 15 above.

In particular, it was stated:

. . . Workers representing the interest of employers may not join a workers' organisation. Membership of organisations formed by national and local regular government employees, the employees of public corporations and national enterprises (listed in the report), the employees of local public enterprises (also listed) and workers engaged in local public service is restricted to the categories in question.

. . . organisations of government employees or of employees of public corporations and national enterprises may elect as their representatives only persons who are employees in the respective categories.

. . . . . .

No modifications have been made in national law or practice with a view to giving effect to all or any of the provisions of the Convention, which has not been ratified by the Government because on certain points there may be some discrepancies between the Convention and national legislation,

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[1] See *Summary of Reports on Unratified Conventions and on Recommendations (Article 19 of the Constitution)*, Report III (Part II), International Labour Conference, 36th Session, 1953 (Geneva, I.L.O., 1953), p. 13.

[2] Ibid., 40th Session, Geneva, 1957 (Geneva, I.L.O., 1957), pp. 74-75.

especially with regard to public servants and others assimilated thereto. No modifications are likely for the time being. If the Convention were to be interpreted as not dealing with the position of public servants and similar categories, the possibility of ratification would increase considerably.

880. A Government representative stated before the Conference Committee on the Application of Conventions and Recommendations, on the occasion of the 40th Session of the International Labour Conference (June 1957), that the Government was considering the possibility of ratifying the Convention and would consult employers' and workers' organisations in this connection.[1]

881. The Governing Body requested governments to furnish another report on this Convention in July 1958. A report was forwarded by the Government of Japan on 8 August 1958.

882. The report [2] took account of an amendment to the Public Corporation and National Enterprise Labour Relations Law. It indicated that recognition of trade unions in public corporations and national enterprises is made by the Public Corporation and National Enterprise Labour Relations Commission. It referred also to the fact that personnel of the police services, fire services, Maritime Safety Board, penal institutions and Self-Defence Force did not have the right to organise or to join personnel organisations. The report concluded:

> No immediate amendment to legislation is contemplated but the problem of ratification is being carefully considered by the Labour Minister's (tripartite) Advisory Committee on Labour Problems.

883. In March 1959 the Committee of Experts on the Application of Conventions and Recommendations included in its report certain " Conclusions concerning the Reports Received under Articles 19 and 22 of the Constitution of the I.L.O. on the Effect Given to Conventions and Recommendations relating to Freedom of Association and Protection of the Right to Organise, Collective Bargaining and Collective Agreements, Co-operation in the Undertaking". In particular, two references were made therein to the legislation of Japan in the light of the standards laid down in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

884. In the first place, Article 2 of the Convention guarantees the right of workers and employers " without distinction whatsoever " to form and join organisations. Among the " distinctions leading to prohibition " of the right to organise, the Committee of Experts drew attention to the fact that in Japan " in some cases, foremen and higher grades are prohibited not only from belonging to the same trade unions as other workers but even from establishing special trade unions". [3]

885. Secondly, Article 3 of the Convention guarantees, *inter alia*, the right of workers' and employers' organisations " to elect their representatives in full freedom". The Committee of Experts, citing among other examples the provisions contained in Japanese legislation (N.P.S. Law, s. 98; L.P.S. Law, s. 52; P.C.N.E.L.R. Law, s. 4 (3); L.P.E.L.R. Law, s. 5 (3)), concluded:

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[1] See *Record of Proceedings*, International Labour Conference, 40th Session, Geneva, 1957 (Geneva, I.L.O., 1958), Appendix VI, p. 697.

[2] See *Summary of Reports on Unratified Conventions and Recommendations (Article 19 of the Constitution)*, Report III (Part II), idem, 43rd Session, Geneva, 1959 (Geneva, I.L.O., 1959), pp. 8-9.

[3] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), idem, 43rd Session, Geneva, 1959 (Geneva, I.L.O., 1959), para. 17, p. 104.

. . . it would seem that when provisions in national legislation provide that all the trade union leaders shall belong to the occupation in respect of which the organisation carries on its activities, the guarantees laid down in the Convention may be impaired. In fact, in such cases, the dismissal of a worker who is a trade union leader may, by reason of the fact that dismissal causes him to lose his status as a trade union officer, infringe the freedom of activity of the organisation and its right to elect representatives in freedom, and may even leave the way open for acts of interference by the employer.[1]

886. Reference to the question of ratification of the Convention was made in the Conference Committee on the Application of Conventions and Recommendations, on the occasion of the 43rd Session of the International Labour Conference (June 1959). The following passage [2] is contained in the Committee's report:

As regards Japan, the Workers' members referred to the indications contained in paragraph 161 of the Conclusions of the Committee of Experts where this country is mentioned among those which contemplate the ratification of the Convention, or which have initiated the internal procedure laid down for this purpose. They recalled that in 1957 and 1958 the Conference Committee had discussed the question of freedom of association in Japan, and that the Japanese Government representative had stated that his country would ratify the Freedom of Association and Protection of the Right to Organise Convention (No. 87). They drew attention to the fact that this statement had been repeatedly confirmed during the deliberations of the Governing Body Committee on Freedom of Association, and that the Japanese Minister of Labour had declared in the plenary sitting of the Conference that he hoped that the various internal conditions necessary for this ratification would be fulfilled in the near future, and had added that, upon the fulfilment of the said conditions, the procedure for the ratification of the Convention would be initiated. The Workers' members wished to know what was the nature of the conditions which would have to be fulfilled to make ratification possible. In reply, the Japanese Government member stated that it was customary in his country before ratifying an international Convention to proceed first to the amendment of legislation if it was not in conformity with the international instrument whose ratification was envisaged.

C. Examination of Reports Furnished by the Government of Japan pursuant to Article 19 of the Constitution of the I.L.O. in regard to the Matters Dealt with in the Collective Agreements Recommendation, 1951 (No. 91)

887. The Governing Body requested governments to furnish reports on this Recommendation, pursuant to article 19 of the Constitution of the I.L.O., in 1955. A report was forwarded by the Government of Japan on 19 July 1955.

888. In this report [3] the Government explains the provisions governing collective bargaining contained in the Trade Union Law, the Public Corporation and National Enterprise Labour Relations Law and the Local Public Enterprise Labour Relations Law, which are analysed in Chapters 11, 12 and 13 above.

889. In particular, with respect to the effect given to Paragraph 3 (1) of the Recommendation, which provides that "Collective agreements should bind the signatories thereto and those on whose behalf the agreement is concluded", the Government pointed out that, under section 16 of the Public Corporation and National Enterprise Labour Relations Law and section 10 of the Local Public Enterprise Labour Relations Law—

[1] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 43rd Session, Geneva, 1959 (Geneva, 1959).

[2] See *Record of Proceedings*, idem, (Geneva, I.L.O., 1960), Appendix VI, . 708.

[3] See *Summary of Reports on Unratified Conventions and on Recommendations (Article 19 of the Constitution)*, Report III (Part II), idem, 39th Session, Geneva, 1956 (Geneva, I.L.O., 1956), pp. 28-29.

. . . trade agreements involving the expenditure of funds not available from the budget approved by the National Diet or Local Diet will not bind the National Government or the local public body concerned until the National Diet or the Local Diet has approved the agreement.

890. The report concluded:

The Government does not consider it necessary at this time to take any further special measures for the implementation of the Recommendation.

It is considered that the national legislation now in force conforms to the intentions and provisions of the Recommendation.

However, as regards persons employed in the national or local public bodies, it is not considered appropriate that this Recommendation should be applied to them without modification.

891. The Governing Body requested governments to furnish further reports in 1958. A report was forwarded by the Government of Japan on 8 August 1958.

892. In this report [1] the Government drew attention to a number of amendments to the legislation and, in particular, to one which again was related to the effect given to Paragraph 3 (1) of the Recommendation referred to above. The report stated:

Section 8 of the Local Public Enterprise Labour Relations Law provides that, when a collective agreement is in conflict with the by-laws of a local public body, the chief of the local public body concerned shall submit to its assembly a Bill to revise or abolish the by-law in order that the agreement may cease to conflict with the by-laws. Unless the Bill is adopted the collective agreement does not take effect to the extent that it is in conflict with the by-law. Furthermore, section 9 provides that if a collective agreement is in conflict with the regulations and other rules of the local public body the chief of the local body shall immediately take measures concerning the necessary amendment or abolishment of regulations and other rules in order that the collective agreement may cease to conflict with the regulations and other rules.

D. Examination of the Report Furnished by the Government of Japan pursuant to Article 19 of the Constitution of the I.L.O. in regard to the Matters Dealt with in the Co-operation at the Level of the Undertaking Recommendation, 1952 (No. 94)

893. The Governing Body requested governments to furnish reports on this Recommendation in 1958. The Government of Japan forwarded a report on 8 August 1958. This report [2], explaining the effect given to the Recommendation, mainly by practice, does not call for any special comment in the present context.

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[1] See *Summary of Reports on Unratified Conventions and on Recommendations (Article 19 of the Constitution)*, Report III (Part II), International Labour Conference, 43rd Session, Geneva, 1959 (Geneva, I.L.O., 1959), pp. 39-40.

[2] Ibid., p. 60.

Section 3

CHAPTER 20

EXAMINATION OF THE CASE BY THE GOVERNING BODY COMMITTEE ON FREEDOM OF ASSOCIATION

894. It is now proposed to summarise the allegations of the complaining trade unions and the replies of the Government of Japan thereto, as communicated to the Governing Body's Committee on Freedom of Association beginning in April 1958. The complaints and replies dealt with in this chapter relate to the following matters: restrictions on trade union membership and election of officers, denial of the right to strike and defects in the mediation and arbitration systems, denial of the right of association to supervisory employees, and collective bargaining, these matters being related to the application of the Public Corporation and National Enterprise Labour Relations Law and the Local Public Enterprise Labour Relations Law; denial of the right of association to the personnel of certain services in the national public service, the " full-time union officers " system in the national and local public services, collective bargaining in the national and local public services, registration and scope of organisations under the Local Public Service Law, denial of the right to strike and lack of compensatory guarantees under the Local Public Service Law, proposed amendments to the Local Public Service Law, the Police Duties Law, and alleged acts of governmental interference or anti-union discrimination in various parts of the public corporation, national and local enterprise and public service sector.

895. A complete analysis of the allegations and the replies thereto over a period of more than seven years was made by the Committee on Freedom of Association, and these appear in successive reports of the Committee which are to be found in the *Official Bulletin* of the I.L.O., more particularly the 32nd, 33rd, 36th, 41st, 44th, 47th, 49th, 52nd, 54th, 58th, 60th, 64th, 66th, 68th, 70th and 72nd Reports of the Committee on Freedom of Association. A complete recapitulation of the allegations of the complaints, the replies of the Government and the action which the Committee on Freedom of Association recommended the Governing Body to take was prepared for the use of the Fact-Finding and Conciliation Commission. This is presently in the library of the International Labour Office with the other documents mentioned in paragraph 26 above.

A. Restrictions on Trade Union Membership and Election of Officers (Public Corporation and National Enterprise Labour Relations Law and Local Public Enterprise Labour Relations Law)

896. These allegations related to section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law (P.C.N.E.L.R. Law) and section 5 (3) of the Local Public Enterprise Labour Relations Law (L.P.E.L.R. Law), which permit only persons who are actually employees of the undertakings concerned to be members

or officers of trade unions organised by such employees. The allegations of this nature form the basis of the first complaints submitted to the I.L.O. in 1958.[1]

897. The first recommendations of the Committee on Freedom of Association to the Governing Body are found in paragraph 20 of the Committee's 32nd Report [2] wherein the Committee recommended the Governing Body—

(a) to draw the attention of the Government to its view that the fact that a trade union official or executive member who is dismissed by the management of a public corporation or national enterprise loses not only his employment but also his right to participate in the administration of his trade union means that the management could in this way interfere with the right of workers to elect their representatives in full freedom, a right which constitutes one of the essential aspects of freedom of association;

(b) to request the Government to be good enough to furnish a copy of the judgment already given by the Tokyo District Court in the case instituted by the Locomotive Engineers' Union;

(c) to request the Government to furnish its observations on the alleged refusal of the competent administrations to negotiate with the Locomotive Engineers' Union and the All-Japan Postal Workers' Union on the grounds that their officers included persons who had been dismissed from their employment;

(d) to take note of the Government's statement that it is examining the question of the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and to request the Government to be good enough to inform the Governing Body as to the results of this examination.

898. These recommendations were approved by the Governing Body at its 140th Session, November 1958. Subsequently, the allegations were examined by the Committee in the light, firstly, of the position with regard to ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and secondly, in the light of the provisions of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Japan in 1954.

1. *Ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)*

899. In its communication of 25 February 1959 [3] the Government indicated that it felt that in order to ratify Convention No. 87, sections 4 (3) of the P.C.N.E.L.R. Law and 5 (3) of the L.P.E.L.R. Law needed to be abrogated at the same time, but that until such action should be completed it was essential that labour and management should observe the legislation in force. The subsequent allegations of the complainants and replies by the Government on this subject dealt with the modalities of achieving both the ratification and the simultaneous amendment of the legislation necessary for it to conform to the standards of Convention No. 87.

900. The Committee on Freedom of Association in paragraph 9 of its 33rd Report [4] for the first time took note of the Government's statement as to the decision to amend its legislation and to ratify the Convention. The Committee made virtually the same comment in paragraph 10 of its 36th Report.[5] The Committee submitted to the Governing Body the following conclusions contained in paragraphs 195 *(a)* and *(b)* of its 41st Report [6], which read as follows:

[1] These allegations and the Government's replies thereto are to be found in docs. Nos. 1-6, 9-13, 16, 19-29, 38, 41, 43, 44, 50, 53, 58-62, 65, 67-69, 71, 73, 74, 77-79, 80-82, 84, 85 and 86.

[2] See *Official Bulletin*, Vol. XLIII, 1960, No. 3, pp. 145-146.

[3] Doc. No. 19.

[4] See *Official Bulletin*, Vol. XLIII, 1960, No. 3, p. 148.

[5] Ibid., p. 180.

[6] Ibid., p. 260.

195. In all the circumstances, therefore, the Committee recommends the Governing Body to emphasise the importance which it attaches to an early solution of the issues involved in the present case, which has been before the Committee since the meeting in November 1958, to express the hope that such solution will be reached at an early date through discussions between the Government and the organisations concerned, and—

(a) to draw the attention of the Government to the conclusion reached by the Governing Body at its 140th Session (November 1958) that the fact that a trade union official or executive member who is dismissed by the management of a public corporation or national enterprise loses not only his employment but also his right to participate in the administration of his trade union means that the management could in this way interfere with the right of workers to elect their representatives in full freedom, a right which constitutes one of the essential aspects of freedom of association and which is guaranteed by Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);

(b) to take note of the statements contained in the communication from the Government dated 26 October 1959, and, having regard to the earlier statement by the Government, noted in paragraph 10 of the Committee's 36th Report, to express the hope that the remaining difficulties referred to therein will be resolved in the near future, as the Government anticipates they will be, and that the Government will be able to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), at an early date, and to request the Government to keep the Governing Body informed of any further developments in the situation.

This report was approved by the Governing Body at its 144th Session (March 1960).

901. Further recommendations to this same effect were set forth in subparagraphs *(a)*, *(b)* and *(c)* of paragraph 104 of the Committee's 44th Report[1], which read as follows:

104. In these circumstances the Committee recommends the Governing Body—

(a) to take note of the conclusions contained in paragraph 195 of the 41st Report of the Committee;

(b) to take note with interest of the Government's statement that collective bargaining relations between the Japanese Postal Authority and the All-Japan Postal Workers' Union have been restored and that preparations for the abrogation of section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law and section 5 (3) of the Local Public Enterprise Labour Relations Law and for the readjustment of other related laws and regulations are now being made by the Ministries concerned in accordance with the decision made at a Cabinet meeting in February 1959;

(c) to express the hope that effect will now be given at an early date to the decision of the Cabinet meeting in question to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), already noted in paragraph 9 of the Committee's 33rd Report; to request the Government to keep the Governing Body informed as to developments in this connection.

This report of the Committee was approved by the Governing Body at its 144th Session (March 1960).

902. The Committee, in paragraph 98 of its 47th Report[2], recommended the Governing Body—

(a) to note with satisfaction the Government's statement that, having decided to seek the approval of the National Diet for ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it has submitted the Convention to the Diet together with Bills to amend the relevant legislation, including Bills to abrogate section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law and section 5 (3) of the Local Public Enterprise Labour Relations Law;

[1] See *Official Bulletin*, Vol. XLIII, 1960, No. 3, pp. 285-286.

[2] Ibid., Vol. XLIV, 1961, No. 3, p. 103.

(b) to express the hope that the proposals to ratify the Convention and to enact the Bills referred to above will be approved by the National Diet at an early date;

(c) to request the Government to be good enough to keep the Governing Body informed as to further developments in this connection.

This report of the Committee was approved by the Governing Body at its 145th Session (May 1960). The Committee made substantially the same recommendations in its 49th Report, paragraph 71, approved by the Governing Body at its 147th Session (November 1960), and its 52nd Report, paragraph 92, approved by the Governing Body at its 148th Session (March 1961).

903. In its 54th Report, paragraph 188 *(a)*[3], approved by the Governing Body at its 149th Session (May-June 1961), the Committee recommended the Governing Body—

to take note of the Government's statement, in its communication dated 9 May 1961, that it submitted to the National Diet on 25 March 1961, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Bills to amend the related laws, and that they are now under consideration by the Diet; to express the hope that the proposal to ratify the Convention and to adapt the legislation to it will be approved by the National Diet at an early date, in accordance with the wish expressed by the Prime Minister of Japan when meeting representatives of the Japanese trade unions on 14 April 1961 that such action should be taken by the Diet at its present session; and to request the Government to be good enough to continue to keep the Governing Body informed as to further developments in this connection.

904. The Committee recommended the Governing Body in paragraph 431 *(a)* of its 58th Report[4]—

to take note of the Government's explanation as to the reasons why it was not found possible to present the Bills relating to the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), to the Extraordinary Session of the Diet which closed on 31 October 1961, and of the Government's statement that there is no diversion at all in the policy of the Government for early ratification of the Convention and that the Government is ready to exert its efforts to secure approval of the Bills by the Diet by submitting them to the coming ordinary session; to express its disappointment that the Convention which the Government has on nine separate occasions from 25 February 1959 onwards indicated its intention of ratifying, has not yet been ratified by Japan; and to request the Government to keep the Governing Body informed as to further developments in connection with the Government's expressed intention of submitting the Bills providing for the ratification of the Convention to the coming ordinary session of the Diet to be convened at the end of the present year.

This report of the Committee was approved by the Governing Body at its 150th Session (November 1961).

905. Similar recommendations of the Committee, based on communications received from the Government, were made to the Governing Body in the Committee's 60th Report, paragraph 109[5], approved by the Governing Body at its 151st Session (March 1962), its 64th Report, paragraph 25[6], approved by the Governing Body at its 152nd Session (June 1962), its 66th Report, paragraph 384[7], approved by the

[1] See *Official Bulletin*, Vol. XLIV, 1961, No. 3, pp. 135-136.
[2] Ibid., Vol. XLIV, 1961, No. 3, p. 225.
[3] Ibid., Vol. XLIV, 1961, No. 3, p. 309.
[4] Ibid., Vol. XLV, No. 1, Jan. 1962, Suppl., p. 74.
[5] Ibid., Vol. XLV, No. 2, Apr. 1962, Suppl. I, pp. 23-24.
[6] Ibid., Vol. XLV, No. 3, July 1962, Suppl. II, pp. 46-47.
[7] Ibid., Vol. XLVI, No. 1, Jan. 1963, Suppl. I, pp. 66-67.

Governing Body at its 153rd Session (November 1962) and its 68th Report, paragraph 80[1], approved by the Governing Body at its 154th Session (March 1963).

906. In paragraph 103 of its 70th Report [2] the Committee submitted the following recommendation to the Governing Body:

> 103. In these circumstances the Committee, recalling that the Government announced as long ago as 6 November 1958 that it was considering the question of ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and then, in a communication dated 25 February 1959, announced that the Cabinet had decided to ratify the Convention and to repeal section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law and section 5 (3) of the Local Public Enterprise Labour Relations Law, recommends the Governing Body—
>
> *(a)* to take note of the Government's statement that Bills to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and to amend the related national legislation were submitted to the Diet on 2 March 1963;
>
> *(b)* to note also the Government's further statement that, following the resumption of the current Diet session after the April recess, informal negotiations were reopened between the representatives of the government and opposition parties with regard to the aforesaid Bills, and that agreement was reached on 15 May 1963 to continue the negotiations in an effort to ensure the passage of the Bills during the current Diet session, which has been prolonged until 6 July 1963;
>
> *(c)* to express its sincere hope, in accordance with the assurances given by the Government on many previous occasions and with the expectations of the Government as expressed by the Prime Minister, as indicated in the Government's communication dated 13 February 1963, the Bills to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), will be approved by the Diet during its current session;
>
> *(d)* to request the Government to be good enough to inform the Governing Body as to further developments in this connection, in time for the information to be considered by the Governing Body at its session in late June 1963 immediately following the close of the 47th Session of the International Labour Conference.

This report was approved by the Governing Body at its 155th Session (June 1963).

907. Finally the Committee submitted to the Governing Body the recommendations contained in paragraph 208 of the 72nd Report [3], which read as follows:

> 208. In these circumstances the Committee, having regard to the questions which have thus been at issue for several years and taking into account also the fact that five years have now elapsed since the original assurances concerning the proposal to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), given by the Japanese Government were received, that these assurances have been given on 12 occasions and that the proposal to ratify the Convention has now been submitted to five sessions of the Diet without a satisfactory result being reached, recommends the Governing Body—
>
> *(a)* to decide to request the Government of Japan, as provided for in subparagraph *(b)* below, to give its consent to the case as a whole being referred to the Fact-Finding and Conciliation Commission on Freedom of Association;
>
> *(b)* to request the Director-General to submit to the Governing Body, at its session in February-March 1964, more detailed proposals for the reference of the matter to the Commission, on the basis of which the consent of the Government will be requested in accordance with the decision recommended in the preceding subparagraph.

This report was approved by the Governing Body at its 157th Session (November 1963).

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[1] See *Official Bulletin*, Vol. XLVI, No. 2, Apr. 1963, Suppl. I, pp. 69-70.

[2] Ibid., No. 3, July 1963, Suppl. II, p. 39.

[3] Ibid., Vol. XLVII, No. 1, Jan. 1964, Suppl., p. 42.

2. *Application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)*

908. Subsequent to the initial series of complaints, and beginning at its meeting on 9 and 10 November 1959, the Committee on Freedom of Association considered the allegations relating to restrictions on trade union membership and election of officers in the light of the provisions of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Japan in 1954. In this respect the Committee considered it appropriate to express its concurrence in the observations of the Committee of Experts on the Application of Conventions and Recommendations in 1959[1], to the effect that as " in particular, workers' organisations shall enjoy adequate protection against any acts of interference, it would be desirable for the provisions in question to be repealed or amended". In its further consideration the Committee on Freedom of Association also had regard to the connected allegations that three of the complaining organisations had been denied recognition for purposes of collective bargaining because they had retained as officers dismissed employees. In this connection the Committee submitted to the Governing Body the following recommendations contained in paragraph 195 of its 41st Report [2]:

. . . . . .

(c) to take note of and to endorse the observation by the I.L.O. Committee of Experts on the Application of Conventions and Recommendations, that the provisions of section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law and section 5 (3) of the Local Public Enterprise Labour Relations Law—and, in particular, having regard to the fact that in the event of the dismissal of a trade union officer the trade union must replace him—may facilitate acts of interference on the part of the managements of the undertakings covered by the said legislation and that, in order to ensure fuller application of Article 2 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Japan, it would be desirable for the provisions in question to be repealed or amended; to take note also of the hope expressed by the Conference Committee on the Application of Conventions and Recommendations that the legislative provisions mentioned in the observations of the Committee of Experts will be revoked; to draw this conclusion to the attention of the Government and to request the Government to inform the Governing Body of the measures that it intends to take;

(d) to note the Government's statement that the officers of the Locomotive Engineers' Union and the All-Japan Postal Workers' Union were not dismissed arbitrarily, which the law of Japan does not permit, but for having performed unlawful acts of dispute.

This report was approved by the Governing Body at its 144th Session (March 1960).

909. In paragraph 104 of its 44th Report [3] the Committee recommended the Governing Body—

(a) to take note of the conclusions contained in paragraph 195 of the 41st Report of the Committee;

. . . . . .

(d) to note that the question as to the compatibility of Japanese legislation with the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), will be further examined by the Committee of Experts on the Application of Conventions and Recommendations at its meeting in Geneva from 21 March to 2 April 1960 and by the Conference Committee on the Application of Conventions and Recommendations in June 1960.

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[1] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 43rd Session, Geneva, 1959 (Geneva, 1959), p. 56.

[2] See *Official Bulletin*, Vol. XLIII, 1960, No. 3, pp. 260-261.

[3] Ibid., pp. 285-286.

These conclusions were approved by the Governing Body at its 144th Session (March 1960). The Committee recommended the Governing Body in paragraph 188 *(b)* of its 54th Report [1]—

to endorse the observations made by the I.L.O. Committee of Experts on the Application of Conventions and Recommendations at its 31st Session (March 1961) ... concerning section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law and section 5 (3) of the Local Public Enterprise Labour Relations Law viewed in the light of Article 2 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Japan; to note the submission to the National Diet of Bills to amend the legislation; and to express the hope that legislation on this point will be promptly enacted.

This report was approved by the Governing Body at its 149th Session (June 1961).

910. Finally, the Committee recommended the Governing Body, in paragraph 431 *(b)* of its 58th Report [2]—

to take note of and to associate itself with the desire expressed by the Conference Committee on the Application of Conventions and Recommendations, in June 1961, that the Government should bring its legislation into conformity with the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), at an early date.

This report was approved by the Governing Body at its 150th Session (November 1961).

B. Denial of the Right to Strike and Defects in the Mediation and Arbitration System (Public Corporation and National Enterprise Labour Relations Law and Local Public Enterprise Labour Relations Law)

911. These allegations related essentially to the contention that, while the two laws in question prohibit strikes in public corporations and national enterprises and local public enterprises, the mediation and arbitration systems prescribed in these laws do not safeguard adequately the interests of the workers and therefore are not sufficient compensation for the loss of the right to strike; moreover, it was alleged that the prohibition on strikes and other acts of dispute was unconstitutional, and, in the alternative, even if permitted by the Constitution, should not be applicable to workers in all public undertakings irrespective of the application of criteria based on size or economic and social importance of the undertaking concerned. Related allegations contended that the agencies of mediation and arbitration were not impartial, were dilatory and failed to protect the workers' interest, and thus the workers were forced to engage in dispute actions to protect themselves and their conditions of work.

912. During the time that the case was before the Committee on Freedom of Association this entire category of allegations concerning the application of these two laws tended to separate into five related groups of allegations and government replies [3]: (i) denial of the right to strike and defects in the mediation and arbitration system; (ii) disciplinary measures against trade unionists; (iii) arrests of trade unionists; (iv) searches of trade union premises; and (v) victimisation of trade union members. When the Commission came to consider the case it received both further statements and testimony on each of these topics, and this evidence is analysed in more detail in the relevant section of this report below.

[1] See *Official Bulletin*, Vol. XLIV, 1961, No. 3, p. 309.

[2] Ibid., Vol. XLV, No. 1, Jan. 1962, Suppl., p. 74.

[3] These allegations and the Government's replies thereto appear in docs. Nos. 1, 3, 4, 6, 7-9, 16, 30, 37, 41, 43, 47, 62, 64, 77 and 83.

913. With respect to the general allegations concerning the prohibition against strikes and the allegations related to the insufficiency of the machinery provided to compensate for that deprivation, the Committee on Freedom of Association in paragraph 188 *(e)* of its 54th Report[1] recommended the Governing Body—

to decide, with respect to the allegations relating to the denial of the right to strike and to defects in the mediation and arbitration system (under the Public Corporation and National Enterprise Labour Relations Law and the Local Public Enterprise Labour Relations Law), which fall within the competence of the Committee in so far, but only in so far as they affect the exerci se of trade union rights—

(i) to draw the attention of the Government to the fact that it would not appear to be appropriate for all publicly owned undertakings to be treated on the same basis in respect of limitations of the right to strike without distinguishing in the relevant legislation between those which are genuinely essential because their interruption may cause public hardship and those which are not essential according to this criterion, and to suggest to the Government that it may care to give consideration to this aspect of the matter at an appropriate time;

(ii) to draw the attention of the Government to the importance which it attaches to the principle that, where strikes by workers in essential services or occupations are restricted or prohibited, such restriction or prohibition should be accompanied by the provision of conciliation procedures and of impartial arbitration machinery whose awards are in all cases binding on both sides, and that such awards should be fully and promptly implemented once they have been made;

(iii) to draw the attention of the Government, while noting its statement that the large majority of awards have been fully implemented, to the importance which the Governing Body attaches in this connection to the principle that the reservation of budgetary powers to the legislative authority should not have the effect of preventing compliance with the terms of awards by the compulsory arbitration tribunal and to its view that any departure from this practice would detract from the effective application of the principle set forth in the preceding subparagraph;

(iv) to suggest to the Government that it may care to examine its legislation governing the settlement of disputes in public corporations and national enterprises in the light of the foregoing principles and to consider what amendments to that legislation and to existing practice might be desirable in order to ensure that the said principles are effectively applied;

(v) to suggest to the Government that it may care to consider what steps can be taken to ensure that the different interests are fairly reflected in the numerical composition of the Public Corporation and National Enterprise Labour Relations Commission, from among whom arbitrators are chosen, and that all the neutral or public members of the Commission are persons whose impartiality commands general confidence.

The recommendation contained in this report was approved by the Governing Body at its 149th Session (June 1961).

914. With respect to the subsidiary allegations enumerated in the preceding paragraph, the Committee, in its 54th Report[2], paragraphs 69 and 78, approved by the Governing Body at its 149th Session (June 1961), stated that having already considered the prohibition of strikes and having submitted to the Governing Body its recommendation as to what were compensatory safeguards which it considered should be enjoyed by the workers concerned, to examine the subsidiary allegations in substance would be tantamount to re-examining the whole question of the prohibition of strikes in the enterprises concerned. The principles which it had already adduced covered these other allegations as well.

[1] See *Official Bulletin*, Vol. XLIV, 1961, No. 3, pp. 309-310.

[2] Ibid., pp. 288 and 290.

C. Denial of the Right of Association to Supervisory Employees (Public Corporation and National Enterprise Labour Relations Law and Local Public Enterprise Labour Relations Law)

915. These allegations related principally to section 4 (1) of the P.C.N.E.L.R. Law providing that those who held managerial and supervisory positions and those employed in a confidential capacity could not become members of a union.[1]

916. The Committee on Freedom of Association when considering these allegations had before it the text of the Bill to amend the Public Corporation and National Enterprise Labour Relations Law which the Government had furnished it, according to which the prohibition of the formation of organisations by supervisory employees appears to be omitted. In these circumstances, the Committee in paragraph 188 *(g)* of its 54th Report [2] recommended the Governing Body to note that, in the Bill to amend the Public Corporation and National Enterprise Labour Relations Law which was before the National Diet, the provision in the existing law prohibiting the formation of organisations by supervisory employees did not appear to be maintained, and to express the hope that legislation resulting in the removal of the present restriction would soon be enacted. The recommendation in this report was approved by the Governing Body at its 149th Session (May 1961).

D. Collective Bargaining (Local Public Enterprise Labour Relations Law)

917. These allegations criticised sections 7, 8 and 10 of the L.P.E.L.R. Law as limiting the scope of collective bargaining in certain respects and permitting certain agreements concluded between unions of workers regulated by that Law and the local public bodies to go unimplemented by those local public bodies. More specifically, it was alleged that section 7 of the Law excluded matters affecting the management and operation of the local public enterprise from the scope of collective bargaining; that section 8 provided that, if provisions of a collective agreement conflicted with local by-laws, the agreement would not take effect until and to the extent that the by-laws were amended so as to remove the conflict; and that section 10 provided that an agreement calling for the expenditure of funds not available in the budget of the local public body could not be effected until such an appropriation was made.[3]

918. The Committee on Freedom of Association dealt with these allegations initially in its 58th Report, wherein it drew the Government's attention to the principles it had adduced in its 54th Report, paragraph 188 *(e)* (iii)[4], principally that the reservation of budgetary powers to the legislative authority should not have the effect of preventing compliance with awards of arbitration tribunals. The Committee expanded this statement to apply equally to the exercise of the budgetary power by the local public bodies in relation to collective agreements. In its 66th Report, paragraph 367[5], and again in its 68th Report, paragraph 77[6], the Committee stated that there had been no change in the situation and it was still awaiting the amendment of legislation to which the Government had alluded before submitting its final recommendations to the Governing Body. Additional allegations and replies of the

[1] These allegations and the Government's replies thereto appear in docs. Nos. 9, 16 and 17.
[2] See *Official Bulletin*, Vol. XLIV, 1961, No. 3, p. 310.
[3] These allegations and the Government's replies thereto appear in docs. Nos. 46, 48, 52, 54 and 63.
[4] See *Official Bulletin*, Vol. XLIV, 1961, No. 3, p. 309.
[5] Ibid., Vol. XLVI, No. 1, Jan. 1963, Suppl., p. 64.
[6] Ibid., No. 2, Apr. 1963, Suppl. I, p. 69.

Government on this subject were subsequently received by the Commission in the form of both further statements and testimony at the hearings. A more detailed analysis of this evidence will be found in the appropriate section of this report below.

E. Denial of the Right of Association to the Personnel of Certain Services (National Public Service Law)

919. These allegations contended that, in addition to the police, personnel of the fire services, the Public Safety Bureau and the prison services were also denied the right to organise by virtue of section 98 of the National Public Service Law.[1] The Committee on Freedom of Association alluded to its previous Case No. 60[2], relating to Japan, in which it had concluded that in the light of the wording of Convention No. 87 similar allegations made with respect to these public services did not call for further examination. Accordingly, the Committee, in paragraph 94 of its 54th Report[3], recommended the Governing Body to decide that this aspect of the case did not call for further examination.

F. The " Full-Time Union Officer " System in the National and Local Public Services

920. In view of the fact that under the N.P.S. Law and the L.P.S. Law only public service employees could serve as officers of public service employees' organisations, a practice has arisen in Japan permitting certain employees in these sectors to absent themselves from their employment for a certain period, without pay but with retention of status, in order to act as full-time union officers. Several complainants alleged that, in addition to this practice having been the object of arbitrary manipulation by the employing authorities, the Government intended to abolish the system at the same time that it succeeded in amending the present legislation so as to permit non-employees to serve as union officers.[4]

921. The Committee on Freedom of Association, in paragraph 188 *(d)* of its 54th Report[5], recommended the Governing Body to decide that these allegations did not call for further examination, subject to two reservations: that so long as the laws remained unamended the privilege ought to be retained; and, correspondingly, that the privilege could be abolished as foreseen by the Government only at such time as the laws were amended to permit non-employees to serve as union officers. This report was approved by the Governing Body at its 149th Session (May 1961). Notwithstanding the submission of further allegations on this point, the Committee in paragraph 431 *(d)* of its 58th Report [6] recommended the Governing Body to take the same decision as it had previously recommended, subject to the same reservations. The Governing Body approved this report at its 150th Session (November 1961). Additional allegations and government replies on this topic were received by the Commission both in further statements and in testimony. A more precise analysis of the topic, therefore, may be found in the appropriate section of this report below.

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[1] These allegations and the Government's reply thereto appear in docs. Nos. 4 and 16 respectively.

[2] See 12th Report of the Committee, paras. 33-36, in *Eighth Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1954), p. 108.

[3] See *Official Bulletin*, Vol. XLIV, 1961, No. 3, p. 292.

[4] These allegations and the Government's replies thereto appear in docs. Nos. 32, 34, 36, 37, 45, 46 and 48.

[5] See *Official Bulletin*, Vol. XLIV, 1961, No. 3, p. 309.

[6] Ibid., Vol. XLV, No. 1, Jan. 1962, Suppl., p. 74.

G. Collective Bargaining (National and Local Public Services)

922. These allegations, relating to restrictions placed on collective bargaining by the N.P.S. Law (and the rules of the National Personnel Authority) and by the L.P.S. Law, fell generally into three categories of contentions: firstly, that national and local civil servants do not have the right to conclude collective agreements; secondly, that the Government proposed to prohibit by law the conclusion of agreements for the check-off of union dues within the local public service sector, and thirdly, that restrictions were placed on the matters which could be included within the negotiating rights of national civil servants' organisations.

1. *Denial of the Right to Conclude Collective Agreements (National and Local Public Services)*

923. In a series of complaints [1] the allegations were put forward that public servants employed by the national Government or a local public body, other than employees covered by the P.C.N.E.L.R. Law, were permitted to organise but prohibited from bargaining collectively or concluding labour agreements. The Government's replies to these contentions were, generally, that the organisations of local public service employees concerned were able to negotiate on various matters and could make representations as to their working conditions; however, as these personnel were secured in their pay and other conditions of work by by-laws or statutory regulation, their organisations were not able to conclude collective agreements in the ordinary sense of these subjects.

924. The Committee on Freedom of Association, in paragraph 179 of its 54th Report[2], observed that Japan had ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Article 4 of which provides that " Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements ", but which also provides in Article 6 that " This Convention does not deal with the position of public servants engaged in the administration of the State, nor shall it be construed as prejudicing their rights or status in any way ". The Committee noted that the public servants involved in the allegations were precisely persons enjoying statutory terms and conditions of employment, as envisaged in Article 6 of the Convention. The Committee considered that the Government had acted in a manner consistent with the standards of Convention No. 98 and recommended, in the light of the fact that the Committee had once before in Case No. 60 (Japan) [3] fully considered these points, the Governing Body to decide that these allegations did not call for further examination. The 54th Report was approved by the Governing Body at its 149th Session (May 1961). Identical action was recommended by the Committee in its 58th Report, paragraph 431 *(c)* [4], which was approved by the Governing Body at its 150th Session (November 1961).

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[1] These allegations and the Government's replies thereto appear in docs. Nos. 4, 46, 48, 54 and 63.

[2] See *Official Bulletin*, Vol. XLIV, 1961, No. 3, pp. 306-307.

[3] See 12th Report of the Committee, paras. 31-44, in *Eighth Report of the International Labour Organisation to the United Nations*, op. cit., pp. 207-210.

[4] See *Official Bulletin*, Vol. XLV, No. 1, Jan. 1962, Suppl., p. 74.

2. *Legislative Interference with Collective Negotiation concerning the Check-Off of Union Dues (Local Public Service Law)*

925. These allegations referred to the Government's intention to amend section 53 of the L.P.S. Law so as to prohibit the operation of the check-off for all union dues by no longer permitting a registered trade union to conclude a check-off agreement with the authority of the local public body.[1]

926. The Government contended that the proposed amendment prohibiting such check-off agreements unless there was a special provision validating them in the laws or by-laws was an attempt to bring the L.P.S. Law into conformity with the provisions of the N.P.S. Law, which provided that union dues should not be deducted from the wages of national public service employees except in accordance with the provisions of law or the rules of the National Personnel Authority.

927. The Committee on Freedom of Association, in paragraph 425 of its 58th Report[2], requested the Government to explain whether the proposed amendments would leave the local public body free to issue by-laws allowing it or its agents to conclude check-off agreements with employee organisations covered by the L.P.S. Law. The Government replied in substance that the local public bodies were free to choose to enter into check-off agreements or not. In these circumstances the Committee, in paragraph 384 (2) *(a)* of its 66th Report[3], recommended the Governing Body to decide that these allegations did not call for further examination. This report was approved by the Governing Body at its 153rd Session (November 1962).

3. *Matters Covered by the Negotiating Rights of Organisations of Civil Servants (National Public Service Law)*

928. These allegations related to the Government's intention to amend the N.P.S. Law so as to introduce a provision which would stipulate that " matters concerning the management and operation of affairs of the State shall not be made subjects of negotiation". It was further contended that the alleged refusal of the Government to permit the appointment or dismissal of any individual to be the subject of negotiation was incompatible with Article 2 of Convention No. 87.[4]

929. The Committee on Freedom of Association, in paragraph 183 of its 54th Report[5], and paragraph 372 of its 58th Report[6], requested the Government to supply it with additional information concerning the actual operation of this Law and the rules of the National Personnel Authority which were the bases for the allegations. In the light of the Government's several replies, the Committee in paragraph 384 (2)*(c)* of its 66th Report [7] recommended the Governing Body—

(i) to take note of the Government's statement that Rule 14-0 of the National Personnel Authority, which provides that negotiation shall not include disciplinary matters, will be rescinded when the Bill to amend the National Public Service Law is enacted, and that no such restrictive provisions will exist thereafter;

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[1] These allegations and the Government's replies thereto appear in docs. Nos. 46, 48 and 52.

[2] See *Official Bulletin*, Vol. XLV, No. 1, Jan. 1962, Suppl., p. 73.

[3] Ibid., Vol. XLVI, No. 1, Jan. 1963, Suppl., p. 66.

[4] These allegations and the Government's replies thereto appear in docs. Nos. 31, 45-47, 51 and 52.

[5] See *Official Bulletin*, Vol. XLIV, 1961, No. 3, p. 307.

[6] Ibid., Vol. XLV, No. 1, Jan. 1962, Suppl., p. 64.

[7] Ibid., Vol. XLVI, No. 1, Jan. 1963, Suppl., p. 67.

(ii) to express the hope that the Government will take the steps which it has indicated it has in contemplation and be good enough to keep the Governing Body informed as to further developments in this connection.

This report was approved by the Governing Body at its 153rd Session (November 1962).

H. Registration and Scope of Organisations under the Local Public Service Law

930. These allegations, which criticised the provisions of the L.P.S. Law relating to the registration and deregistration of employees' organisations formed under the Law, complain principally that trade union rights were being infringed by the text and application of the provisions of sections 53, 54 and 55 of the Law, under which only registered trade unions could negotiate with the authorities of local public bodies, acquire legal personality, be permitted to have full-time union officers who retained their status while so serving, and negotiate agreements on the check-off of unions' dues.[1] It was further alleged that no room was left for any non-registered personnel organisation to carry on its activities, that an administrative agency decided questions of acceptance, rejection or cancellation of registration without intervention by the courts, and that where the employing local public body had not set up a personnel commission it was the head of the local public body himself who performed the above functions.

931. The Committee on Freedom of Association, in paragraph 431 *(h)* of its 58th Report [2], recommended the Governing Body—

(i) to suggest to the Government that it may care to envisage the establishment of a system of registration of local public employees' organisations by a registrar or other agency entirely independent of the Personnel Commissions and of the local authorities and whose decisions would be subject to a right of appeal to the courts;

(ii) to remind the Government that it is the generally accepted principle that it should be left to the workers' organisations themselves to make provision in their rules as to the majority of votes requisite for election to union office;

(iii) to reaffirm its view that, while the employing local authorities have the right to decide whether they will negotiate at the regional or national level on their side, the workers, whether negotiating at the regional or national level, must be entitled to choose as they wish the organisation which shall represent them in the negotiations;

(iv) to express the hope that the Government will take into account the observations made in subparagraphs (i), (ii) and (iii) above in connection with the proposed amendment of the Local Public Service Law and, so far as applicable, of the National Public Service Law, and to adjourn further examination of these particular allegations for the moment.

This report was approved by the Governing Body at its 150th Session (November 1961).

932. The remaining allegations complained that the employees under the L.P.S. Law could not form organisations jointly with employees covered by the L.P.E.L.R. Law, and that, within the local public service itself, the Law required each basic unit to form its own organisation. Also criticised were the limitations placed on the right of federation.[3] These allegations and the Government's replies thereto were

[1] These allegations and the Government's replies thereto appear in docs. Nos. 46, 48, 54 and 63.

[2] See *Official Bulletin*, Vol. XLV, No. 1, Jan. 1962, Suppl., p. 75.

[3] These allegations and the Government's replies thereto appear in docs. Nos. 31, 45, 46, 48, 52, 54 and 63.

repeated in substantial detail both in the further statements and in the testimony submitted to the Commission. They are, therefore, analysed in greater detail in that part of this report which is devoted to that phase of the Commission's consideration of the case.

933. The Committee on Freedom of Association, in paragraph 397 of its 58th Report [1], in attempting to complete the documentation on which it might base its understanding of the complicated problem of statutory interpretation presented by these allegations, first recapitulated the facts with which it had been presented: the " general administrative employees " of a local public body were the employees of the said body whose terms of employment were governed by by-laws and who fell within the provisions of the L.P.S. Law; these persons could form only an employees' organisation within that Law. Educational employees of a local public body could also form a union limited only to their category—also under the L.P.S. Law—but separate from that of the " general administrative employees ". Under the L.P.E.L.R Law, however, the " personnel " of a given enterprise could form a trade union limited to such " personnel ", as could " persons employed for simple labour ". The Government had stated that the employees of local public enterprises and persons employed for simple labour could organise a trade union or federation extending beyond the limit of one local public enterprise or local public body. The Committee then requested the Government to state whether its own interpretation of the laws and customs in this area was accurate.

934. Both the Government and various complainants replied to the further questions which the Committee had put concerning the statutory regulation in this area. In the light of the existing complexities with reference to the legal provisions governing the exercise of freedom of association by the four main categories of local public employees, and as the Committee had been informed by the Government that the existing situation would be modified in various ways by the proposed amending legislation related to the Government's intention to ratify Convention No. 87, the Committee decided to await the final outcome with regard to these proposed amendments before formulating any recommendations on these particular allegations. These views of the Committee were incorporated into paragraph 350 of its 66th Report [2] which was approved by the Governing Body at its 153rd Session (November 1962).

I. Denial of the Right to Strike and Lack of Compensatory Guarantees (Local Public Service Law)

935. These allegations related to the failure of the local personnel and equity commissions, the machinery provided in the L.P.S. Law, to compensate the workers governed by that Law for having been deprived of the right to engage in acts of dispute or to protect the interests of local public service employees.[3] In addition to alleging numerous individual instances in which municipalities had failed to increase wages, pay increases or take action in accordance with the recommendations of personnel commissions, the complainants also criticised the standards of pay in the local public service and the absence in that sector of any arbitration machinery.

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[1] See *Official Bulletin*, Vol. XLV, No. 1, Jan. 1962, Suppl., p. 69.

[2] Ibid., Vol. XLVI, No. 1, Jan. 1963, Suppl., p. 61.

[3] These allegations and the Government's replies thereto appear in docs. Nos. 32, 34, 36, 37, 45, 46, 48, 49, 54, 60, 63, 66 and 67.

936. The Committee on Freedom of Association in paragraph 431 *(f)* of its 58th Report [1] recommended the Governing Body—

(i) to reaffirm the importance which the Governing Body has always attached to the principle that, where strikes are prohibited, there should be other means of redress; to note the Government's statement that it intends to amend the Local Public Enterprise Labour Relations Law to provide for arbitration machinery whose awards shall be binding in the case of employees of local public bodies who are not designated local public servants; to suggest to the Government that it should consider the advisability of adopting the widespread practice of bringing local public servants also within the scope of similar machinery;

(ii) to suggest to the Government that it may care to consider what steps can be taken to ensure that the different interests are fairly reflected in the numerical composition of the Personnel Commissions and that all the neutral or public members of the Commissions are persons whose impartiality commands general confidence;

(iii) to suggest to the Government that it may care to consider also the advisability of providing that each of the respective parties concerned shall have an equal voice in the appointment of the members of the Personnel Commissions.

This report of the Committee was approved by the Governing Body at its 150th Session (November 1961).

937. On the basis of additional allegations and government replies thereto, the Committee on Freedom of Association in paragraph 384 (2) *(b)* of its 66th Report [2] recommended the Governing Body to repeat its suggestions and recommendations made in its 58th Report on this subject and, in addition—

. . . . . .

(v) to suggest to the Government that it may also take account, in the case of the Equity Commissions, of the suggestions contained in subparagraphs (iii) and (iv) above.[3]

This report was approved by the Governing Body at its 153rd Session (November 1962).

J. Proposed Amendments to the National Public Service Law

938. These allegations arose in connection with the Government's announced intention to ratify Convention No. 87. Toward that end, the Government had submitted to the Diet a Bill to effect the amendment of a considerable number of the provisions of the N.P.S. Law relating to freedom of association and the formation and activities of employees' organisations.[4] In brief, it had been alleged that the proposed section 108-2 (3) and (4) of the Law would provide that " managerial " personnel were to be regulated by the rules of the National Personnel Authority, a new section 108-3 (4) would limit the membership of employees' organisations to persons actually employed, plus dismissed employees, but only up to one year after their dismissal or for so long as an appeal against the dismissal was pending, and these new provisions, it was alleged, would be extended to cover federations as well, by virtue of the new section 108-2 (1). Further allegations contended that the new section 108-5 would, in contradistinction to the present Law, distinguish between working conditions and other conditions of employment, so that the right to negotiation on the

[1] See *Official Bulletin*, Vol. XLV, No. 1, Jan. 1962, Suppl., p. 75.

[2] Ibid. Vol. XLVI, No. 1, Jan. 1963, Suppl., pp. 66-67.

[3] These suggestions are the same as those in subparas. (ii) and (iii) of para. 431 *(f)* of the 58th Report quoted in para. 936 above.

[4] These allegations and the Government's replies thereto appear in docs. Nos. 31, 37, 45, 47, 51 and 52.

latter subject would be restricted and the right to negotiate on matters concerning the operation and management of affairs of the State would be totally withdrawn.

939. The Committee on Freedom of Association, after having received replies from the Government on these allegations, observed that the contentions all related to proposed amending legislation which was still before the Diet. Notwithstanding, the Committee, noting that the allegations were sufficiently detailed, that the Government had made detailed replies and that the Government had also furnished the proposed texts of certain Bills, considered it appropriate to express some views on the intended amendments in light of the provisions of Convention No. 87. The Committee, however, confined itself, in paragraph 128 of its 54th Report [1], to points relating to the proposed provisions regarding registration of public employees' organisations as an alleged prerequisite to negotiation with the authorities. The Committee noted that the Government had denied that only organisations which favoured the preconditions for registration would be allowed to negotiate, stating that " a non-registered employees' organisation under the Bill may *equally* present its demands to and negotiate with the authorities with a view to furthering and defending the interests of its members". Thus, the Committee, in paragraph 132 of its 54th Report [1], requested the Government to state whether, in practice, the competent authorities negotiated with non-registered organisations and, if so, whether they negotiated with them on the same conditions as they did with registered organisations.

940. In the light of the Government's reply the Committee in paragraph 431 *(g)* of its 58th Report [2] recommended the Governing Body—

To note that the provisions of the proposed Bill to amend the National Public Service Law as explained by the Government would involve rescinding the present rule of the National Personnel Authority which provides that negotiation shall be conducted only by the employees' organisations registered with the National Personnel Authority, and to request the Government to be good enough to keep the Governing Body informed as to action taken for this purpose.

This report was approved by the Governing Body at its 150th Session (November 1961).

K. Allegations relating to the Police Duties Law

941. These allegations contended that the Government intended to intensify its alleged pressure on the labour movement by amending the Police Duties Law. It was alleged that, of the proposed amendments, section 2 would enable the police to search suspects under a police check-up system, section 3 would permit them to arrest workers on the pretext of " protection," and sections 4 and 5 would empower the police to disperse meetings, demonstrations and other collective activities on the pretext of eliminating danger or maintaining public safety and order. Generally, it was contended that through these amendments the Government intended to deprive the people, and more particularly the workers, of democratic rights guaranteed to them by the Constitution—freedom of assembly, association and speech. [3]

942. With reference to these allegations and the Government's replies thereto the Committee on Freedom of Association expressed the opinion that there was nothing in the actual text of the proposed amendments which would appear, *prima*

[1] See *Official Bulletin*, Vol. XLIV, 1961, No. 3, p. 299.

[2] Ibid., Vol. XLV, No. 1, Jan. 1962, Suppl., p. 75.

[3] These allegations and the Government's replies thereto appear in docs. Nos. 11, 14 and 15.

facie, to relate specifically to the exercise of trade union rights. The allegations were viewed as being too general in nature and related more to an imputed intention of the Government than to any provisions in the Bill aimed at trade unions. The Committee noted, on the contrary, that the Government had made a number of concrete statements in which it denied any such intentions as had been alleged. In these circumstances the Committee considered that the complainants had not offered sufficient proof to show that the proposed Bill, if enacted, would infringe trade union rights, and therefore it recommended the Governing Body, in paragraph 188 *(c)* of its 54th Report[1], having regard to the specific assurances of the Government, to decide that these allegations did not call for further examination. This report was approved by the Governing Body at its 149th Session (May 1961).

L. Acts of Interference with the National Railway Workers' Union and the Adhesion of Workers to It

943. It was alleged that the management of the Japanese National Railways interfered with the right of workers, and in particular with the right of the National Railway Workers' Union (N.R.W.U.), to organise. The alleged interferences took various forms: *(a)* persuasion (through immediate supervisors) of workers to defect from the union and/or to join the splinter unions formed during the period that the management refused to bargain with N.R.W.U., accompanied by promises of personal gains or threats of disadvantageous treatment; *(b)* interference (through immediate supervisors) with the workers' choice of officers when elections are held; *(c)* restrictions placed by supervisors on activities of N.R.W.U. local unions; *(d)* consideration of a worker's loyalty to N.R.W.U. policy as a factor against him in compiling his merit rating; and *(e)* discrimination against those who took part in N.R.W.U. activities and favouritism towards those who did not take part.[2] The complainant listed a great number of individual alleged cases of such interference.

944. In its replies to these allegations the Government subsequently declared that all the cases listed by the complainant were being examined by the Public Corporation and National Enterprise Labour Relations Commission. In these circumstances, in paragraph 365 of its 58th Report[3], the Committee on Freedom of Association, assuming that the Commission referred to by the Government was fully apprised of the guarantees provided for in the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Japan, requested the Government to be good enough to furnish detailed information concerning the findings of the Commission referred to with regard to these cases, together with the reasons on which such findings were based. The Government's reply, in due course, summarised the findings of the P.C.N.E.L.R. Commission on the cases of alleged anti-union discrimination submitted to it. These orders recognised that unfair labour practices had occurred in certain cases which the complainant had referred to the Commission. The Government, however, replied that the Japanese National Railways had instituted an administrative suit requesting the revocation of those parts of the Commission's orders which upheld the allegations of the complainants. The Government subsequently stated that the proceedings in this appeal were still before the Tokyo District Court. The allegations and replies of the Government thereto relating to

[1] See *Official Bulletin*, Vol. XLIV, 1961, No. 3, p. 309.

[2] These allegations and the Government's replies thereto appear in docs. Nos. 41-43, 47, 64, 67 and 71.

[3] See *Official Bulletin*, Vol. XLV, No. 1, Jan. 1962, Suppl., p. 63.

alleged interference with N.R.W.U. were more fully developed in the further statements and testimony submitted to the Fact-Finding and Conciliation Commission, and a more detailed and current analysis of this phase of the case may be found in this report below.

M. Acts of Anti-Union Discrimination Affecting the Japan Teachers' Union and Non-Recognition of That Union

945. The Japan Teachers' Union is a national organisation which, through its prefectural and municipal constituent or affiliated unions, organises teachers. These unions are set up in accordance with the L.P.S. Law. In a series of complaints it listed a considerable number of alleged acts of interference either with its unions or with the members thereof. In addition, allegations were formulated in respect of the failure of the public authorities to recognise the Japan Teachers' Union for either negotiation or other purposes.

1. *Acts of Anti-Union Discrimination*

946. The complainant alleged a great number of cases in which acts of anti-union discrimination against individual teachers, members of its union, had taken place. In particular, the complainant referred to acts in Ehime Prefecture in which it was alleged that the Prefectural Education Board had been working actively to make educational civil servants take part in a research conference which in substance, alleged the complainant, was a means of discriminating against the union.[1]

947. After having received voluminous documentation and additional information from both the complainant and the Government, the Committee on Freedom of Association, in paragraph 320 of its 58th Report[2], pointed out that in all cases in which the information supplied by governments to which complaints had been communicated appeared to be inadequate or of too general a character, the Committee had followed the practice of requesting the government concerned to supply it with more detailed information in order to enable it to express a considered view to the Governing Body. Subsequently the Committee, in paragraph 287 of its 66th Report[3], while thanking the Government for the information furnished in response to the request made by the Committee at its November 1961 meeting, requested the Government to be good enough to furnish fuller information concerning the detailed allegations made in the communications from the Japan Teachers' Union. In the meantime the Committee had recommended the Governing Body to take note of its present interim report on these allegations, it being understood that the Committee would report further thereon to the Governing Body when the information and observations requested from the Government had been received. The 66th Report of the Committee was approved by the Governing Body at its 153rd Session (November 1962). In paragraph 69 of its 68th Report[4] the Committee, observing that considerable evidence had been submitted to it with respect to this aspect of the case and considering that it needed more time to give careful consideration to this evidence, decided to postpone the formulation of its definitive conclusions to the Governing

[1] These allegations and the Government's replies thereto appear in docs. Nos. 32, 34, 36, 45, 49, 52, 55, 60, 63, 66 and 71.

[2] See *Official Bulletin*, Vol. XLV, No. 1, Jan. 1962, Suppl., p. 57.

[3] Ibid., Vol. XLVI, No. 1, Jan. 1963, Suppl., p. 51.

[4] Ibid., No. 2, Apr. 1963, Suppl. I, p. 68.

Body. The allegations of the Japan Teachers' Union with regard to alleged interference and the Government's replies thereto were continued and carried forward in greater detail in the further statements and testimony submitted to the Commission. This aspect of the case is therefore more fully analysed in that part of this report below which deals with the Commission's consideration of the case.

2. *Non-Recognition of the Japan Teachers' Union*

948. It was alleged by the complainant that while section 55 of the L.P.S. Law stated that a registered personnel organisation of local civil servants might negotiate, on certain conditions, it did not have the right to conclude a collective agreement with the authorities of the local public body concerned. Under sections 52 and 53, only a trade union organisation within the scope of one local public body (e.g. a prefecture) could become a "registered organisation" entitled to negotiate. In addition, it was alleged that any federation organised in more than one public body, as was the complainant itself, was regarded only as a *de facto* organisation. The complainants contended that these provisions contravened the standards set by Convention No. 87, the result being that the complainant could not bargain with local public bodies and the Minister of Education refused to bargain at the national level because of the stated policy of the decentralisation of education within Japan. The complainant rejected the contention of the Government that there was a decentralisation of education and claimed that unless the Japan Teachers' Union could bargain collectively with the Minister the wages and working conditions of teachers would never be improved. The union did not seek the right to conclude collective agreements but only the right to have its views taken into consideration.[1]

949. The Government replied that teachers could form a union in each municipality which could negotiate with the municipal board of education. These unions could also federate within the limits of a single prefecture and the federation could negotiate with the prefectural education authority. The Government, therefore, stated that, in view of the decentralisation of education in Japan, provision was made only for unions within the limits of a given prefecture, but the Government stated that it did not deny the right of the regional teachers' unions to form a nation-wide confederation such as the Japan Teachers' Union.

950. The Committee on Freedom of Association, in paragraph 188 *(f)* of its 54th Report [2], recommended the Governing Body—

to decide..., while agreeing that the determination of the broad lines of educational policy, although a matter on which it may be normal to consult teachers' organisations, is not one for collective bargaining between such organisations and the education authorities, and recognising that activities of a subversive character can claim no sanction from the principle of freedom of association—

(i) to draw the attention of the Government to the importance which the Governing Body attaches to the principle that workers should be able to establish and join organisations of their own choosing and to elect their representatives in full freedom;

(ii) to express the view that, while the employing authorities have the right to decide whether they will negotiate at the regional or national level on their side, the workers, whether negotiating at the regional or national level, should, in accordance with the above principles, be entitled to choose as they wish the organisation which shall represent them in the negotiations.

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[1] These allegations and the Government's replies thereto appear in docs. Nos. 32, 34, 36, 37 and 45.
[2] See *Official Bulletin*, Vol. XLIV, 1961, No. 3, p. 310.

This report of the Committee was approved by the Governing Body at its 149th Session (May 1961).

N. Acts of Interference with and Non-Recognition of Certain Organisations of Government Employees

951. These allegations stated that there had been numerous cases of interference by governmental authorities in the organisation of some of the constituent unions of the Congress of Government Employees' Unions, as well as cases of refusal to negotiate with a number of them on various grounds.[1] While the Government agreed that the membership of several of the constituent unions had been decreasing, it attributed this fact entirely to the will of the individual members and not to any direction or interference by the competent authorities. With regard to the bargaining cases, the Government declared that only unions registered with the National Personnel Authority could be parties to negotiations and that employees' representatives and officers of such unions must have employee status in order for such negotiations to be permitted.

O. Acts of Interference with regard to Unions Affiliated to the All-Japan Prefectural and Municipal Workers' Union

952. The All-Japan Prefectural and Municipal Workers' Union is a nation-wide central organisation made up of unions of public employees at the prefectural or municipal levels. Some of its constituent unions are formed under the L.P.E.L.R. Law. The complainant submitted allegations relating to acts of interference by local public bodies with several of its affiliated organisations.[2] In addition to these general allegations of unfair treatment of unions formed under the L.P.S. Law as compared with those under the L.P.E.L.R. Law, the complainants went on to list numerous individual cases of alleged anti-union discrimination in various prefectures and municipalities.

953. The Government's reply to the more general allegations was to the effect that the remedies afforded by the L.P.S. Law were different from the remedies under other legislation, and that this was because of the duty of public employees to devote themselves to public services, to comply with by-laws, etc., of the public bodies and to obey the orders of their superiors. No breach of these obligations could be excused on the ground that it was performed on behalf of an employees' organisation. However, section 56 of the L.P.S. Law, as well as sections 49, 50 and 51, provided special provisions under which local public servants could request examination of cases of dismissal or other unfair treatment adverse to their interests. The Government subsequently also submitted its replies to the various alleged cases of anti-union interference.

954. The Committee on Freedom of Association, in paragraph 377 of its 66th Report [3] and paragraph 75 of its 68th Report [4], requested the Government to be good enough to furnish information as to the outcome of the proceedings still pending concerned with the aforementioned individual cases of alleged anti-union interference, and as to any further investigations into particular cases that the Government might have made.

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[1] These allegations and the Government's replies thereto appear in docs. Nos. 68 and 76 respectively.

[2] These allegations and the Government's replies thereto appear in docs. Nos. 46, 48, 54, 56, 57, 63, 71 and 75.

[3] See *Official Bulletin*, Vol. XLVI, No. 1, Jan. 1963, Suppl., p. 65.

[4] Ibid., No. 2, Apr. 1963, Suppl. I, p. 69.

Section 4

Examination of the Case by the Fact-Finding and Conciliation Commission on Freedom of Association (Further Statements and Hearings)

955. In this section it is proposed to examine the successive stages of the examination of the case by the Fact-Finding and Conciliation Commission on Freedom of Association. As pointed out in Chapters 4 to 7 above the phases of the case included a first session in Geneva, 12 to 19 May 1964, at which the Commission, *inter alia*, adopted its procedure and set a period of time in which it would receive further statements, and other documents from the complainants and the Government, the period between the first and second sessions during which additional written testimony and other information was duly received, a second session in Geneva, 9 to 26 September 1964, which included 27 private sittings of the members of the Commission for the purpose of taking additional written evidence and oral testimony, and a visit by the members of the Commission to Japan, 12 to 26 January 1965. The latter phase, the visit and the examination of certain events affecting the case which have occurred since the Commission left Japan, are examined in the following section.

956. The immediately following chapters deal with an analysis of the allegations of the complainants and the replies of the Government thereto contained in the further statements and other documents submitted to the Commission in response to its invitation therefor, as well as an analysis of the evidence, written and oral, which was presented to the Commission at its hearings held in Geneva from 9 to 26 September 1964. A stenographic record of the hearings was prepared and has been deposited in the library of the International Labour Office, as indicated in paragraph 26 above.

CHAPTER 21

POSITION WITH REGARD TO THE RATIFICATION OF THE FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 1948 (No. 87)

I. Statements and Evidence of the Complainants

957. In its further statement[1], dated 25 June 1964, the General Council of Trade Unions of Japan reported that, notwithstanding the Government's promise of the early ratification of Convention No. 87, repeated 12 times, such ratification had not yet taken place. The complainant alleged that, even though " an understanding was

[1] Doc. No. 89.

established between the government party and . . . the opposition, on the Bills amending the internal laws ", including the establishment of a special committee whose terms of reference included deliberation on the ratification issue, ratification had not been realised by the close of the 46th Session of the Diet on 27 June 1964.[1] The complainant stated that the Government used the time obtained by these repeated delays of ratification in " weakening the union organisation to a great danger to the establishment of social justice in Japan ".[1]

958. In a statement before the Commission the General Secretary of the General Council of Trade Unions of Japan alleged that the failure to ratify the Convention, even after the agreement reached between the government and opposition parties, was due to the internal disagreement within the Liberal Democratic (government) party which tended to confuse the entire labour policy of the Government. He further alleged that the refusal of the Minister of Education to negotiate with the Japan Teachers' Union was symptomatic of this internal disagreement.[2]

959. In a statement before the Commission, the representative of the General Council of Trade Unions of Japan repeated the allegation that ratification was being delayed principally because of the dissension within the government party, with opposition to such ratification centred around the Ministers of Education and Local Autonomy.[3] The statement proposed that—(1) Convention No. 87 should be ratified immediately; (2) proposals to amend existing labour legislation should be confined to the repeal of paragraph 3, article 4, of the Public Corporation and National Enterprise Labour Relations Law and paragraph 3, article 5, of the Local Public Enterprise Labour Relations Law; and (3) the Government should cease its alleged policy of " capitalising upon the ratification of the Convention as an opportunity for harsh revisions of the domestic laws."[4]

960. Similar proposals as to the timing and legislative content of the Bills submitted to the Diet in connection with the ratification of the Convention and allegations as to the motives and causes of the delay in ratification were presented to the Commission in statements delivered by the representatives of the International Confederation of Free Trade Unions[5], the International Transport Workers' Federation[6] and the International Federation of Free Teachers' Unions.[7]

961. The witness appearing on behalf of the General Council of Trade Unions of Japan alleged that the two main substantive factors delaying ratification of Convention No. 87 were the problem of allowing teachers' organisations to have discussions at the national level and the determination of persons within the scope of managerial and supervisory personnel. The witness stated that both of these problems were entirely within the Government's power to solve.[8] In response to a question put by the Commission the witness agreed fully that it would be better to seek first the ratification of the Convention as a starting point on which to base better future labour-

[1] Doc. No. 89, p. 4.
[2] *Record of Hearings*, VII/3.
[3] Ibid., I/3.
[4] Ibid., I/2.
[5] Ibid., I/11-12 and I/13.
[6] Ibid., I/17.
[7] Ibid., I/18.
[8] Ibid., III/5.

management relations, rather than attempting to couple the ratification with extensive proposals designed to amend existing legislation.[1]

962. The witness appearing on behalf of the Japan Teachers' Union stated that the persistent refusal of the Government to recognise the Japan Teachers' Union was " one real reason why the Japanese Government had so far failed to ratify " the Convention in spite of the repeated recommendations of the I.L.O.[2]

II. Statements and Evidence of the Government

963. In its comments on the further statement of the General Council of Trade Unions of Japan, the Government, with reference to its policy concerning the ratification of Convention No. 87 and the deliberations thereon by the Diet, stated that its policies were directed towards the early realisation of such ratification and it intended to continue its efforts towards this end.[3] The Minister of Labour of Japan, in a statement before the Commission, reiterated this intention of the Government and added that it was transmitted through him to the Commission at the personal request of the Prime Minister of Japan.[4]

964. The Minister of Labour further stated that while the substance of Convention No. 87 was almost fully implemented in Japan, it had not yet been ratified because of certain doubts which were raised by the existence of legislative provisions originally enacted to deal with special post-war conditions. Nevertheless, the Government had decided upon the policy of ratification and therefore, after a careful examination of existing national laws, the decision had been taken both to make legislative adjustments of those provisions which had been called into question by the standards of the Convention and to take measures to secure the normal operation of the services and corporations involved. The failure of these proposals thus far to pass the Diet was considered an internal problem of Japan and a solution in a form appropriate to the national conditions would be forthcoming in future through the efforts of the Government and other interested parties.[5]

965. The representative of the Government, in a statement before the Commission, explained, in substantially the same terms, the Government's intentions concerning the ratification.[6] He confirmed that during the previous session of the Diet, the efforts of both parties were frustrated by the twin problems of discussion between teachers' organisations and the national authority and the scope of managerial and supervisory employees. With special reference to the problem of the permissibility of discussion of teachers' organisations with the national authority, some who favoured such relations had insisted that such discussions be held as a legal right.[7]

966. The Government representative further stated that although the avowed policy of the Government was the eventual ratification of Convention No. 87, in the interim, " in the light of the public interest and importance which the work of the public sector involves ", the Government also intended " to keep the present system in which the employees in this sector shall be prohibited from engaging in acts of

[1] *Record of Hearings*, III/8.
[2] Ibid., IX/18.
[3] Doc. No. 99, p. 1.
[4] *Record of Hearings*, VII/5.
[5] Ibid., VII/4-5.
[6] Ibid., II/2-3.
[7] Ibid., II/3.

dispute ". But this was not to be considered as having any direct bearing on the ratification of Convention No. 87.[1]

967. In his evidence before the Commission the Administrative Vice-Minister of Labour stated that it was only because of the few problems relating to the right of organisation among public service employees and public corporation employees that Japan had not yet ratified the Convention.[2] In reply to a question from the Commission concerning the present difficulties preventing ratification the witness wished to refrain from referring to the political programme surrounding the question but stated that it could be said that the core of the problem between the government and opposition parties was the question of central negotiations on the scope of supervisory and managerial personnel, and, among these, teachers. As for the prospect of an early settlement of this problem, it was difficult to assess at the present time, but the Prime Minister was keen on ratification of the Convention.[3]

968. In response to a question from the Commission the Administrative Vice-Minister of Labour stated that the Tripartite Committee on Labour Problems created by the Government had advised that in order to ratify Convention No. 87, it would be necessary to repeal article 4 (3) of the Public Corporation and National Enterprise Labour Relations Law and article 5 (3) of the Local Public Enterprise Labour Relations Law, but, to do that, other steps needed to be taken to stabilise labour-management relations; that in all this the two principles of the autonomy of management and labour and the policy of mutual non-interference between them should be introduced according to the spirit of the Convention.[4]

969. In reply to a question put to him by the representative of the Government the Administrative Vice-Minister of Labour agreed that in Japan " all political parties are in favour of ratification, and at an early date ".[5] In answer to a question put to him by the representative of the International Confederation of Free Trade Unions the witness said that, while all parties were in favour of ratification, the Government had " assumed the attitude of requiring revision of the national laws simultaneously, while the union proposes to have national negotiations on this question ". These elements continued to give rise to political difficulty.[6]

970. In response to questions put to him by the Commission [7] and the representative of the International Confederation of Free Trade Unions [8] the Deputy Director of the Cabinet Legislation Bureau stated that the problems which ratification encountered in the Diet were by their very nature matters of policy-making and that from a strictly legal or administrative viewpoint there were no problems. For example, Convention No. 87 would not contradict the Constitution of Japan, or be contradicted itself by Japanese legislation, if the proposed amendments to existing legislation were made simultaneously with ratification.

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[1] *Record of Hearings*, II/4.
[2] Ibid., XII/7.
[3] Ibid., XII/12-13.
[4] Ibid., XII/16.
[5] Ibid., XIV/7.
[6] Ibid., XIV/10.
[7] Ibid., XV/11.
[8] Ibid., XVII/14.

CHAPTER 22

RESTRICTIONS ON TRADE UNION MEMBERSHIP AND ELECTION OF OFFICERS (PUBLIC CORPORATION AND NATIONAL ENTERPRISE LABOUR RELATIONS LAW AND LOCAL PUBLIC ENTERPRISE LABOUR RELATIONS LAW)

I. Statements and Evidence of the Complainants

971. In their statements before the Commission the representatives of the International Confederation of Free Trade Unions [1] and the International Transport Workers' Union [2] both referred to the restrictions on trade union freedom contained in section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law and section 5 (3) of the Local Public Enterprise Labour Relations Law. The two provisions were alleged to violate the letter and spirit of I.L.O. Conventions Nos. 87 and 98 by limiting membership in trade unions to employees and allowing only such employees to be eligible to serve as union officers. In addition, the Government had failed to implement the unanimous decision of one of its own tripartite consultative committees, the Labour Problems Deliberative Council, which in 1958, after 18 months of studying the ratification issue, had unanimously recommended that both provisions be repealed as incompatible with Article 2 of Convention No. 87. In 1960 the Government had submitted its proposal to have that Convention ratified, together with proposed amendments which would modify rather than eliminate the existing restrictions.[3]

972. In their further statements both the Japan Postal Workers' Union [4] and the Nihon National Railway Motive-Power Union [5] stated that as a result of the operation of section 4 (3) of the P.C.N.E.L.R. Law neither of their respective presidents, both of whom were dismissed employees, were allowed to conclude or sign any contract or agreement with the authorities in his own name as president. The Japan Postal Workers' Union further alleged that the Public Corporation and National Enterprise Labour Relations Commission refused requests for conciliation, mediation or arbitration from the union if those requests were submitted in the name of any dismissed employee.[6] The union concluded that those allegations demonstrated that section 4 (3) of the P.C.N.E.L.R. Law deprived officers and executive members of unions who were discharged by their employer of not only their jobs but the right to participate in the administration of the union to which they belonged.[7]

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[1] *Record of Hearings*, I/9-10.
[2] Ibid., I/16.
[3] Ibid., I/12.
[4] Doc. No. 90, p. 4.
[5] Doc. No. 92, p. 4.
[6] Doc. No. 90, pp. 4-5.
[7] Ibid., p. 6.

973. In his evidence before the Commission the witness for the General Council of Trade Unions of Japan stated that, notwithstanding government assurances to the contrary, bargaining relations had not yet been normalised between the Government and the railway and postal unions since 1959. The fact was that even today the postal authority did not recognise for purposes of collective bargaining the president of the Japan Postal Workers' Union. Similarly, the president of the National Railway Workers' Union was not recognised by the National Railway Authority. Both these facts, said the witness, constituted a continuing violation of the principles of freedom of association enshrined in Convention No. 87.[1]

974. The witness for the Japan Postal Workers' Union stated that immediately after the Second World War the newly enacted Japanese labour legislation had guaranteed to all civil servants, both national and local, with only few exceptions, the right to engage in acts of dispute. The offending section 4 (3) of the P.C.N.E.L.R. Law had not existed.[2] But since its enactment, up to and including the present day, neither the Ministry of Posts and Telecommunications nor the P.C.N.E.L.R. Commission would either sign an agreement or accept an application for conciliation or mediation from an officer of the Japan Postal Workers' Union who was a dismissed employee. This was contempt for a union of 250,000 members, and as long as section 4 (3) existed and was enforced, the lawful election by the union of its present president, the witness, was void.[3]

975. In his evidence before the Commission the witness for the Nihon National Railway Motive-Power Union stated that, since its first complaint was filed in 1957, the union had elected as chairman of its central executive committee four dismissed employees. While they had served in that office, no collective or other agreement had been concluded by the union with the National Railway Authority owing to the latter's refusal to do so. Even the P.C.N.E.L.R. Commission, an apparently neutral organ, had refused all applications for arbitration during the incumbency of those four officers.[4]

976. In response to questions put to him by the Commission on the effects on the organisation of the unions and conditions of work of union members to whom the provisions of section 4 (3) of the P.C.N.E.L.R. Law had been applied, the witness for the General Council of Trade Unions of Japan stated that the provisions limiting membership to employees had had adverse effects on the labour movement because union members had been prevented from exercising their own will in running their own affairs. The presidents of the railway and postal unions had encountered practical problems within their own unions because they, personally, had not been recognised for the purposes of collective bargaining.[5]

977. The witness for the General Council of Trade Unions of Japan added that if a union had been deprived of the right to bargain collectively because of the operation of the restrictive provision of the P.C.N.E.L.R. Law, working conditions tended, generally, to be determined by employers unilaterally. Therefore, the conditions of employment of members of unions which were not able to bargain deteriorated in comparison to unions which possessed that capability.[5]

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[1] *Record of Hearings*, III/4.
[2] Ibid., IV/4-5.
[3] Ibid., IV/9.
[4] Ibid., VII/8.
[5] Ibid., III/9.

978. In testifying to the effects of the operation of section 4 (3) of the P.C.N.E.L.R. Law on his union, the witness for the Nihon National Railway Motive-Power Union stated that the rules of that union in 1957-58 had provided that dismissed employees should not lose their status as either members or officers of the union. When the incumbent officers had been dismissed by the Authority, but retained in their official capacities by the union in 1957, the Authority had notified the union that it would refuse to participate in further negotiations with the union. The witness also stated that the Authority had notified the union shortly thereafter that all existing collective agreements had been abrogated, and concurrently, the Authority had increased locomotive drivers' working hours by 30 minutes per day. It had taken two-and-a-half years to regain this loss. During this period the union had requested negotiations on the basis that such refusal to negotiate had violated article 28 of the Japanese Constitution, guaranteeing the rights of labour. Legal action had been instituted to enjoin the Authority to reopen negotiations and the trial judge had been requested to arbitrate the dispute. All of this had been to no avail. The case had been taken to the Labour Relations Commission but the union's request had been rejected.[1]

979. The witness for the Japan Postal Workers' Union stated that, when negotiations between the union and the Ministry of Posts and Telecommunications had been interrupted because of the application to the union of section 4 (3) of the P.C.N.E.L.R. Law, the Ministry had declared that all the collective agreements in existence at that time were of no effect whatsoever. These abrogated agreements had been on such subjects, *inter alia*, as collective bargaining procedures; the holding of bargaining sessions—those who could attend them, and the places where they were to be held; grievance procedures; and wages and working conditions. None of these agreements had been recovered during the period of 20 months during which no negotiations had taken place.[2] In answer to questions put to him by the Commission the witness stated that his union had been notified by the authorities that they would no longer negotiate with the union as long as dismissed employees remained as union officers. That, said the witness, meant that, in effect, all collective agreements, whether or not they had expired, were actually void. While the Ministry had not explicitly declared these agreements to be void, they had been, in fact, void.[3]

980. In reply to questions of the Commission concerning a previous statement [4] alleging that existing collective agreements had been abrogated by the authorities the witness for the Nihon National Railway Motive-Power Union stated that the authorities had " told the union verbally " that all collective agreements would be abrogated. Later, all the directors of railway offices throughout Japan had been informed that " all negotiations and bargaining with the union would be void from that time ". On 19 August 1957 the Railway Authority had informed the union that as of 1 October the collective agreements would be abrogated. Between 70 and 120 agreements had been abrogated, the main subjects of which were [5] collective bargaining procedures, grievance procedures, action to be taken before the transfer of personnel; disciplinary sanctions; standards for leave; accident compensation; employees' union activities; safety; and overtime. Not all of these abrogated agreements had yet been recovered.[6]

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[1] *Record of Hearings*, VII/12-15.

[2] Ibid., V/1-3; for a more complete list submitted by the witness, see doc. No. 107.

[3] *Record of Hearings*, XV/18.

[4] See para. 978 above.

[5] A more complete list of these may be found in doc. No. 108 submitted by the union at the request of the Commission.

[6] *Record of Hearings*, VII/13-15.

Until section 4 (3) of the P.C.N.E.L.R. Law was deleted, however, there was no guarantee that the Authority would either continue to negotiate or not abrogate agreements again.[1] When recalled by the Commission the witness further stated that many of the agreements had contained dates of expiration which had fallen due during the period when negotiations had not been held.[2]

981. The witnesses for the National Railway Workers' Union and the Nihon National Railway Motive-Power Union both gave evidence on the nature and substance of the compromise agreement proposed to their union by a former Chairman of the P.C.N.E.L.R. Commission, in an attempt to seek a way by which negotiations could be resumed between those unions and the National Railway Authority. The witnesses stated that in 1957, at the request of the Chairman of the Commission, tentative discussions were held at which the Chairman had proposed, *inter alia*, that—

(a) the unions should, at a special convention, appoint temporary representatives from among officers who were not dismissed employees;

(b) bargaining should thereupon be resumed;

(c) at the next regular convention, the unions should elect as officers union members who were employees; and

(d) all law suits instituted by the unions to test the legality of existing labour legislation should be removed.[3]

982. The witness for the Nihon National Railway Motive-Power Union stated that the union had held a meeting of its central executive committee to consider the compromise proposal. It had been decided at this meeting that the union could not accept the proposal, as the union had determined that the compromise would infringe trade union rights and would constitute an interference with the internal affairs of the union by the P.C.N.E.L.R. Commission. The union had rejected the compromise. Subsequently, in June 1958, at its regular convention, the witness stated that the decision had been taken to permit the incumbent president, a dismissed employee, to seek election to the Diet; upon his resignation a new president had been elected, and negotiations with the National Railway Authority had been reopened.[4]

983. The witness for the Japan Postal Workers' Union testified that in December 1959 the same former Chairman of the P.C.N.E.L.R. Commission who had intervened in the railway unions dispute mentioned above had attempted to conciliate a dispute between the Japan Postal Workers' Union and the postal authorities which had resulted in a one-year-and-eight-month cessation of negotiation between them. The witness stated that the compromise proposal suggested at that time had called upon the union to appoint a member of the union's executive committee who still had employee status to act on behalf of the Japan Postal Workers' Union for the purpose of collective bargaining and the signing of contracts and agreements. Upon the acceptance of this proposal by the Union, negotiations with the Ministry of Posts and Telecommunications had been resumed.[5]

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[1] *Record of Hearings*, VII/21.

[2] Ibid., XXII/1-4.

[3] Ibid., VI/12-13 for the National Railway Workers' Union; VII/14-18 for the Nihon National Railway Motive-Power Union.

[4] Ibid., VII/18-19.

[5] Ibid., IV/14.

984. The witness for the Japan Postal Workers' Union continued his evidence on the subject of the compromise proposal by stating that, although his union fundamentally opposed both the operation of section 4 (3) of the P.C.N.E.L.R. Law and the proposal of the Chairman of the Labour Relations Commission, the union had accepted the compromise for a variety of reasons. The nature of the temporary representative to be appointed and the fact that the officers of the union could remain in their elective positions, which distinguished this proposal from the compromise offered to the railway workers' unions, had been considered " an improvement—a step farther ". The timing of the proposal had suggested to the union that it had been made only to solve a temporary critical situation involving a backlog of holiday season mail, and, out of consideration for the public during the holiday season, the union had decided to end its work-to-rule tactics. The fact that the Chairman's proposal had included the express desire that the Government would proceed to ratify Convention No. 87 and that the Government had accepted the compromise as a whole had led the union to believe that the Government had agreed to ratify the Convention in 1960, and thus the appointment of a bargaining representative would have been only temporary. In addition, the witness stated that, as there had been no bargaining at either central or local levels for one year and eight months, the union had been unable to improve working conditions for its membership and a considerable number of its members had begun to request a change in officers. Related to this fact, movements towards secession from the union had developed which had " coincided with a scheme of the Postal Ministry Authority to break up our union and create splinter unions ".[1]

985. In reply to a series of questions by the Commission the witness for the General Council of Trade Unions of Japan stated that, in spite of the continued non-recognition by the postal authority of the lawfully elected president of the Japan Postal Workers' Union, negotiations had been held since the mutual acceptance of the compromise proposal. This had resulted in a certain improvement in industrial relations. The witness desired to qualify the use of the word " improvement " in describing the present state of these relations, because, he stated, the acceptance of the compromise was compelled by the union's need to resume its activity of attempting to safeguard the interests and life of its members. They were not perfect negotiations, as they were insufficient. Thus there had been no real improvement.[2] The witness further stated that it was the position of his union not to encourage its affiliated members to accept such compromises [3], as the principle denied the complete guarantee of freedom of association.[4]

986. The representative of the Government asked both the witness for the Japan Postal Workers' Union and the witness for the Nihon National Railway Motive-Power Union whether, after the acceptance of the compromise, the presence and participation at negotiating sessions of dismissed employees who were officers of the unions had been forbidden. The witness for the Japan Postal Workers' Union answered affirmatively—that even if the Minister of Posts and Telecommunications had wished to negotiate with the president of the union, pressure was put on the Ministry by the government party not to meet with him as long as section 4 (3) of the P.C.N.E.L.R. Law was in effect. Even when meetings had occurred, the president

[1] *Record of Hearings*, IV/15-16.
[2] Ibid., III/10-11.
[3] Ibid., III/11.
[4] Ibid., IV/2.

of the union had been forced to bring with him the union's temporary representative.[1] The witness for the Nihon National Railway Motive-Power Union replied that sometimes officers of his union who were dismissed employees were permitted to attend negotiations and sometimes they were not, and that participation in collective bargaining was permitted to them only at the discretion of the authorities.[2]

987. In reply to a series of questions put by the Commission the witness for the Japan Postal Workers' Union stated that in form as well as in practice a number of problems had been solved since the compromise had been accepted, but as section 4 (3) of the P.C.N.E.L.R. Law still existed the inconvenience to the union continued.[3] In reply to a similar line of questions by the Commission the witness for the National Railway Workers' Union stated that, owing to the necessity to accept the compromise, the union had been compelled to change officers and, for this purpose, to hold a special convention. This had taken money and time. The effect on the union had been to strengthen the position of the Railway Authority. Generally, relations with the National Railway Authority were worse than before.[4]

II. Statements and Evidence of the Government

988. The Government, in commenting upon the further statement submitted by the Nihon National Railway Motive-Power Union, stated that in the event that it ratified Convention No. 87, section 4 (3) of the P.C.N.E.L.R. Law and section 5 (3) of the L.P.E.L.R. Law were to be deleted. This intent had been clearly expressed. As the ratification had not yet taken place, those provisions were still effective, and thus a discharged employee was not eligible to be a legitimate union representative. It followed that, even if discharged employees were elected "*de facto* representatives" by the union, management was not able to recognise them as such. This did not mean, however, that the existence of the union would be denied or that its functioning would be obstructed.[5]

989. The Administrative Vice-Minister of Labour restated the Government's intention to repeal article 4 (3) of the P.C.N.E.L.R. Law and section 5 (3) of the L.P.E.L.R. Law, when Convention No. 87 had been ratified.[6] In reply to questions of the Commission the witness said that, while some opinion favoured the repealing of the two legislative provisions independently of the ratification issue, the Government had not yet considered such a programme.[7]

990. The witness further stated that the two provisions in question had been established in 1947 with a view to ensuring the normal operation of the public corporations and national enterprises, all of which had a close connection with the national economy and daily lives of the people. It had also been the intention to protect normal trade union activities from interference by outside destructive elements in the special circumstances of post-war Japan.[8] By "normal activities" the witness stated he meant collective bargaining, smoothly carried out, without conflict with

[1] *Record of Hearings*, V/8.
[2] Ibid., VI/19.
[3] Ibid., V/4.
[4] Ibid., VI/3.
[5] Doc. No. 102, p. 2.
[6] *Record of Hearings*, XII/7-8.
[7] Ibid., XII/15 and XIII/1.
[8] Ibid., XII/14.

national legislation. While parties to negotiations might disagree, the procedure of disagreement would be in conformity with the legal provisions.[1]

991. The witness further stated that, pending actual repeal of section 4 (3) of the P.C.N.E.L.R. Law and section 5 (3) of the L.P.E.L.R. Law, these provisions were in force as national laws. As a matter of form, measures should be taken to ensure their observation. As the Commission had already heard, compromise proposals, accepted by labour and management, had tended to remove in practice the obstacles presented by the legal provisions.[2]

992. In reply to questions put to him by the representative of the General Council of Trade Unions of Japan the Administrative Vice-Minister of Labour stated, with reference to the original decision of the National Railway Authority not to negotiate with the National Railway Workers' Union, that in 1957, in answer to an inquiry submitted by the President of the National Railways to the Director of the Labour Policy Bureau concerning the interpretation of the P.C.N.E.L.R. Law, an opinion containing the substance of the final decision taken had been issued. The decision of the Cabinet in 1959, that measures were to be taken to make trade unions of the national enterprises and public corporations observe faithfully the national laws so that normal labour relations might be established, did not make specific reference to the cessation of negotiations between the authority and the railway union; it had been worded in broad general terms.[3]

993. With reference to the alleged abrogation of existing collective agreements due to the operation of section 4 (3) of the P.C.N.E.L.R. Law [4], the Deputy Director of the Personnel Bureau of the Ministry of Posts and Telecommunications stated that, even during the period in which collective bargaining had been suspended, the postal authorities had respected and abided by the labour agreements previously concluded with the Japan Postal Workers' Union.[5] No agreements had been abrogated during that time by the authority on its own initiative; but there were some whose term of validity had expired, and these had not been renewed. These expired agreements had dealt with, *inter alia*, overtime work and work on holidays, deductions from wages, night duty, collective bargaining procedures, procedure for applications for conciliation, mediation and arbitration and grievance procedures. These agreements primarily had regulated relations between the union and the authority and had not governed the conditions of employment of postal workers. With the exception of expired agreements concerning bargaining procedures, the postal authority had observed the other agreements which had expired, particularly if those agreements had dealt with working conditions.[6]

994. With reference to similar allegations concerning the National Railway Authority [7] the Director of the Staff Administration Department of the Japanese National Railways testified that the agreements alleged to have been abrogated actually had expired at the end of the term of validity provided in them during the

[1] *Record of Hearings*, XIII/4.
[2] Ibid., XIII/2.
[3] Ibid., XIV/9.
[4] See para. 979 above.
[5] *Record of Hearings*, XVIII/34 and XIX/7.
[6] Ibid., XIX/7-9.
[7] See para. 978 above.

period in which there had been no collective bargaining between the railway authority and the Nihon National Railway Motive-Power Union. All of these existing collective agreements had remained in force until the date on which they had expired.[1]

995. The Administrative Vice-Minister of Labour stated that under the terms of the compromise agreements proposed by the former Chairman of the P.C.N.E.L.R. Commission trade union officers who had been dismissed from employment were required to be replaced by a temporary representative chosen from among union members who were employees. It had been merely the proposal of the Chairman of the Commission. The compromise plans were all still in effect and had helped in improving relations between the authorities and the unions. The witness stated that he considered the existing state of labour-management relations between the railway authority and the railway unions to be appropriate pending the repeal of section 4 (3) of the P.C.N.E.L.R. Law and article 5 (3) of the L.P.E.L.R. Law, as such relations had been conducted along the lines proposed in the compromise plans.[2]

996. The Deputy Director of the Personnel Bureau of the Ministry of Posts and Telecommunications stated that since the settlement of the dispute concerning the postal authority's refusal to negotiate with the Japan Postal Workers' Union by the mutual acceptance of the compromise proposal in December 1959, both parties had conducted collective bargaining, without difficulty, under the system of temporary union representatives. The witness stated that the Ministry had understood the compromise proposal to have been intended to act as a general solution to the 20-month demand of the union for the reopening of negotiations, and had not been accepted with a view towards solving only the 1959 year-end struggle.[3] The compromise agreement was still in effect in the postal sector. The postal authorities bargained collectively with the union even though the union retained dismissed employees as officers, provided that all agreements were signed by representatives or officers who were employees. The dismissed employees who remained as union officers were not refused attendance at bargaining sessions and were permitted to participate in discussions.[4] Attendance at such sessions and designation of bargaining officers were completely within the discretion of the union.[5]

997. In its comments on the further statement submitted by the Japan Postal Workers' Union the Government stated that the cases cited therein by the union, for the purpose of illustrating that collective bargaining was not assured even under the compromise proposal, represented only those attempts by the union to approach the P.C.N.E.L.R. Commission and the postal authority in the name of the president who was a dismissed employee or other dismissed employees still holding union office. All of those attempts had been refused as they had violated section 4 (3) of the P.C.N.E.L.R. Law and had not been within the provisions of the compromise agreement.[6]

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[1] *Record of Hearings*, XX/13.
[2] Ibid., XIII/3.
[3] Ibid., XVIII/35.
[4] Ibid., XIX/7.
[5] Ibid., XIX/10.
[6] Doc. No. 90, p. 3.

CHAPTER 23

DENIAL OF THE RIGHT TO STRIKE AND DEFECTS IN THE MEDIATION AND ARBITRATION SYSTEM (PUBLIC CORPORATION AND NATIONAL ENTERPRISE LABOUR RELATIONS LAW AND LOCAL PUBLIC ENTERPRISE LABOUR RELATIONS LAW)

A. Denial of the Right to Strike and Defects in the Mediation and Arbitration System

I. *Statements and Evidence of the Complainants*

998. In its comments on the Commission's draft analysis of the legislation the General Council of Trade Unions repeated its complaint that the total deprivation of the right to strike in public corporations and national enterprises not only resulted in the workers in these undertakings being prevented from resorting to actions in defence of their interests but also prohibited resistance against alleged undue interference in union activities by the authorities. The prohibition of the right to strike contained in section 17 of the P.C.N.E.L.R. Law was reinforced by section 18 of that Law, which provided for the dismissal of employees having taken part in dispute actions. In addition, the complainant alleged that on 15 March 1963 the Supreme Court had ruled that section 1 (2) of the Trade Union Law, which provided trade union members with immunity from criminal prosecution, was not to be applied to cases arising out of violations of section 17 of the P.C.N.E.L.R. Law and, pursuant to that decision, the trade union movement was subjected to the infliction of criminal punishment.[1]

999. The complainant further stated that the P.C.N.E.L.R. Commission, which had been established as a means to compensate union members for the loss of the right to strike, had failed to fulfil this function, in that owing to the inappropriate method used to appoint members of the Commission equal representation of union organisations was not assured; the method used to appoint the five members of the Commission representing the public interest did not require, of necessity, the consent of organised labour, as was required by the Trade Union Law for the Labour Relations Commission in the private sector; and, as the competent Minister in charge of a given public corporation or national enterprise could require the P.C.N.E.L.R. Commission to mediate or arbitrate in a case, compulsory mediation or arbitration was possible under the system.[2]

1000. The complainant alleged that, according to section 35 of the P.C.N.E.L.R. Law, awards of the Labour Relations Commission were declared to be binding on both parties; but if an award called for the expenditure of funds not available from the budget or funds of the corporation or enterprise, then according to section 16

[1] Doc. No. 87, p. 9.
[2] Ibid., pp. 9-10.

of the Law the Government was not bound by the award until and unless the appropriation was approved by the Diet.[1]

1001. With respect to the L.P.E.L.R. Law the complainant stated criticisms of the prohibition therein of dispute acts by union members, similar to those it brought against the P.C.N.E.L.R. Law. The right to engage in acts of dispute was " not denied even to those who are in the employ of public utilities . . . which are private enterprises ". The complainant alleged that there " was no logical reason why workers of local public enterprises should not be recognised their right to engage in dispute acts ".[2]

1002. As another example of the alleged lack of compensatory machinery provided for workers who were forbidden to strike, the complainant stated that, owing to the operation of section 3 of the P.C.N.E.L.R. Law, sections 28 and 32 of the Trade Union Law were not applied to employees working in public corporations or national enterprises, and therefore orders to stop the commission of unfair labour practices issued by interim or final judgments of the courts were not effective.[3] Similar allegations were made with reference to the L.P.E.L.R. Law, particularly against the proposed amendment concerning the period available for filing a complaint in respect of a dismissal.[4]

1003. With reference to its previous allegation concerning the lack of effective machinery to compensate its workers for the statutory loss of the right to strike, the further statement of the National Railway Workers' Union stated that the arbitration system represented by the P.C.N.E.L.R. Commission was " more or less serving as a machinery for carrying out the wage policies of the Japanese Government ". The complainant alleged that, since its last statement of February 1961 directed to the same issue, the Government had appointed to the Commission, as representing the public interest, Mr. Matsuzaki, a high-ranking government official and member of the Ministry of Labour, and Mr. Kaneko, a former member of the same Ministry and one of the directors of the Public Corporation for the Development of Water Resources.[5]

1004. In his evidence before the Commission the witness for the General Council of Trade Unions of Japan stated that, although many countries had restricted the right to strike in certain sectors of the economy, they had also provided machinery to compensate for the loss of the right to strike. In Japan such compensatory machinery had been created but it did not adequately provide such compensation. The witness alleged that, in addition, the neutrality of the existing machinery had not been guaranteed. In reply to a question of the Commission the witness stated that if the various mediation and arbitration institutions were both neutral in composition and more expeditious in decisions the workers' organisations would be satisfied with the compensatory machinery.[6]

1005. In his evidence before the Commission the witness for the Japan Postal Workers' Union stated that of the 10 million organised workers in Japan one-quarter were employed by the Government and other public authorities. All of these 2½ mil-

[1] Doc. No. 87, p. 10.
[2] Ibid., p. 15.
[3] Ibid., pp. 10-11.
[4] Ibid., pp. 14-15.
[5] Doc. No. 91, p. 25.
[6] *Record of Hearings*, III/11-12.

lion workers were deprived of the right to engage in acts of dispute, without any distinction being made in the legislation between the kind of services the interruption of which would create difficulties for the public welfare and those that would not. The witness alleged that the compensatory machinery instituted to remedy these restrictions on trade union rights had proved inefficient.[1] In this respect the witness alleged that sections 16 and 35 of the P.C.N.E.L.R. Law had themselves weakened the function of the arbitration system. The Government had stated in the past that arbitration awards were respected, but it had never guaranteed the neutrality of the members of the P.C.N.E.L.R. Commission or taken steps to improve the structural shortcomings of the over-all machinery created by the P.C.N.E.L.R. Law.[2]

1006. With specific reference to the allegation that the P.C.N.E.L.R. Commission's impartiality was not ensured, the witness stated that the P.C.N.E.L.R. Law had been revised to the detriment of the workers in 1956, in that the Government was permitted to appoint the members of the Labour Relations Commission. It was " a truism that a person who is not acceptable to the Government cannot become a public member of the Commission under the present system ". The witness alleged that an incumbent director of a Labour Ministry Bureau had been appointed as one of the public members of the Commission and had become Vice-Minister of Labour some years after. Under the circumstances one could not see how the impartiality of the P.C.N.E.L.R. Commission would be ensured. The witness alleged that this would continue to be a source of distrust between labour and management.[1]

1007. In his evidence before the Commission the witness for the National Railway Workers' Union stated that article 17 of the P.C.N.E.L.R. Law prohibiting workers in public corporations and national enterprises from engaging in acts of dispute was the fundamental cause of the present case. His union contended that the prohibition was a violation of article 28 of the Constitution of Japan, while the Government, supported by the Supreme Court, held that it was proper that all such employees be thus restricted in " the public interest ". Nevertheless, stated the witness, there was no clear-cut definition of " the public interest ", and restrictions of trade union rights on that basis were liable to be used as a means of trade union oppression. The union had acted with common sense, aware of its responsibility to society, and would continue to do so if it was permitted to engage in dispute acts. The witness stated that in the private sector a system of strike notification existed in sections 37 and 35 *(b)* of the Labour Relations Adjustment Law, for the purpose of safeguarding " the public interest ". Such safeguards could, therefore, be given to the public sector employees as well.[3]

1008. The witness alleged that the compulsory arbitration system instituted to compensate public sector employees had not fulfilled its function as a substitute for the right to strike. The principles of impartiality and neutrality were not present. The witness further stated that the National Railway Authority had not yet implemented a portion of Arbitration Award No. 1, issued by the P.C.N.E.L.R. Commission in December 1949. The union had attempted to have the award implemented by the Courts, and the Supreme Court had refused to do this in 1960, a full ten years after the issuance of the arbitration award.[4] In reply to questions of the Commis-

[1] *Record of Hearings*, IV/7.
[2] Ibid., IV/9-10.
[3] Ibid., V/13.
[4] Ibid., V/13-14.

sion concerning the implementation of arbitration awards the witness stated that he could not remember any case in which an arbitration award had been implemented prior to 1956. In 1956 the union had reached a wages settlement with the Authority through the good offices of the P.C.N.E.L.R. Commission. The Government had been opposed to the settlement, and although it had granted it, the witness alleged that every year thereafter the Authority had deducted the amount of wages that had been added. Since 1957 the arbitration awards had been implemented, but, as some members of the Labour Relations Commission had previously been high-ranking civil servants, the arbitration awards had called for only small wage increases.[1]

1009. In his evidence before the Commission the witness for the Nihon National Railway Motive-Power Union alleged that the recommendation contained in the 54th Report of the Committee on Freedom of Association, which had called upon the Government to provide adequate compensatory machinery for public sector workers who were prohibited from engaging in dispute acts, had not yet been enacted. The witness further alleged that the Government's proposed amendments to the P.C.N.E.L.R. Law not only had failed to improve the legislative situation, but had added, in the amended section 17 *(b)* of the Law, " simple desertion of the workshop may be subjected to judicial punishment ".[2] Notwithstanding the Government's explanation that the prohibition of strikes was for the " public interest ", it was true that in the outskirts of the large towns in Japan the quantity of transportation undertaken by the National Railways was approximately equal to the traffic of private railways. The workers in the private transport sector were governed by the Trade Union Law and the Labour Relations Adjustment Law, and the only obligation on such workers was to give ten-day notice before a strike. There was " no justifiable reason why the workers of the National Railways alone should be deprived of the right to strike ".[3]

1010. The witness further alleged that the arbitration procedure created under the P.C.N.E.L.R. Law—which ought to be neutral—was not impartial. As an example of this the witness stated that in Award Koroi-Hatsu-192 of 19 May 1964 the P.C.N.E.L.R. Commission had ignored the will of the union and had designated, unilaterally, an " ad hoc representative " to act on behalf of the union.[3] In this connection, in reply to questions put by the representative of the International Confederation of Free Trade Unions the witness stated that the union was very much dissatisfied with the way in which the P.C.N.E.L.R. Commission functioned, as it did not reflect the will of the unions, particularly in the action taken by the Labour Relations Commission in designating a representative for the union rather than permitting the union to designate its own.[4]

II. *Statements and Evidence of the Government*

1011. In its comments on the Commission's draft analysis of the legislation the Government, discussing the provisions of the Railway Business Law, stated that, as opposed to the legislation governing the actions of workers in private transport, in the National Railways acts of dispute were prohibited in view of the importance of those railways, and therefore section 1 (2) of the Trade Union Law did not exculpate

[1] *Record of Hearings*, VI/11-12.
[2] Ibid., VII/7-8.
[3] Ibid., VII/8.
[4] Ibid., VII/19-20.

public sector workers who had engaged in such acts from the criminal sanctions mentioned in section 25 of the Railway Business Law. In the event that national railway workers staged a strike, they were punished under section 25 of that Law.[1]

1012. The Government further stated that in the legal system regulating the adjustment of industrial disputes in Japan the fundamental principle was the peaceful and voluntary settlement of disputes by labour and management themselves. In the private as well as the public corporation and national enterprise sectors the use of collective agreements was never denied, and therefore the statutory procedures for adjustment did not take precedence over voluntary procedures of settlement.[2]

1013. With reference to the allegations of partiality on the part of the P.C.N.E.L.R. Commission made in the further statement of the National Railway Workers' Union, the Government, in its comments on that document, stated that Mr. Matsuzaki, referred to in that allegation, had once been an assistant to the Secretary-General of the P.C.N.E.L.R. Commission but had never been appointed a commissioner. Mr. Kaneko, who was presently a member of the P.C.N.E.L.R. Commission representing the public interest, had been appointed to that position " only after full consent was virtually reached by the labour and employer commissioners ". Thus, stated the Government, there was no justifiable reason to claim that the P.C.N.E.L.R. Commission functioned as an agent dedicated to the implementation of the Government's wage policy.[3]

1014. In its comments on the further statement of the Nihon National Railway Motive-Power Union the Government repeated the statement that it had made in its communication of 1 May 1961 that the interruption of the service of the Japanese National Railways would adversely affect the national economy and the daily life of the nation. The national railway was an essential enterprise, and it was " clear that the prohibition of strike action on the part of J.N.R. personnel is not tantamount to an infringement of workers' rights ". The Government alleged in this connection that the union had more than once resorted to dispute actions prohibited by section 17 of the P.C.N.E.L.R. Law, considerably impeding the railways' normal operations. It stood to reason " that he who has recourse to strike action, or he who has conspired, instigated, or incited such action, should be dismissed, as provided for in law, or otherwise punished or prosecuted under the criminal law ".[4]

1015. In his evidence before the Commission the Administrative Vice-Minister of Labour, with reference to paragraph 188 *(e)* of the 54th Report of the Committee on Freedom of Association [5], stated that, in Japan, in addition to the three public corporations and five national enterprises to which the P.C.N.E.L.R. Law applied, there were a large number of publicly owned enterprises in which strikes were not prohibited. The Government considered " that, in judging what enterprises are ' genuinely essential enterprises ', the social and economic conditions and historical

[1] Doc. No. 88, p. 7.

[2] Ibid., p. 8.

[3] Doc. No. 101, pp. 12-13.

[4] Doc. No. 102, p. 1.

[5] " . . . it would not appear to be appropriate for all publicly owned undertakings to be treated on the same basis in respect of limitations of the right to strike without distinguishing in the relevant legislation between those which are genuinely essential because their interruption may cause public hardship and those which are not essential according to this criterion " (see *Official Bulletin*, Vol. XLIV, 1961, No. 3, p. 309).

development of the country need to be taken into due consideration. . . . However the Government does not consider at this stage revising the Public Corporation and National Enterprise Labour Relations Law, which prohibits strikes by employees of the three public corporations and five national enterprises "[1].

1016. With reference to the provision of adequate and impartial machinery to compensate workers for the loss of their right to strike the witness stated that the Government fully agreed that arbitration machinery ought to be impartial and awards ought to be binding on both sides, as well as fully and promptly implemented. In this connection, while the Governing Body had drawn the attention of the Government to the principle that the reservation of budgetary powers to the legislative authority should not have the effect of preventing compliance with the terms of the arbitral awards of compulsory arbitration tribunals, in Japan the budget of the public corporations and national enterprises was submitted to and approved by the Diet. The provision in the P.C.N.E.L.R. Law that arbitration awards involving the expenditure of funds not available from the appropriated budget or funds could not be put into effect until such awards had been submitted to and approved by the Diet was " to be regarded as an inevitable restriction ". The problem presented was, however, one of the actual operation of the system. It was to be noted " that all of the 184 arbitration awards handed down by the Public Corporation and National Enterprise Labour Relations Commission since its inauguration in 1956 have already been implemented in full, and it has become an established practice for all the parties concerned to respect and implement arbitration awards fully and promptly ".[2]

1017. The witness also referred to the similar provisions in the L.P.E.L.R. Law which required that arbitration awards which contravened a local public body's by-law or called for the expenditure of funds not provided for in the local public body's budget would not be implemented until the by-law had been revised or the appropriation approved by the local public body.[3] The problems presented by these provisions would continue to exist so long as local assemblies retained the power to establish by-laws and to take decisions on the budget as a body representing the local inhabitants. The witness further stated that, in actual practice, the full implementation of arbitration awards was established under the L.P.E.L.R. Law.[4]

1018. In reply to questions put by the Commission regarding the reasons why employees in the National Railways and those in private railways were treated differently in respect of the right to strike, the witness stated that the National Railways were a public body whose capital was paid out in full by the Government, and, therefore, it was operated as a public corporation. The high degree of public character with which the National Railways were invested distinguished them from railways or tramways operated by private industries. The difference was reflected by the different labour legislation governing the two sectors. In view of the relation of such public corporations to the national economy and public welfare it was clear, stated the witness, that the prohibition against acts of dispute did not run counter to article 28 of the Constitution of Japan. Although it was true that the suspension

[1] *Record of Hearings*, XII/8.

[2] Ibid., XII/8-9.

[3] Another aspect of the controversy centred around these provisions—ss. 8 and 10 of the L.P.E.L.R. Law—has been set forth separately elsewhere in this analysis (see Ch. 25 below), in relation to the effect of the L.P.E.L.R. Law on collective agreements.

[4] *Record of Hearings*, XII/9.

of operation of private railways would have certain consequences on the economy, the extent of these consequences would be less than suspension of the operation of the National Railways. The witness stated that there might be some areas of Japan which were served only by private railways and that sometimes there were strikes on the private railways and tramways.[1] In reply to a question put by the representative of the General Council of Trade Unions of Japan the witness agreed that there might be more than 500,000 workers, both organised and unorganised, in the private railroad industry.[2]

1019. With reference to the allegations of the complainants concerning the lack of adequate compensation to workers having been prohibited from striking, the witness repeated that all of the 184 awards of the P.C.N.E.L.R. Commission had been in all cases fully implemented by the Government during the period from the inauguration of the Commission in August 1956 to the present. Prior to 1956 there had been 19 arbitration awards concerning wages. Of these 19 seven had been fully implemented by the Government and in 11 the timing of the implementation had been somewhat delayed. In one case the amount of the award had been reduced. The witness stated that the 19 awards mentioned had been rendered during the period of socio-economic confusion following the war. In the case of awards made under the L.P.E.L.R. Law there had been 16 handed down since the enactment of the Law in 1952, and all of them had been fully implemented.[3]

1020. With reference to the allegations concerning the lack of impartiality in the principal organ created to compensate workers for having lost the right to strike the witness stated that the five members of the P.C.N.E.L.R. Commission representing the public interest had a numerical preponderance over either the employers' or workers' commissioners, who had three each. Objections of this kind had " rarely been raised " in Japan and the Government considered that the present method for electing these public commissioners could not be called unfair.[4] The neutrality of the Commission was fully secured.[5] In reply to questions put by the Commission on the method employed in selecting the public members of the P.C.N.E.L.R. Commission the witness stated that all the present members had been approved by representatives of both labour and management before they had been nominated by the Prime Minister and approved by the Diet. The approval of all the present members had been given by the three labour commissioners presently serving. The President of the Japanese Confederation of Labour, which was not represented on the Commission, had also given his approval to the names submitted to the Diet.[6] The three commissioners representing labour were all members of the General Council of Trade Unions of Japan.[7] Never in the past had other candidates for commissioner representing the public interest been added to the list prepared by the Government because of requests from the representatives of labour.[8]

1021. In reply to a question put by the representative of the General Council of Trade Unions of Japan the witness disagreed that the selection of the Chairman of the P.C.N.E.L.R. Commission as a representative to the International Labour

[1] *Record of Hearings*, XIV/5-6.
[2] Ibid., XIV/7.
[3] Ibid., XIII/5, 7.
[4] Ibid., XII/10.
[5] Ibid., XIII/7.
[6] Ibid., XIII/8-9.
[7] Ibid., XIV/1.
[8] Ibid., XIV/8.

Conference had affected the impartiality of that organ. It was a question of whether the person selected was an appropriate individual to represent the Government at an international conference and " not so much a question to be looked at from other angles ".[1]

1022. In his evidence before the Commission the Deputy Director-General of the Cabinet Legislation Bureau stated that in " undertakings which are genuinely essential because their interruption may cause public hardship " the workers had been deprived of the right to strike, but certain procedures for settling disputes peacefully had been provided " as a measure to ensure suitable guarantees to safeguard the interests of the workers concerned". The workers concerned were those employed by the Japanese National Railways, the Nippon Telegraph and Telephone Public Corporation and the Japan Monopoly Public Corporation, as well as the five national enterprises, the local enterprises and the simple labour of local public bodies, all of which were more closely related to the public welfare than the remaining publicly owned enterprises. Thus, on the one hand, lockouts were forbidden to the employers and, on the other, acts of dispute were prohibited to the employees. " It cannot be helped that any employee found to have engaged in such prohibited conduct is subjected to dismissal." [2]

1023. The witness further stated that by way of compensation for the prohibitions placed on workers in public corporations and national and local enterprises, a system of compulsory arbitration had been instituted to deal with disputes over conditions of employment. The labour relations commissions in the national and local sectors undertook this task on application of the parties concerned or ex officio under statutory conditions. When an award was given " both of the parties concerned are bound by this award as a final decision and the Government or the head of the local public body must endeavour as much as possible " to implement the award. The witness explained that if an award involved the expenditure of funds not available in the national or local public body budget, it would take effect—retroactively—if, and only if, the award was approved by the Diet or local public body concerned. Similarly, if an award conflicted with a local by-law, the award could not be implemented until the local public body eliminated the inconsistency by revision or abrogation of the by-law.[3] In reply to a question put by the representative of the General Council of Trade Unions of Japan concerning the possible contradiction in policy emanating from the fact that public subway workers in Osaka were prohibited from striking while private subway and other transport workers in the Tokyo metropolitan area were able to strike, the witness stated that those facts represented a very rare case, and the point did not concern the general questions connected with the application of the law.[4]

1024. With reference to the Government's previously expressed intentions to amend the L.P.E.L.R. Law so as to render arbitration awards final and binding on both sides, the witness stated that this proposal envisaged an addition to the present section 16 of the Law to the effect that both parties concerned would abide by the award, which would be a final decision, and the head of the local public body would " do his utmost to see that the arbitration award is put into effect ". The Government did not intend to amend or delete section 8 or 10 of the L.P.E.L.R. Law which re-

[1] *Record of Hearings*, XIV/8.
[2] Ibid., XV/8.
[3] Ibid., XV/8-9.
[4] Ibid., XVII/10.

quired that awards calling for unappropriated funds or conflicting with local by-laws would not be implemented until such funds had been appropriated or such by-laws had been amended or abrogated.[1]

1025. In his evidence before the Commission the Director of the Staff Administration Department of the Japanese National Railways stated that in the field of land transport in Japan the National Railways accounted for 50 per cent. of all passenger services and 63 per cent. of freight services and, therefore, if the normal operation of its services was interrupted, " the national economy, the welfare of the nation and social life are most likely to be seriously affected". Thus, strikes against the National Railways were prohibited by section 17 of the P.C.N.E.L.R. Law.[2] Notwithstanding this prohibition on acts of dispute, the railway labour unions had often resorted to strike action.[3]

1026. Several questions were put to the witness by the Commission and by the representative of the General Council of Trade Unions of Japan concerning the disparate treatment in Japanese labour legislation between railway workers in the public and private sectors. The witness replied that he thought the approximate number of private railway employees was less than 300,000. A strike of these employees was usually limited to a particular locality; but the National Railways operated a network that was nation-wide. There was, therefore, no comparison between the effects on national life of strikes in the two sectors. While it was true that private enterprise operation of bus services predominated over bus services operated by the National Railways, the main reason for difference in treatment of employees arose from the fact that the National Railways operated many bus services in very remote areas in which private companies would be unwilling to operate.[4]

III. *Evidence on behalf of the Public Corporation and National Enterprise Labour Relations Commission* [5]

1027. In his evidence before the Commission the witness, one of the five commissioners of the Public Corporation and National Enterprise Labour Relations Commission representing the public interest, stated that the allegation made by the witness for the Nihon National Railway Motive-Power Union that the P.C.N.E.L.R. Commission had unilaterally and against the will of the union designated Mr. Fukomoto as an ad hoc representative was "completely contrary to fact". In this respect the union had submitted an application for mediation in February 1964, in a wage dispute, in the name of the same Mr. Fukomoto; as a result of this submission, the P.C.N.E.L.R. Commission had handed down an award in May 1964 and the award was addressed to Mr. Fukomoto " as the applicant who applied to the Commission for mediation earlier". [6]

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[1] *Record of Hearings*, XV/13-14; an analysis of additional testimony on these two sections of the L.P.E.L.R. Law and their effect on collective agreements may be found in Ch. 25 below.

[2] Ibid., XIX/14.

[3] Ibid., XIX/16.

[4] Ibid., XX/13-15; XX/15-16.

[5] This witness was requested to appear by the Commission, and was duly produced by the Government, but his appearance was on behalf of the P.C.N.E.L.R. Commission and not on behalf of the Government.

[6] *Record of Hearings*, XXI/9; the witness for the Nihon National Railway Motive-Power Union was recalled by the Commission and repeated the substance of his previous allegation concerning the unilateral appointment of Mr. Fukomoto as ad hoc representative of the union. See also ibid., XXII/3-4.

B. Effects of the Denial of the Right to Strike and Defects in the Mediation and Arbitration System on Wages and Working Conditions

I. *Statements and Evidence of the Complainants*

1028. In reply to questions put by the Commission concerning the Union's allegation that the arbitration machinery established by the P.C.N.E.L.R. Law had not compensated postal workers for their loss of the right to strike, the witness for the Japan Postal Workers' Union stated that a gap existed between the wages of workers in the private sector and wages in the public sector, owing to the combination of the loss of the right to strike and the ineffectiveness of the compensatory arbitration machinery. The witness thought the wage difference was approximately 6,000 yen. The wage levels of Japanese postal workers compared very unfavourably with the corresponding wages paid in other countries. The witness added that in recent years wages had been rising on the basis of annual recommendations of the P.C.N.E.L.R. Commission, based on a comparison of wages in the private sector.[1]

1029. With reference to the general working conditions of postal workers, more had been lost than gained. While other Japanese corporations in the communications sector had adopted the 40-hour work week, the members of his union could not expect such a development. Other deteriorated conditions related to work breaks and the time by which uniformed postal workers had to be at work.[2]

1030. In his evidence before the Commission the witness for the National Railway Workers' Union stated that as a result of railway workers being deprived of the right to engage in dispute acts, their wages, hours of work and other working conditions had deteriorated and the " increased labour intensity arising from such state " had been responsible for an increased accident rate on the National Railways, with a resultant loss of life among passengers and workers.[3] In its further statement the National Railway Workers' Union submitted numerous statistical tables in aid of its allegations that wages and other working conditions had deteriorated. In a series of statistics on wages the complainant alleged that the wages of national railway workers were more than 25 per cent. lower in respect of age of employee and more than 35 per cent. lower in respect of length of service than wages in any other industry; although its members' wages had always been " on the top level " before 1945, since the Union had been deprived of the right to strike, " the suppression of increase of their wages at the Public Corporation and National Enterprise Labour Relations Commission has year after year brought about the relative lowering of their wages". [4]

1031. The witness for the National Railway Workers' Union testified that, according to a survey taken by his union, the loss of wage increases caused by the unsatisfactory implementation of only one arbitration award had amounted to 22,700 million yen (U.S.$63,050,000) and the effect on retirement allowances, annuities and related matters had amounted to an estimated 40,000 million yen ($111,110,000).[5]

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[1] *Record of Hearings*, V/7; V/10.
[2] Ibid., V/7.
[3] Ibid., V/13.
[4] Doc. No. 91, pp. 11-13.
[5] *Record of Hearings*, V/14.

1032. With reference to other working conditions the complainant produced further statistics in support of its allegation that, while traffic volume on the railways had increased considerably, the number of personnel had not increased commensurately, resulting in increased per head work volume and work hours required of employees.[1] In addition, the complainant also adduced statistics in support of its allegations that the increases in work-load per head, in work hours and in over-all traffic without commensurate increases in personnel had all contributed to a higher accident rate, as well as to increasing personal injuries and illness, for which the National Railways were responsible.[2]

1033. The witness for the Nihon National Railway Motive-Power Union repeated, in more abbreviated form, its allegations of the deteriorating wages and working conditions of its membership which the union had put forward in its further statement.[3] In view of the loss of the right to strike the union had attempted to resist this deterioration " by utilising as far as possible the mediation or arbitration machinery " of the P.C.N.E.L.R. Commission. Nevertheless, the deterioration had continued. The witness alleged that—(i) the Authority had failed to implement a 1961 mediation which had proposed a reduction in hours of work; (ii) since 1961 the union had repeatedly attempted to negotiate in order to reduce the maximum hours of work of engine drivers on one shift from 19 to 15, but to no avail; (iii) 12 out of 27 local railway bureaux had not followed a mediation award which stated that the standard for diesel engine drivers' hours of service should be the same as that for steam engine drivers; (iv) the wages of engine drivers were low and the arbitration procedure had failed to attempt to remedy that; (v) the number of trains on the national railways had doubled in the past seven years, but the number of engine drivers had scarcely increased, resulting in the intensification of the work density of engine drivers and increased accidents and safety hazards, and (vi) large-scale retaliation measures had been taken against union members' resistance in aid of their working conditions, to the detriment of the union organisation.[4]

II. *Statements and Evidence of the Government*

1034. In his evidence before the Commission the Administrative Vice-Minister of Labour discussed the prevailing wage rates in the public corporation and national enterprise sector, but added that the Ministry of Labour had no responsibility in this respect. Wages were determined primarily in direct negotiations between management and labour; in cases in which negotiations failed, wages were then determined according to the procedures of the P.C.N.E.L.R. Commission. The witness stated that in the period 1958-63 the rate of wage increases in the private sector had been 54 per cent. as compared to 57.4 per cent. in the National Railways, 63.2 per cent. in the tobacco monopoly, 51 per cent. for postal workers and 58 per cent. for telephone and telegraph workers. The witness added that a recent award of the P.C.N.E.L.R. Commission had found that the actual wages in the private sector exceeded those in the public corporation and national enterprise sector by 1.2 per cent., and had decided that wages in the latter sector should be raised by 7.76 per cent.

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[1] Doc. No. 91, pp. 1-10.
[2] Ibid., pp. 18-24.
[3] Doc. No. 92, pp. 5-14.
[4] *Record of Hearings*, VII/8-10.

The witness stated that " this award has been fully implemented by the Government ".[1]

1035. In his evidence before the Commission the Deputy Director of the Personnel Bureau of the Ministry of Posts and Telecommunications stated that under present procedures the wages of postal workers were " generally determined by collective bargaining . . . but as regards such matters as the raising of wage levels, which seriously affect the finance of the enterprise, the practice is to have recourse to the arbitration system . . .". The postal authority did not consider that the working conditions of its employees, so determined, were on the whole less favourable than similar conditions in private enterprises where strikes were not forbidden; nor did it believe that the P.C.N.E.L.R. Law was " inadequate as a system to protect the workers' interests ".[2] According to government statistics the 1953 monthly average of regularly paid workers in private industry employing 30 or more was 14,068 yen, while postal workers were paid 16,403 yen. In 1963, ten years after the inauguration of the P.C.N.E.L.R. Law, private workers were paid 25,755 yen and postal workers 30,660 yen.[3] In reply to a question of the representative of the General Council of Trade Unions of Japan the witness agreed that there was a disparity in wages between large-scale (500 or more employees) and small-scale enterprises: if the wages of postal workers were compared with wages in the former category of enterprises, the statistics would differ from those he had given, but the witness doubted whether the difference would be the 6,000 yen mentioned in the representative's question. As the proportion of large-scale enterprises in Japan was relatively small, the witness felt that it was more realistic to base wage comparisons on a category more representative of the private sector as a whole.[4]

1036. The witness stated that it was extremely difficult to compare industry wage levels between countries; however, in respect of postal workers special conditions had obtained in Japan. These included systems of supplementary benefits payments, year-end bonuses and lump-sum retirement payments, in addition to regular pension payments. Considerable sums were spent by the authorities to provide welfare facilities for employees.[5]

1037. In its comments on the further statement of the National Railway Workers' Union the Government contradicted both the allegations and the statistics which the union had submitted in aid of its claim of deteriorating working conditions in the national railways. With reference to the allegations of expansion of railroad traffic and failure adequately to increase personnel the Government denied the charge generally, and specifically pointed to the extensive rationalisation plans which were currently being undertaken after consultation with the unions. With reference to hours of work the Government stated that in accordance with a P.C.N.E.L.R. Commission arbitration award of 18 August 1961 the decision was taken to reduce the work week by two hours. Agreement on this had been reached with the union. With reference to the allegations concerning the rising incidence of labour-connected accidents the Government offered a general denial that there had been any increase of accidents or fatalities for which the Railway Authority was responsible. In support of this position the Government produced copious statistical tables.[6]

[1] *Record of Hearings*, XIII/6.
[2] Ibid., XVIII/36-37.
[3] Ibid., XIX/3.
[4] Ibid., XIX/9-10.
[5] Ibid., XIX/3, 4-4 *(a)*.
[6] Doc. No. 101, pp. 1-6 and 9-12.

1038. In its comments on the further statement of the Nihon National Railway Motive-Power Union the Government contradicted each of the items [1] offered by the complainant to illustrate the way in which working conditions were deteriorating for engine drivers. In addition to providing statistical tables reflecting the allegations concerning wage rates and labour-incurred injuries the Government stated that, in accordance with an arbitration award of the P.C.N.E.L.R. Commission dated 18 August 1961 and a collective agreement with the union dated 30 March 1963, management and labour had solved the outstanding grievances concerning hours of work and operating hours of diesel locomotive crews. With respect to the remaining controversy over wage rates the Government stated that the differentiation of wages, if necessary, between motive power crews and other National Railways employees " should be decided on the basis of a scientific job appraisal", and the authority had created a committee of labour and management representatives for this purpose; there was, however, no definite justification for motive power crews' claims for a 10 per cent. increase in basic pay.[2]

1039. In his evidence before the Commission the Director of the Staff Administration Department of the Japanese National Railways stated that there was " no truth whatsoever in the allegation that the working conditions of Japanese National Railways employees have deteriorated because of the prohibition of strike action ".[3] With special reference to wage levels the witness stated that, according to statistics compiled by the Ministry of Labour, in 1963 the average wage of National Railways employees was 31,229 yen as compared to 30,654 yen paid to private railway workers. As a result of an arbitration award of the P.C.N.E.L.R. Commission the national railway workers were to receive an increment of 3,000 yen per month as from 1 April, which increment would also be applicable to private railway employees. The witness added that one reason why there was so large a discrepancy between the wage comparison figures of the union and those of the Ministry which he had just stated was that the union's figures for private sector wages represented undertakings employing 1,000 workers or more.[4]

C. Arrests of Trade Unionists (Railway and Postal Workers)

I. *Statements and Evidence of the Complainants*

1040. In its comments on the Commission's draft analysis of the legislation the General Council of Trade Unions of Japan stated that on 15 March 1963 the Japanese Supreme Court had ruled that section 1 (2) of the Trade Union Law, which provided workers with immunity from the imposition of sanctions under the criminal law, should not be applied to any action which violated section 17 of the P.C.N.E.L.R. Law (prohibiting acts of dispute within the sectors to which that Law is applicable). The complainant alleged that this opinion was used as a legal justification for the infliction of criminal punishments upon the trade union movement. In this connection the complainant further alleged that, in addition to the P.C.N.E.L.R. Law, the different laws and regulations of the various undertakings in this sector were also used by the Government to punish employees who had exercised their right to collective actions.[5]

[1] See para. 1033 above.
[2] Doc. No. 102, pp. 3-13 and the Appendix thereto.
[3] *Record of Hearings*, XIX/15.
[4] Ibid., XX/6-7.
[5] Doc. No. 87, p. 9.

1041. In its further statement the Japan Postal Workers' Union pointed to another March 1963 Supreme Court case to which it had been a party.[1] Although it had pleaded that the arrests of its members had been illegal, the views of the Ministry of Posts and Telecommunications, supported by the Government, had been approved —that acts of dispute in violation of section 17 of the P.C.N.E.L.R. Law are not immune from criminal prosecution. The complainant stated that in accordance with the decision union activities would thereafter " be exposed to the danger of arrest, prosecution and dismissal " as long as section 17 existed.[2]

1042. In his evidence before the Commission the witness for the Japan Postal Workers' Union expanded on the allegations that the complainant had set forth in previous statements. Union employees in Matsue city had been arrested, the witness alleged, for their participation in a one-hour workshop rally. This was the case that had led to the 1963 Supreme Court decision. Subsequent to that decision, in connection with the arrest of certain employees of the Tokyo Central Post Office, the Tokyo District Court had held the several defendants to be not guilty, but on appeal by the Government the Court of Appeal had reversed this decision, in accordance with the foregoing Supreme Court decision. The witness alleged that these recent examples illustrated that " the Government policy to treat the trade union's activities with penal sanctions has not changed ".[3]

1043. In its further statement the National Railway Workers' Union undertook to bring up to date allegations made in its statement of 20 February 1961, in connection with the criminal prosecutions of certain of its members. In respect of the case of the Okayama Railway Operating Division the defendant had been acquitted, the Court having decided that the defendant's acts had fallen within the definition of the normal scope of trade union activities.[4] In respect of the case at the Higashi-Sanjo station crossing the Court had dismissed the appeal of the public prosecutor on the alleged grounds that the acts of the defendants also fell within the definition of the normal scope of trade union activities. The complainant added that similar prosecutions had continuously been made up to the present day. The complainant alleged that in 1962 27 cases involving criminal prosecution had been brought, involving 70 individual workers; if the 1963 figures were used the cumulative total of arrests would be 107, involving a total of 300 individual workers who had been indicted to face criminal charges.[5]

1044. The complainant also made reference to the decision of 15 March 1963 of the Supreme Court in the *Hiyama-Maru* boat case, which it alleged had held that " so far as the personnel employed by the public corporations and/or national enterprises are prohibited their dispute acts and denied their right to dispute itself, there shall be no room for any argument over the limited justifications of their acts of dispute, as a result of which it shall be legitimate to consider that they shall not be covered by the provisions stipulated by clause 2, section 1, of the Trade Union Law ". The complainant alleged that subsequent to this decision all the lower courts of the country, before which similar cases had been pending, had followed this decision and found

[1] A purported copy of this decision was appended to the complainant's further statement. Doc. No. 90, pp. 70-72.

[2] Ibid., p. 11.

[3] *Record of Hearings*, IV/10-11.

[4] The complainant alleged that the public prosecutor had appealed this decision to the High Court at Hiroshima and that the decision was still pending. Doc. No. 91, p. 45.

[5] Ibid., pp. 45-46.

trade unionists guilty under the criminal law.[1] The complainant stated that these results were all attributable to the general prohibitory nature of section 17 of the P.C.N.E.L.R. Law.[2]

1045. In reply to questions from the Commission the witness for the National Railway Workers' Union detailed the instructions that the complainant had issued to its members participating in the dispute which had led to the prosecutions in the previously mentioned *Hiyama-Maru* boat case. The Union had " ordered its members to hold a workshop rally just once each day just before the ferry boat was scheduled to leave the port " in opposition to certain hours of work schedules then prevailing. The witness explained that " since the preparation for departure of this ferry would necessarily be delayed a little, there was some delay in departure " occasioned by these workshop rallies.[3]

1046. In reply to questions from the Commission seeking to know the general nature of the instructions the union usually issued before its members engaged in acts of dispute the witness stated that the directives of the union were issued to the affiliated local and then discussed. On the basis of the demand made the union would attempt " collective bargaining with and bring pressure upon the other party ". The union had always encouraged the affiliated union to concentrate on bargaining and to negotiate if possible. It had always stressed that acts of dispute ought to be carried on strictly within the framework of the work rules of the National Railways, so as not to allow the authorities' public security officers to intervene on the grounds of interference with official duties. The acts of dispute which had developed into cases of criminal prosecution were usually ones into which the National Railways public security officers had intervened.[4]

1047. In its further statement the Nihon National Railway Motive-Power Union had included a detailed chart allegedly showing the criminal cases in which its membership had been involved. Eight cases were listed therein, and the three in which judgments had been already rendered had resulted in the conviction of the defendants. All were being appealed.[5]

1048. In his evidence before the Commission the witness for the Nihon National Railway Motive-Power Union stated that, from 1957 to the present, 49 union members had been arrested as a result of the application of sections 17 and 18 of the P.C.N.E.L.R. Law to the attempts by the union to safeguard its members' interests. Since the 1963 Supreme Court decisions the judicial branch of the Government seemed to have " endorsed the oppression of the Government and the authority ".[6]

II. *Statements and Evidence of the Government*

1049. In its comments on the Commission's draft analysis of the legislation the Government stated that union organisations formed under the Trade Union Law enjoyed " the privileges of exemption from criminal and civil liabilities even in case

[1] The complainant included among its attached appendices a copy purporting to be one such lower court decision. Doc. No. 91, Appendix 9.

[2] Ibid., pp. 47 and 48; see also evidence of witness for this complainant, to the same effect, in *Record of Hearings*, V/15.

[3] Ibid., VI/9-10.

[4] Ibid., VI/7-9.

[5] Doc. No. 92, pp. 27-29.

[6] *Record of Hearings*, VII/10-11.

[they have] carried out an act of dispute ".[1] The Government continued by stating that, on the other hand, in the public corporation and national enterprise sector, acts of dispute were prohibited. Therefore, in view of the importance of the National Railways, and in accordance with the decision of the Supreme Court that section 1 (2) of the Trade Union Law did not apply to them, national railway workers engaging in acts of dispute could be prosecuted under section 25 of the Railway Business Law. The Government did not believe, however, that the said section 25 was " a provision to prohibit acts of dispute of railway workers ".[2] In its comments on the further statement of the General Council of Trade Unions, wherein the complainant had submitted a list of alleged cases of retaliatory measures of the Government taken against trade unions and their membership [3], the Government stated that the list contained a number of persons who had been arrested for having committed such acts of violence as " interference with the execution of official duties, personal injuries, etc., or committed such illegal acts as acts of dispute in violation of the law ". The Government commented that these acts could not be considered as justified union activities, but were considered as impairing the public welfare. Thus, such " flagrant acts were subjected to criminal sanctions ".[4]

1050. In its comments on the further statement of the Japan Postal Workers' Union the Government stated that, as the postal services were inseparably related to the national economy, the employees engaged in the postal services were prohibited from resorting to acts of dispute, with the result that they were " punished accordingly " if they committed such acts. The Government further stated that the postal authority had never intervened in justifiable union activities, but in the event that union activities were in conflict with the legislation these could not be regarded as justifiable. With special reference to the Matsue city case [5] the Government held that the union meeting which had extended by one hour into the working hours was an illegal union activity which had violated section 17 of the P.C.N.E.L.R. Law. The authority had forewarned the union that such meetings must not be held. The authority had censured the employees who had participated " according to the fact of their association with respective workshop meetings ".[6]

1051. In its comments on the further statement of the National Railway Workers' Union the Government replied to the allegations of the complainant concerning the two cases in which union members had been held " not guilty " by the courts and against which the public prosecutor had lodged appeals.[7] The Government stated that in the Okayama case the prosecutor had been dissatisfied in that the decision " justifying the building trespassing . . . as well as the propriety of the methods, is not fair and is erroneous . . . and that the action committed should have been interpreted from the evidence that the Division's office building had been occupied by force with the design to interfere with the business of the Division ". In the Higashi-Sanjo crossing case the complainant's allegation that the court held that the union

[1] Doc. No. 88, p. 4.

[2] Ibid., p. 7; similar statements on behalf of the Government were made in testimony by the Administrative Vice-Minister of Labour, *Record of Hearings*, XII/10, and by the Counsellor of the Criminal Affairs Bureau of the Ministry of Justice, ibid., XVIII/5.

[3] Doc. No. 89, pp. 7-21 *(c)*.

[4] Doc. No. 99, p. 2.

[5] See para. 1042 above.

[6] Doc. No. 100, pp. 6-7.

[7] See para. 1043 above.

activities fell under the normal scope thereof was " not an accurate interpretation of the reasoning given ".[1]

1052. The Government stated that, although some criminal prosecutions of National Railway Workers' Union members had been carried out after the recommendations contained in the 64th Report of the Committee on Freedom of Association [2], these prosecutions had been directed against " acts by force, such as occupation of the signal post and abduction of the men on duty, tantamount to interference in the execution of official duties, bodily harm, building trespassing, etc., that could never be admitted as proper activities of a trade union ".[3]

1053. In its comments upon the further statement of the Nihon National Railway Motive-Power Union the Government, with reference to the complainant's list of alleged arrested union members, stated that in each case action had been taken entirely in accordance with the Criminal Code of Procedure. The Government also added that one of the persons named by the complainant had been prosecuted not only for interfering with the exercise of duties by government officials but also for having injured a railway police officer.[4]

1054. In his evidence before the Commission the Counsellor of the Criminal Affairs Bureau of the Ministry of Justice stated that in the legislation of Japan there were four " exceptional cases where penalties may be imposed upon the activities of the union ", three of which were applicable to unions whose members worked in public corporations and national enterprises. These were cases of violation of provisions denying workers the right to engage in acts of dispute, cases in which there has been a violation of a special punitive provision which punishes action calculated to effect a stoppage in the business of a public corporation, i.e. the Postal Communication Law, and cases in which the Penal Code or the punitive provisions of other laws prohibited acts of violence committed in the course of the activities of workers or workers' organisations, i.e. crimes of obstruction of the performance of official duties.[5]

1055. The witness stated that the illegal acts committed in the conduct of union activities might be classified in two categories—crimes of a violent nature and crimes violating prohibitions of law. In the period 1961-63 there had been 1,139 cases of bodily injury, 654 obstructions of business by force, 398 cases of intrusion upon places of habitation, 141 cases of obstruction of the performance of official duties, 123 cases of illegal detention and confinement, 114 cases of violence and 696 violations against the Law for punishment of acts of violence—all accepted by the Public Procurator's Office with reference to the conduct of union activities. These were considered cases of violence. As to the second category of illegal acts, there had been only two cases involving criminal prosecution under the N.P.S. Law, 64 involving the L.P.E.L.R. Law and none involving violation of the Postal Communication Law, or related laws.[6] The witness went on to outline the factual circumstances surrounding

[1] Doc. No. 101, pp. 19-20.

[2] Para. 25 *(f)* therein.

[3] Doc. No. 101, p. 21; to the same effect, see the testimony of the Director of the Staff Administration Department of the Japanese National Railways, *Record of Hearings*, XIX/15.

[4] Doc. No. 102, p. 10.

[5] *Record of Hearings*, XVIII/33-34; the witness also itemised the particular laws and regulations which comprised the major legislative provisions imposing possible criminal sanctions on union members (see ibid., XVII/6-7).

[6] Ibid., XVIII/7.

the most recent cases of criminal prosecutions involving railway workers [1] and postal workers. [2] The witness further gave extracts from leading cases from all courts in Japan concerning the limits of the legitimacy of union activities and the interpretation of the related provisions of the Japanese Constitution.[3]

1056. In reply to a question from the Commission concerning the Government's proposed amendments to the P.C.N.E.L.R. Law and their effect on existing provisions relating to the penalties for engaging in acts of dispute, the witness stated that, generally speaking, no change had been proposed in relation to existing penal provisions.[4]

1057. In reply to a question from the representative of the General Council of Trade Unions of Japan concerning the possibility that certain penal provisions in Japanese law ran counter to both Convention No. 87 and the Constitution of Japan the witness stated that, even before the Committee on Freedom of Association had commented on the principles to be followed concerning the arrest of trade union members, the Government " believed that we were not exercising our prosecuting power against the spirit " of the principles later expressed; but that to " ensure that no miscarriage of justice occurred, the Minister of Justice issued a directive informing all prosecutors in Japan of the purpose of the recommendations ".[5]

D. Disciplinary Measures and Victimisation of Members of the Japan Postal Workers' Union and the National Railway Workers' Union

I. *Statements and Evidence of the Complainants*

1058. In its comments on the Commission's draft analysis of the legislation the General Council of Trade Unions of Japan alleged that as a consequence of the denial of the right to strike workers in public corporations and national enterprises were prohibited from taking any action to defend their interests, and, as a result, such actions were met with retaliatory dismissals, in violation of Article 8 (2) of Convention No. 87.[6] In its further statement the complainant repeated this allegation, alleging that such disciplinary measures, taken in response to the workers' attempts to improve their living conditions, had continued, and the complainant attached to its statement an extensive list purporting to reflect the number and quality of the disciplinary measures taken by the Government.[7]

1059. In its further statement the Japan Postal Workers' Union submitted a chart purporting to show the increase in disciplinary actions, both dismissal and arrest, since the complainant submitted its last statement.[8] The complainant alleged that these actions involved penalties imposed on workers for their participation in workshop rallies and opposition to the refusal by the Government to conclude collective agreements on overtime work; the measures taken had ranged from reprimands and

[1] *Record of Hearings*, XVIII/11 and 15-17.
[2] Ibid., XVIII/11-15.
[3] Ibid., XVIII/20-24.
[4] Ibid., XVIII/26.
[5] Ibid., XVIII/29-30.
[6] Doc. No. 87, p. 9.
[7] Doc. No. 89, p. 5 and pp. 7-21 *(c)*.
[8] Doc. No. 90, Appendix 6.

wage reductions to dismissal[1], and in some cases, even arrest and prosecution.[2] As a result of these disciplinary actions the complainant alleged that it had been compelled to expend large sums for the benefit of its victimised members, and these sacrifices could not be recovered even if such action by the Government ceased in future.[3] In his evidence before the Commission the witness for the Japan Postal Workers' Union alleged that, since 1958, 58,418 of its members had been subjected to victimisation, and that, in 1961 and 1963, 68.2 per cent. and 44 per cent. of the complainant's entire budget had been expended on behalf of these victims.[4]

1060. The witness stated that the latest of the Government's attempts at retaliatory disciplinary tactics had occurred in connection with his union's attempt to claim a wage increase by having its members attach a printed ribbon to their work-clothes. To those who refused to take the ribbon off " the Government applied severe disciplinary sanctions " on the grounds of having violated an administrative order, having engaged in union activities within working hours, or having disturbed workshop discipline.[5] In reply to the claim of the Government that public sector trade unions often resorted to illegal acts of dispute, the witness stated that the workers were severely penalised just for holding workshop rallies and the unions had to pay large sums of their budget to aid these workers; therefore, it did not seem likely that unions would resort to more serious acts of dispute which would call for the imposition of heavier sanctions.[6]

1061. In its further statement the National Railway Workers' Union stated that, since 1962, 42 of its members had been dismissed in compliance with section 17 of the P.C.N.E.L.R. Law, 42 members had been discharged in compliance with the National Railways Law, section 31, and 5,466 members had received other kinds of disciplinary punishments. Since 1953 the cumulative number of disciplinary sanctions imposed would amount to 45,067.[7] As a result of the expensive nature of the disciplinary measures taken by the Government, annual expenditures from the union's relief fund for victimised members had reached nearly 300 million yen[8], and the cumulative expenditure for this purpose since 1953 surpassed 1,600 million yen.[9] The witness for this complainant, in his evidence before the Commission, testified to the same effect and added that it appeared that the infliction of so many disciplinary sanctions amounted to an attempt of " the Japanese Government, as well as the Railway Authority, to weaken the union activities by giving a great interruption in the financial field of the union ".[10]

1062. In its further statement the Nihon National Railway Motive-Power Union included a series of statistical tables " to show a mass of punitive measures used by the National Railway Authority to retaliate against the union's resistance to protect basic human rights " of its workers; also included was a table purporting to show

[1] Doc. No. 90, pp. 7-10.
[2] See, paras. 1041 and 1042 above.
[3] Doc. No. 90, p. 11 and Appendix 6-2.
[4] *Record of Hearings*, IV/11.
[5] Ibid., VI/11.
[6] Ibid., IV/12.
[7] Doc. No. 91, p. 48 and Appendix 10.
[8] Ibid., Appendix 12.
[9] Ibid., p. 49.
[10] *Record of Hearings*, V/16.

the financial damage caused the union by these actions.[1] In addition the complainant furnished a list of union members allegedly discharged under section 18 of the P.C.N.E.L.R. Law. All 12 persons on the list were said to have been either chairmen or vice-chairmen of their respective district or branch unions.[2]

1063. Under the heading of "Unjustified Oppression by the Authorities," the complainant reported a series of alleged disciplinary actions taken by the authority in the union's Hokuriku District headquarters in order "strenuously to oppress the union's anti-rationalisation struggle", in December 1963. Among these alleged cases of disciplinary sanctions imposed upon workers who had taken part in union activities while off duty there were also alleged cases of discrimination against the named workers in such ways as being refused permission to take their paid leave in order to join in a union-organised demonstration, cancellation of scheduled train duty, and cancellation of previously granted days off.[3]

1064. In his evidence before the Commission the witness for the Nihon National Railway Motive-Power Union alleged that, since 1957, in addition to the 47 cases of arrest of its union members, 31 persons had been discharged and 8,700 had been "placed under disciplinary suppression in the sphere of administrative measures". The witness further alleged that $472,000 of union funds had been expended on behalf of these disciplined members. The witness added that "neither the Japanese Government nor the National Railway Authority takes any concrete measure as regards the union's demand, but they are merely resorting to the Public Corporation and National Enterprise Labour Relations Law, sections 17 and 18, and repeatedly issuing administrative actions, including attempts to discharge, in order to disintegrate the union".[4]

1065. As an example of the complainant's allegations in this respect the witness pointed to his union's struggle in opposition to the Authority's rationalisation scheme. The witness stated that in spite of its opposition to the plan as expressed in negotiations since 1960 the Authority had proceeded to implement its plan. Although the union knew from its past experiences that actions on its part in opposition to the proposed implementation would result in oppressive disciplinary measures against union members and financial loss for the union, on 13 December 1963 the union "could not help holding a two-hour workshop rally at the six major bases, because it had no other means". As a result, the witness alleged, 11 union officers, including the Vice-Chairman of the Central Executive Committee and nine other workers, had been subjected to disciplinary measures and victimisation.[5]

II. *Statements and Evidence of the Government*

1066. In its comments on the further statement of the General Council of Trade Unions of Japan the Government stated, with reference to the complainant's allegations of oppressive disciplinary actions towards trade unionists [6], that, as the courts had held that the prohibition on acts of dispute by employees of public corporations and national and local enterprises did not conflict with the Constitution of Japan, then

[1] Doc. No. 92, pp. 15-17.
[2] Ibid., p. 17.
[3] Ibid., pp. 18-21.
[4] *Record of Hearings*, VII/10.
[5] Ibid,, VII/11.
[6] See para. 1058 above.

measures taken to punish illegal acts neither conflicted with Convention No. 87 nor encroached upon the rights of trade unions. The acts punished " could not at all be considered as justifiable union activities, but went so far as impairing the public welfare ".[1]

1067. In its comments on the further statement of the Japan Postal Workers' Union the Government stated that the legal basis for both arrests of, and disciplinary sanctions against, union members rested on the prohibitions of dispute acts in the P.C.N.E.L.R. Law.[2] With reference to the allegations of victimisation of postal workers who had participated in a one-hour workshop rally [3] the Government said that it was the policy of the postal authority to punish all union members who had participated in an act of dispute; the fact that many union officers had been censured was not attributable to their official positions, as no union officer had been punished who had not actually participated in the act of dispute, unless an officer " was responsible for the holding of the workshop meeting by participating in advance in a consultation for the holding of such a meeting ". The Government added that, if postal workers interpreted the labour agreements arbitrarily and hampered the normal course of business operations by performing their work in an arbitrary manner, their acts were " nothing but acts of dispute prohibited by section 17 of the Public Corporation and National Enterprise Labour Relations Law ".[4]

1068. In his evidence before the Commission the Deputy Director of the Personnel Bureau of the Ministry of Posts and Telecommunications, with general reference to the complainant's allegations relating to disciplinary actions, stated that no such action had ever been taken against lawful union activities. If the complainant's allegations in effect meant either that unions should not be held responsible for any of their activities, whether unlawful or lawful, or that the postal authority had unfairly punished union activities, then the authority could not agree to such contentions of the complainant.[5]

1069. In its comments on the further statements of both the National Railway Workers' Union [6] and the Nihon National Railway Motive-Power Union [7] the Government stated that violations of section 17 of the P.C.N.E.L.R. Law " should be punished properly and adequately ". In its comments on the latter statement the Government stated, with reference to the complainant's alleged list of disciplinary punishments [8], that the complainant had not made any objection to the action taken, as was provided in the " Agreement concerning the criteria for disciplinary punishments " concluded between the management and the complainant, but had, on 23 March 1964, requested that the matter be settled at a " joint co-ordination meeting for redressing grievances ", which had been held on 30 March 1964. An appeal had been taken from the divided opinion rendered by the meeting, and on 24 April 1964 the Central Grievances Redressing Meeting was convened to deliberate further, and the deliberations were still in progress. The Government added that informal

[1] Doc. No. 99, pp. 1-2.
[2] Doc. No. 100, p. 6.
[3] See para. 1059 above.
[4] Doc. No. 100, pp. 7-9.
[5] *Record of Hearings*, XVIII/36.
[6] Doc. No. 101, p. 21.
[7] Doc. No. 103, p. 1.
[8] See para. 1061 above.

warnings were not considered as disciplinary punishments; and that " the management cannot very well see its way clear to approving the use of yearly leaves on pay for labour struggle; it is an act contrary to what is sanctioned by law ".[1]

1070. In its comments on both railway workers' unions' further statements the Government stated, with reference to the complainants' allegations concerning the financial burden imposed upon their organisations by expensive government disciplinary actions [2], that it was not concerned about such financial problems [3] as it had no right to deal with them.[4]

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[1] Doc. No. 102, pp. 10-12.
[2] See paras. 1061 and 1064 above.
[3] Doc. No. 101, p. 22.
[4] Doc. No. 102, p. 13.

CHAPTER 24

DENIAL OF THE RIGHT OF ASSOCIATION TO SUPERVISORY EMPLOYEES (PUBLIC CORPORATION AND NATIONAL ENTERPRISE LABOUR RELATIONS LAW AND LOCAL PUBLIC ENTERPRISE LABOUR RELATIONS LAW)

I. Statements and Evidence of the Complainants

1071. In its comments on the Commission's draft analysis of the legislation the General Council of Trade Unions of Japan alleged that employees' rights of association were being infringed by section 4 (1) of the P.C.N.E.L.R. Law, which provided that the categories of employees rendered ineligible for union membership and prohibited from forming trade unions because of their status as supervisory personnel should be designated and made public in notifications issued by the Minister of Labour based on the resolution therefor of the P.C.N.E.L.R. Commission. The statement of the complainants alleged that the scope of union membership should be decided by the union itself and not determined by legislation.[1] The complainants, in commenting upon the proposed amendments to the P.C.N.E.L.R. Law, contended that the present Bill to amend the Law, which would have the scope of organisation decided not by notification of the Minister of Labour but by the P.C.N.E.L.R. Commission alone, would only be a change in form and not in principle because the voice of the trade unions would still not be heard on this matter.[2] The complainant further alleged that the categories of employees designated as non-union members in the present Law would remain under the amendment Bill (Enforcement Regulations of the Bill to amend the P.C.N.E.L.R. Law, s. 2).[3]

1072. With reference to section 5 (1) of the L.P.E.L.R. Law, which prohibits " those holding managerial or supervisory positions and those in charge of confidential affairs " from organising or affiliating with unions, the complainants' comments on the draft analysis of the legislation stated that it had been possible for employees in this category to form employee organisations under the L.P.S. Law. It was alleged that under the proposed revision Bill such employees would no longer be permitted to join employee organisations under that Law and would consequently be deprived of any means to protect their rights. The Government had contended that by rescinding section 5 (1) and amending section 39 of the present L.P.E.L.R. Law personnel holding managerial and supervisory positions and personnel acting in a confidential capacity would be ensured of the right to organise themselves. At the same time, however, the Government had maintained that, by virtue of section 2 (1) of the Trade Union Law, equally applicable to trade unions formed under the L.P.E.L.R. Law, the supervisory staff would not be permitted to join the organisations formed by other categories of employees.[4] The complainant further

[1] Doc. No. 87, p. 7.
[2] Ibid., pp. 7-8.
[3] Ibid., p. 8.
[4] Ibid., p. 13.

alleged that, even if the necessary amendments to the L.P.E.L.R. Law were adopted, so that supervisory personnel were permitted to organise themselves, the resulting employees' organisations of supervisory staff would not fulfil the requisites of section 2 (1) of the Trade Union Law, which prohibited the formation of company unions, and would consequently be denied the ability to exercise the rights ensured by the Trade Union Law. In this respect, the complainant concluded, the Government's contention that managerial staff would be guaranteed freedom to form trade unions by the Bill to repeal the present section 5 (1) of the L.P.E.L.R. Law was groundless.[1]

1073. With reference to the extant procedure by which the scope of managerial employees was determined, as provided in sections 5 (1) and 5 (2) of the L.P.E.L.R. Law, the complainant alleged that, although the determination was to be made according to cabinet order, the decision was actually left to the discretion of the prefectural governor. The complainant stated that even if, under the presently proposed amendment, the labour relations commissions were to be required to acknowledge the governor's designation, the possibility would still remain " that many employees would be unduly deprived of their rights to organise ". In addition, both the present and proposed systems presented a clear danger that unions would be weakened as a result of decreases in their membership due to the restricted scope of the categories of employees permitted to organise. The scope of union membership should be decided voluntarily by the unions. Determination by the labour relations commissions should be limited to fixing general standards which would serve as guidelines for union designation of the specific workers who fall under the categories defined in the law.[2] The complainant contended that both the present system and the system envisaged by the amendment Bill violated Convention No. 87, which provided that workers should have the right to join the trade unions of their choice.[3]

1074. With reference to section 4 (1) of the P.C.N.E.L.R. Law the further statement of the Japan Postal Workers' Union alleged that the scope of " non-union membership " was determined so as to deprive workers, without justifiable reason, of the right to organise.[4] Such a system of unilateral determination of the scope of union membership, which increased the numbers of employees not permitted to organise or join trade unions, was politically based on the intention to weaken employee organisations and not on the managerial system or the problem of job performance.[5]

1075. The complainant stated that, notwithstanding the application of the Ministry of Posts and Telecommunications made in September 1958 to expand the scope of employees not to be permitted to organise or join a trade union, the Ministry had presented an additional similar request on 26 July 1961. Although the Ministry had given as its reasons for the application its desire to conform the managerial system of the Ministry of Posts and Telecommunications to the scope of " non-union membership " and to conserve secrecy, it was clear, the complainant alleged, that this action was taken against the union " because neither the job contents nor the posts concerning the execution of powers were altered ".[6] The complainant further

[1] Doc. No. 87, pp. 13-14.
[2] Ibid. p. 13.
[3] Ibid., p. 14.
[4] Doc. No. 90, p. 1.
[5] Ibid., p. 2.
[6] Ibid., pp. 2-3.

stated that, when the Minister of Labour had received the postal authorities' request, it had been referred by him to the P.C.N.E.L.R. Commission, and the Commission on 6 August 1962 had designated as coming within the scope of non-union membership about 1,200 workers who had previously been held exempt from such designation, without giving any reason for its action. As a result of this and previous similar orders by the Commission the scope of non-union members among postal workers had expanded to 28,000 or 9.4 per cent. of workers in the Ministry of Posts and Telecommunications. Since August 1958 this had amounted to an increase of 7,513 workers or 2 per cent.[1] The complainant contended that these alleged facts had proved that the Government was continuing to take measures in contradiction to the principles of the 54th Report of the Committee on Freedom of Association.[2]

1076. The complainant concluded by contending that, although the Government had declared that it would take measures to amend section 4 (1) of the P.C.N.E.L.R. Law when it had ratified Convention No. 87, the Government also intended to expand, even in the amendment, the scope of non-union membership, as it had inserted in the revision Bill a provision to the effect that those persons already designated by the P.C.N.E.L.R. Commission as coming within the scope of non-union membership were to be treated, after the amendment, as falling within the purview of the Trade Union Law, section 2 (1), which provision was to be applied *mutatis mutandis* by the revised P.C.N.E.L.R. Law.[3]

1077. In its further statement the National Railway Workers' Union, in connection with the operation of section 4 (1) of the P.C.N.E.L.R. Law, alleged that the National Railway Authority had been trying, successfully, to extend the scope of those excluded from joining or organising a union. The complainant stated that the number of such personnel and managerial staff so excluded had increased by 9 per cent. from 1958 to 1964, as contrasted with an over-all 1 per cent. rise in the number of rank-and-file employees during the same period.[4]

1078. In his testimony before the Commission the witness for the Japan Postal Workers' Union repeated the statistics concerning the number of postal employees who had been deprived of the right to organise or to affiliate with a union under the operation of section 4 (1) of the P.C.N.E.L.R. Law, which had been alleged in his union's further statement.[5] The witness stated, in this connection, that these lower supervisory staff employees had not only been deprived of their right to organise, but also had had imposed upon them by their superiors the " obligation to carry out various measures to resist union activities ".[6] In answer to a question put to him by the Commission the witness stated that if supervisory employees were permitted, by the amendment of existing legislation, to form employees' organisations of their own rather than being permitted to rejoin his union, the Japan Postal Workers' Union would face a grave crisis within several years, owing to the fact that a union composed exclusively of supervisors would tend to become part of the control machinery of the postal ministry and would attempt to encourage the formation of splinter unions.[7]

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[1] See Appendix I to complainants' further statement, in Doc. No. 90, pp. 12-20.
[2] Ibid., p. 3.
[3] Ibid., pp. 3-4.
[4] Doc. No. 91, pp. 43-44.
[5] See para. 1075 above.
[6] *Record of Hearings*, IV/8.
[7] Ibid., V/4.

1079. In reply to a question put to him by the representative of the International Confederation of Free Trade Unions the witness stated that in respect of the postal workers who had been classified as supervisory personnel the Labour Relations Commission made the decision upon application to it for that purpose by the Ministry of Posts and Telecommunications, and, judging from the past experience of the union, the Commission seemed to decide that about a half of the number applied for would fall within the scope of supervisory personnel.[1] In reply to the questions of the Commission based on the testimony given by a witness for the Government [2] the witness repeated the allegation made by his union in its further statement to the effect that, when certain categories of postal workers were designated as supervisory staff on 22 January 1959, their official duties underwent no change. The witness further stated that since 1958, on three occasions, employees of the postal administration had been rendered ineligible for union membership. In such reclassifications it had not been unknown that, with reference to a similar type of position, some employees were rendered ineligible for union membership while others were unaffected.[3]

II. Statements and Evidence of the Government

1080. In its comments on the Commission's draft analysis of the legislation the Government stated that section 2 of the Trade Union Law denied treatment as a trade union, as defined in that law, to an employees' organisation formed jointly by employees holding managerial or supervisory positions or occupying confidential posts and workers who were in a position to be supervised. The object of this distinction was to preserve to the union its ability to maintain and improve working conditions for its members while remaining independent from the employer. A union which combined supervisory and other workers " would find it difficult to make efforts autonomously to elevate the economic position of the workers who are in a position to be supervised ". Intermediate managerial or supervisory employees, who were not allowed to join a trade union formed by ordinary workers, could form a trade union under the Trade Union Law. Senior employees whose position was managerial or supervisory in relation to such intermediate supervisory employees could not join a trade union formed by such intermediate employees.[4]

1081. The Government further commented that, while it was true that, under sections 4 (1) and 5 (1) of the P.C.N.E.L.R. Law and the L.P.E.L.R. Law respectively, supervisory or managerial personnel in the national and local public enterprises and the national corporations were expressly forbidden from organising or joining a trade union, the employees in the five national enterprises and in the local enterprises could " form or join employee organisations within the meanings of the National and Local Public Service Laws ". Moreover, under the terms of the proposed amendment Bill, the two provisions of the two laws were to be repealed, and thus employees holding managerial, supervisory or confidential positions would be able to form trade unions " in the same manner as those employed in the private sector ". In that event the provision of section 2 (1) of the Trade Union Law would alone apply to such employees, as previously explained.[5]

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[1] *Record of Hearings*, V/10.

[2] See para. 1097 below.

[3] *Record of Hearings*, XX/18-19.

[4] Doc. No. 88, pp. 1-2.

[5] Ibid., pp. 2-3.

1082. The Government concluded its comments by stating that the scope of " employees holding managerial or supervisory positions and those employed in a confidential capacity " in the P.C.N.E.L.R. and L.P.E.L.R. Laws was not determined at the discretion of the relevant authority. Such scope was objectively determined for each union. The law determined the scope in an objective, though abstract, manner, and the authority concerned merely confirmed the determination. It was not a question of the arbitrary judgment of the authority; the ultimate decision was left to the law courts, and this principle was to be maintained in the proposed amendment Bills.[1]

1083. In its comments on the further statement of the Japan Postal Workers' Union the Government commented upon the unions' allegations regarding the 1,200 postal workers designated supervisory personnel by the P.C.N.E.L.R. Commission on 6 August 1962.[2] According to the Government statement, on 22 September 1958 the Ministry of Posts and Telecommunications had applied to the Minister of Labour requesting that all " deputy section chiefs " and " deputy postmasters " be designated as within the scope of non-union membership. The Minister of Labour had referred the matter to the Labour Relations Commission, which in January 1959 had granted the request, with the exceptions that the definition of deputy section chiefs should be restricted to one person who acts for a section chief or vice-section chief in the latter's absence or persons in charge of personnel and labour affairs or accounts in the Tokyo, Nagoya or Osaka Central Post Offices; and that in the case of deputy postmaster the definition should be restricted to one person who acts for the postmaster in the latter's absence. On reapplication by the Minister of Labour following a submission therefor from the postal ministry, in July 1961, the Commission on 17 July 1962 had amended its previous restrictions concerning these definitions. The total number of employees reclassified as ineligible for union membership as a result of this ruling, and the public notification of it by the Minister of Labour, was 739, consisting of 65 deputy section chiefs, 442 deputy postmasters and 232 others.[3]

1084. The Government stated that the Minister of Labour had only made public the resolutions of the Commission, which was an impartial third party, and therefore it was apparent that this action had not been intended to weaken the union organisation, as the complainant had alleged.[4]

1085. In its comments on the further statement of the National Railway Workers' Union the Government stated that the scope of non-union members had been prescribed in the notifications that the Minister of Labour had issued on the basis of the P.C.N.E.L.R. Commission, as provided in section 4 (2) of the P.C.N.E.L.R. Law, and there had never been an occasion in which the Japan national railway authorities had expanded that scope. While it was true that the number of non-union members had increased somewhat, this was largely due to modifications in organisation and the revision of the service regulations.[5]

1086. In his evidence before the Commission the Administrative Vice-Minister of Labour stated that, as to the method of determining the scope of supervisory and confidential employees provided in the P.C.N.E.L.R. Law and the L.P.E.L.R. Law,

[1] Doc. No. 88, p. 6.
[2] See para. 1075 above.
[3] Doc. No. 100, pp. 1-2.
[4] Ibid., p. 2.
[5] Doc. No. 101, pp. 15-16.

some misunderstanding had arisen. The scope of such employees was not determined at the discretion of the authority concerned. The scope defined in those two laws was construed as identical with that of persons representing the interests of employers as provided in section 2 (1) of the Trade Union Law, and, therefore, was already objectively determined by law. The authority concerned merely ascertained it in a concrete manner. Thus the authority had no discretion in the matter, and the authority's specific application of the legal provisions was subject to judicial review. The proposals to amend the two laws would not grant any element of discretionary powers to the authorities.[1]

1087. In reply to a question of the Commission which requested the reasons for having prohibited supervisory personnel not only from joining existing unions but from forming unions exclusively their own, the witness stated that section 4 (1) of the P.C.N.E.L.R. Law, to which the Commission had referred, had been promulgated in order to ensure the autonomy of trade unions formed in the public corporations and national enterprises, but that provision had also prohibited supervisory employees from forming unions of their own in view of the public nature of the corporations and undertakings in which they were employed. Upon ratification of Convention No. 87, that latter provision contained in section 4 (1) would be repealed and that would enable managerial and confidential employees to organise trade unions of their own.[2] The witness further stated that he thought that if the present legal provision had not excluded supervisory personnel from joining trade unions formed by other employees there would have been a danger that such unions would be dominated by employers by reason of the membership of supervisory employees. It was the intention of the Ministry to protect the autonomy of employees' unions.[2]

1088. The witness stated that the procedure to be followed in the designation of supervisory and managerial personnel not eligible for union membership was provided by section 4 (2) of the P.C.N.E.L.R. Law. The P.C.N.E.L.R. Commission adopted a resolution containing its decision and the Minister of Labour then issued a notification in a public corporation notice. With reference to the issuance of Labour Ministry Notice No. 10 of 25 April 1958 that procedure had been followed, and as a result the number of supervisory employees in the national railways had been increased by 5,584. The present total of supervisory personnel in the national railways, as reflected in the figures at hand, was 38,645 of approximately 450,000 employees in all.[3]

1089. With reference to Labour Ministry Ordinance No. 3 of 22 January 1959 concerning postal workers the witness stated that the P.C.N.E.L.R. Commission had adopted a resolution, and on the basis of that the ordinance had been issued. The original application had been submitted by the Ministry of Posts and Telecommunications to the Commission, requesting additional supervisory personnel. As a result of the Commission's resolution 4,013 members of the Japan Postal Workers' Union had been rendered ineligible for union membership.[4]

1090. In reply to questions put to him by the Commission the witness stated that the total number of persons employed in the monopoly corporation, to which section 4 (1) of the P.C.N.E.L.R. Law applied, apart from postal and railway workers, was 43,700. Of these 3,580 were ineligible for union membership. In the National

[1] *Record of Hearings*, XII/11-12.
[2] Ibid., XIII/10.
[3] Ibid., XIII/11.
[4] Ibid., XIII/11-12.

Forestry Service 2,980 out of a total of 40,400 employees were ineligible; in the Government Printing Office 270 out of 7,800; in the Minting Service 110 out of 1,900 and in the alcohol monopoly approximately 100 out of 1,260. The witness did not have figures at hand as regards the Nippon Telegraph and Telephone Public Corporation, which were distinct from the figures given for postal workers.[1] With reference to the corresponding statistics for local public enterprise employees who were rendered ineligible for union membership by the operation of section 5 (1) of the L.P.E.L.R. Law the witness stated that the approximate number of employees in this sector was 130,000, and the rough proportion of non-union members to this total was between 8 and 10 per cent.[2]

1091. With reference to the Government's expressed intention, when Convention No. 87 had been ratified, to amend sections 4 (1) of the P.C.N.E.L.R. Law and 5 (1) of the L.P.E.L.R. Law so as to permit supervisory employees to form organisations of their own, the witness stated that while this was the Government's continuing intention the Government had not given consideration to the repeal or amendment of these provisions independently of the question of ratification.[2]

1092. In his evidence before the Commission the Deputy Director-General of the Cabinet Legislation Bureau stated that the provisions of section 5 (1) of the L.P.E.L.R. Law prohibited supervisory employees in the local public enterprise sector from joining employees' organisations, and that it was clear that such employees could not form trade unions within the terms of the Trade Union Law or enjoy the facilities given to trade unions in terms of the Law. Such employees could, however, form their own organisations under the L.P.S. Law.[3] With reference to the Government's intended amendments to the P.C.N.E.L.R. and L.P.E.L.R. Laws the witness stated that the proposed Bill would repeal the restrictions which presently prohibited supervisory personnel from forming their own trade unions and would further permit the organisations formed by supervisory personnel to negotiate and conclude agreements in the same way as other employees.[4]

1093. In reply to a question of the Commission concerning the standards set by cabinet orders in determining the grades forming supervisory and managerial staff in local public enterprises which were then defined by local by-laws pursuant to section 5 (2) of the L.P.E.L.R. Law, the witness stated that the relevant cabinet order had designated the manager of a local enterprise, the head of the bureau of the main office of a local enterprise, the head of the business office and other equivalent persons as the categories to be defined by local by-law. With reference to whether under this system different local bodies might not render different determinations of the cabinet order in their by-laws the witness contended that, in practice, the determination of the scope of supervisory personnel varied from enterprise to enterprise, according to size and organisational structure, and because of these variable conditions the definition of such scope could differ between local public bodies. The witness did not think that such a method of determining the scope led to unreasonable results.[5]

1094. The witness further stated that upon the intended repeal of section 5 (1) of the L.P.E.L.R. Law the supervisory and managerial personnel subject to the appli-

[1] *Record of Hearings*, XIII/12.
[2] Ibid., XIII/13.
[3] Ibid., XV/15-16.
[4] Ibid., XV/18.
[5] Ibid., XVI/8-9.

cation of the Law would be able to " form organisations without exception ". As for the Government's previous communication, which stated that such organisations would have the right " in principle " to negotiate collective agreements covering wages and other working conditions, the witness, after consulting the Japanese-language copy of the Government's reply, stated that the words " in principle " used in the English translation made by the Government, were a mistake.[1]

1095. With reference to the complainants' allegations concerning the determination of the scope of supervisory personnel the Deputy Director of the Personnel Bureau of the Ministry of Posts and Telecommunications, in his testimony before the Commission, stated that it was true that during the past ten years since the P.C.N.E.L.R. Law had been applied to the postal enterprise the scope of the supervisory postal personnel had been revised three times. These revisions had been made on the basis of the resolutions of the P.C.N.E.L.R. Commission in conformity with the internal reorganisation of the postal service necessitated by the changing economic and social conditions in Japan. Of the approximately 15,000 post offices in Japan as many as 9,600 were small non-delivery post offices with a small staff, 83 per cent. of them having five or less workers, including the postmasters. The witness stated that it was inconceivable that the postal authority should try to weaken the organisation of the Japan Postal Workers' Union by abusing the provisions of section 4 (1) of the P.C.N.E.L.R. Law.[2]

1096. The witness stated that, as a result of Labour Ministry Ordinance No. 3, issued by the Ministry in January 1959 in accordance with the resolution of the P.C.N.E.L.R. Commission, 4,013 postal workers who previously had possessed the right to organise under the P.C.N.E.L.R. Law had been rendered ineligible for union membership. This total had included approximately 1,548 assistant chiefs or the equivalent, 2,302 deputies to postmasters in small post offices in which there were no sections, 669 supervisors responsible for the personnel affairs and accounts of the post offices, 102 assistant postal inspectors and 42 chiefs of regional postal inspection bureaux. At the time the ordinance of the Ministry had been issued there had been 259,773 postal workers in all services. At the present time the total number of postal service employees was approximately 300,000, and slightly under 28,000 had become ineligible for union membership because of their supervisory or confidential positions.[3]

1097. In reply to a question from the Commission the witness stated that the official duties of the employees who had become ineligible for union membership by the resolution of the P.C.N.E.L.R. Commission had been changed and as a result of that change the notification of the Ministry had been issued.[4] In reply to subsequent questions asked by the Commission the witness stated that the majority of posts which were declared by Ministry Ordinance No. 3 to be supervisory or confidential in nature had been newly created by the Ministry of Posts and Telecommunications in 1957 and 1958 and that since the time when the employees had been assigned to these new posts their duties had been changed. The witness added that it was necessary to create these supervisory posts because the year-to-year increase in the workload and the corresponding increase in the total number of employees had required additional assistants for section chiefs and postmasters to be provided.[5]

[1] *Record of Hearings*, XVI/9-10.
[2] Ibid., XVIII/35.
[3] Ibid., XIX/4 *(a)*-6.
[4] Ibid., XIX/6.
[5] Ibid., XXI/1-3.

1098. With reference to the complainants' objections to the action taken with regard to the newly created supervisory posts the witness stated that it was true that the assignment to these posts did not necessitate 100 per cent. of working time to be devoted to supervisory duties and that, strictly speaking, these posts involved the execution of supervisory work as well as other work usually performed by union members. However, the authorised number of these posts had been arranged so that these particular employees were to devote approximately 40 per cent. of their time to supervisory jobs. In view of the relatively high proportion of working time to be devoted to jobs which were supervisory in nature the witness felt that the notification issued by the Ministry of Labour had been fair.[1]

1099. In reply to questions of the representative of the International Confederation of Free Trade Unions the witness stated that according to his understanding the new posts created by his Ministry, which involved a change of duties and which were ultimately notified by the Ministry of Labour in its Ordinance No. 3, were posts for which the duties had already been changed before the issuance of the ordinance. The statutory procedures had been instituted on the basis of these changed duties. After the issuance of Ordinance No. 3 the duties had not changed qualitatively but the proportion of supervisory work done had tended to increase quantitatively.[2]

1100. In reply to a question of the Commission as to whether, in the absence of the legal provisions which prohibited supervisory or managerial employees from joining unions of other employees, there would be a danger that such employees' organisations which included supervisory personnel would become " company unions " dominated by the employers, the witness stated that, while he could not say that the possibility did not exist at all, he did not consider that there was " a very great possibility that it will come immediately ".[3]

1101. In reply to a question of the Commission regarding the reasons which led to the issuance of Labour Ministry Notice No. 10 on 25 April 1958 designating certain categories of railway workers as supervisory and managerial employees the Director of the Staff Administration Department of the Japanese National Railways stated that the increase in the number of railway supervisory employees had been effected by a notification issued by the Labour Ministry in accordance with a decision of the P.C.N.E.L.R. Commission, and it was not correct to say that the Japanese National Railway Authority had intended to increase the number of supervisory staff. The categories of positions in which increases in staff had occurred as a result of the notification had included deputy assistant stationmasters, increased by approximately 2,700, chiefs of depot branches, increased by approximately 2,700, first navigation officers, increased by 50, and chief communication engineers, increased by 30. The witness added that no change had been made in the content of the duties comprehended in these posts. In reply to a Commission question as to whether the initiative for the action came from the Railway Authority, the Ministry of Labour or the P.C.N.E.L.R. Commission, the witness stated that he was unable to give that information.[4] As of the end of March 1964 455,797 workers were employed by the National Railways, and as of the same date 40,473 of these were supervisory personnel within

[1] *Record of Hearings*, XXI/2-3.
[2] Ibid., XXI/4-5.
[3] Ibid., XIX/4 *(a)*.
[4] Ibid., XIX/16-17.

the provisions of section 4 (1) of the P.C.N.E.L.R. Law and therefore ineligible for union membership.[1]

III. Evidence on behalf of the Public Corporation and National Enterprise Labour Relations Commission [2]

1102. The witness, one of the five members of the P.C.N.E.L.R. Commission representing the public interest, stated that when an application was made to the Labour Relations Commission seeking to have certain categories of national enterprise or public corporation employees' posts declared supervisory or managerial in nature, the application must state the reasons for the requested change of scope of duties. In reply to a question from the Commission concerning the reasons supporting the application made by the National Railway Authority in 1958, about which a previous government witness [3] had testified that the duties of the reclassified staff had not been changed, the witness stated that the National Railway Authority application had been the first one received after the creation of the Labour Relations Commission. The decision had been taken at a joint meeting of the five public members of the Commission " in the light of the spirit of section 2 (1) of the Trade Union Law and section 4 (1) of the P.C.N.E.L.R. Law, by making thorough deliberations on the duties and responsibilities involved at the time ". The P.C.N.E.L.R. Law had been enacted in December 1948, but the Commission created pursuant to the Law had not been inaugurated until August 1956.[4]

1103. With reference to the application made by the postal authorities in 1959 for the reclassification of certain categories of postal workers as supervisory and managerial employees the witness stated that the resolution of the P.C.N.E.L.R. Commission had designated 4,013 employees as supervisory in nature, which represented approximately 36 per cent. of the total number of supervisory personnel which had been applied for by the authorities. The duties of these personnel had been clearly indicated in the application and the Commission had proceeded to examine the contents of the duties in a concrete manner. The number applied for had exceeded 10,000, but the Commission had reduced this to slightly more than 4,000, having judged that the duties of the 6,000 other employees did not fall within the scope of supervisory personnel. In that application the Commission had been informed that the duties of the workers concerned had been changed, but even if the application had not contained such a statement it was the practice of the Commission to make an independent investigation of this question. The changes in duties had to be important or substantial in nature.[5]

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[1] *Record of Hearings*, XX/1.

[2] The witness was requested to appear by the Commission, and was duly produced by the Government, but his appearance was on behalf of the P.C.N.E.L.R. Commission and not on behalf of the Government.

[3] See para. 1101 above.

[4] *Record of Hearings*, XXI/9-10.

[5] Ibid., XXI/11-12.

CHAPTER 25

COLLECTIVE BARGAINING (PUBLIC CORPORATION AND NATIONAL ENTERPRISE LABOUR RELATIONS LAW AND LOCAL PUBLIC ENTERPRISE LABOUR RELATIONS LAW)

A. Binding Nature of Collective Agreements

I. *Statements and Evidence of the Complainants*

1104. In its comments upon the Commission's draft analysis of the legislation the General Council of Trade Unions of Japan stated that although wages and other remunerations were acknowledged to be legitimate subjects for collective bargaining under the P.C.N.E.L.R. Law, section 16 of that same law provided that any negotiated agreement which required a payment of funds in excess of the amount provided therefor in the budget of the enterprise was not enforceable unless additional funds had been appropriated by the Diet. The complainant alleged that this provision was a "*de facto*" denial of collective bargaining.[1] The effect of section 10 (1) of the L.P.E.L.R. Law, which provided that "any agreement involving the expenditure of funds not available from the budget or funds of the local public enterprise shall not be binding on the local public body concerned, and no funds shall be disbursed pursuant thereto, until appropriate action has been taken by the assembly of the local public body concerned", was also criticised by the complainant. It was alleged that by virtue of that provision a collective agreement would not come into force upon its conclusion between the parties and the danger always existed that such an agreement might be denied any legal effect whatsoever.[2]

1105. In his evidence before the Commission the witness for the All-Japan Prefectural and Municipal Workers' Union repeated the complainants' allegation that by virtue of sections 8 and 10 of the L.P.E.L.R. Law collective agreements which conflicted with local by-laws or which called for the expenditure of funds not available from the budget of the local public body did not ever take effect until the by-law had been amended or the budget had been approved. It was difficult to give exact statistics on the number of agreements which were unimplemented because of the proliferation in Japan of both employees' organisations and local public bodies. As an example the witness pointed to the negotiations between the Workers' Union of the Board of Supply of Matsue city and the authorities of that public body which in 1958 had resulted in basic wage increases having been granted. The negotiated increase had subsequently been refused by the Parliament and had not yet been instituted. It was only when the wages of all workers in the local public service had been raised that the Board of Supply workers' wages had been increased.[3]

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[1] Doc. No. 87, p. 8; the representative for this same complainant, in his statement before the Commission, repeated the substance of these allegations, *Record of Hearings*, I/5; to the same effect see the testimony of the witness of the Japan Postal Workers' Union, in ibid., IV/9-10.

[2] Doc. No. 87, p. 14.

[3] *Record of Hearings*, VIII/8-9.

1106. The witness stated that, after the experiences realised in Matsue city and other local public bodies, the workers in local public enterprises had been reluctant to conclude collective agreements with local public bodies, having felt that even if contracts had been successfully concluded they would not be implemented. The witness further stated, however, that the cases in which agreements had been refused implementation under the L.P.E.L.R. Law had not been numerous in recent years, principally because, after the previous experiences, the tendency of workers in local public enterprises had been to attempt to organise themselves with local public service employees, or to try to federate with local public service unions.[1]

1107. In answer to a question of the Commission the witness repeated his union's allegations that the existence of sections 8 and 10 of the L.P.E.L.R. Law had tended to lead to the conclusions of agreements which were disadvantageous to the workers, and to a worsening of wage levels and working conditions.[2]

II. *Evidence of the Government*

1108. In his evidence before the Commission the Administrative Vice-Minister of Labour stated that, in respect of the implementation of collective agreements, it was inevitable that agreements involving the expenditure of funds not available from the appropriated budget could not take effect until the legislative authority had appropriated additional budgetary funds; however, the witness stated that in actual administration the " sound judgment and practice of fully implementing such agreements . . . have already been established " in both the P.C.N.E.L.R. Law and the L.P.E.L.R. Law.[3]

1109. In his evidence before the Commission the Deputy Director-General of the Cabinet Legislation Bureau, in reply to a question of the Commission concerning the effect of section 8 of the L.P.E.L.R. Law on collective agreements, stated that the assembly of a local public body was composed of the representatives of all the inhabitants of the area of the local public body and therefore the assembly was not obliged to approve a proposal to amend a by-law because it had a discretion that sprang from its representative character. The collective agreement which conflicted with a by-law would not take effect until the conflicting provisions of the Law had been revised or abrogated. This was so because " the local public service employees should serve the interests of all the inhabitants of the locality. Therefore, even if an agreement has been concluded between the local authority and the employees of the local public service, the effect of this agreement is . . . dependent upon the decision or view of the assembly and of the local public body which represents the interests of the local inhabitants concerned." [4]

1110. With reference to the function of section 8 of the L.P.E.L.R. Law the witness stated that the by-law to which that provision referred provided only for the standard and kind of wages. There was not much scope for contradiction between the agreement and the by-law concerned. That was a purely legal explanation; in practice, the witness stated, looking at the individual negotiations, there might be

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[1] *Record of Hearings*, VIII/9-10, IX/7.

[2] Ibid., VIII/12-13.

[3] Ibid., XII/9; the Deputy Director-General of the Cabinet Legislation Bureau, in his evidence, repeated, by way of outlining the relevant legislative norms regulating collective bargaining, essentially the same facts as the Administrative Vice-Minister of Labour above; see ibid., XV/6-7.

[4] Ibid., XV/11-12.

cases where the authority would consult the assembly in order to discuss the revision or abrogation of a by-law. The Law itself only provided the standards. The witness alluded to the case of the by-law dealing with the standards and kind of wages of the employees in the Tokyo Metropolitan Public Enterprises. This by-law only provided the standards for salaries and allowances; the actual level of salaries was not provided in the by-law, and there was little room for contradiction between any agreement concluded and the by-law itself.[1]

1111. In reply to a question from the Commission concerning the proposed amendment to the L.P.E.L.R. Law which the Government had stated was intended to render arbitration awards binding on both parties, the witness stated that in this connection the Government had not intended to amend or delete sections 8 and 10 of the Law so as to make collective agreements equally binding. While there was always a legal possibility that the assembly of a local public body would not approve the abrogation or revision of a by-law which conflicted with an agreement, as a matter of practice, in the witness's understanding, there has never been such a case.[2]

1112. With reference to the Law for special measures to promote financial reconstruction of local governments the Director of the Administrative Bureau of the Ministry of Home Affairs, in reply to a question of the Commission, stated that the by-laws establishing the salaries of personnel in local public service and the salaries of local public enterprise employees were quite independent of each other. The Reconstruction Law was not applied to local public enterprises and therefore section 8 of the L.P.E.L.R. Law was not applicable to by-laws made pursuant to the Reconstruction Law.[3]

B. Matters Excluded from Scope of Collective Bargaining

I. *Statements and Evidence of the Complainants*

1113. In its comments on the Commission's draft analysis of the legislation the General Council of Trade Unions of Japan agreed that the scope of collective bargaining under the P.C.N.E.L.R. Law was provided for in section 8 thereof, but the complainant alleged that primary importance was attached by the Government to the part thereof which prescribed that " matters affecting the management and operation of the public corporations and national enterprises shall be excluded from collective bargaining ". The complainant alleged that pursuant to this provision, " collective bargainings have been repeatedly rejected by the authorities concerned ".[4] The complainant commented to the same effect with reference to the L.P.E.L.R. Law. It questioned the propriety of determining in legislation the matters which might be the subjects of collective negotiations; that decision should more properly be taken voluntarily by agreement between labour and managements, not decided by law.[5]

1114. In his statement before the Commission the representative of the General Council of Trade Unions of Japan repeated the substance of the allegations made concerning the scope of collective bargaining under the two laws.[6] The representative

[1] *Record of Hearings*, XV/12-13.
[2] Ibid., XV/14.
[3] Ibid., XXII/15-16.
[4] Doc. No. 87, p. 8.
[5] Ibid., p. 14.
[6] *Record of Hearings*, I/5.

of the International Transport Workers' Federation, in his statement, said that no one disputed managements' right to manage, but that it " flies in the face of all modern trends . . . and provides the management with a dangerous loophole through which it can escape the implications of decisions reached in collective bargaining " to prevent railwaymen from discussing operational questions. Such limitations on the scope of bargaining could even be used " without much ingenuity, to exclude working hours ".[1]

1115. In his evidence before the Commission the witness for the Japan Postal Workers' Union alleged that the postal authorities had refused to negotiate with his union on the subject of conditions of work in relation to new programmes of postal administration, on the ground that such matters were in the category of management affairs which section 8 of the P.C.N.E.L.R. Law removed from the scope of collective bargaining.[2]

1116. In its further statement the National Railway Workers' Union alleged that working conditions for its members were deteriorating owing to the imperfect nature of the collective bargaining system resulting from the exclusion from the scope of bargaining of matters affecting management.[3] As an example the witness offered a description of the negotiations between the complainant and the authority concerning the latter's intention to construct a new broad-gauge track system parallel to the Tokaido Trunk Line.[3] The witness stated that, in spite of the union's consistent opposition in principle and the fact that negotiations had been under way on the subjects of personnel transfers and employment conditions, " whenever the negotiations came to a critical point, the J.N.R. authorities avoided further negotiations on the plea that the union should not intervene in problems which were solely of concern to management ".[4]

1117. In his evidence before the Commission the witness for the National Railway Workers' Union stated, in addition to its previous allegations, that the Railway Authority refused to bargain collectively with the union, on the question of the manning of trains and crews, on the ground that these were subjects under the control of management and not open to bargaining.[4]

II. *Statements and Evidence of the Government*

1118. In reply to a question of the Commission the Administrative Vice-Minister of Labour stated that, according to the interpretation of his Ministry, managerial and operational matters could be subject to collective negotiation in so far as a given subject related to and affected working conditions. With respect to the railway unions it was to be understood that the rationalisation by the Railway Authority was an operational matter, but that the parts of the rationalisation programme which affected working conditions were subject to collective bargaining. [5] On the over-all legislative side of this issue the Deputy Director-General of the Cabinet Legislation Bureau, in his evidence, stated that unions were free to negotiate with a view to improving the conditions and protecting the interests of their members—such as

[1] *Record of Hearings*, I/16.

[2] Ibid., IV/10; these allegations paralleled the substance of statements previously made in the further statement of the Japan Postal Workers' Union. Doc. No. 90, pp. 5-6.

[3] Doc. No. 91, p. 40.

[4] *Record of Hearings*, V/15.

[5] Ibid., XIV/3.

conditions of employment; and even in areas where the matters concerned appeared to be excluded by section 8 of the P.C.N.E.L.R. Law, such as the exercise of the disciplinary power, they could be subject to negotiation in so far as they were related to conditions of employment.[1] As examples of such matters he referred to the establishment of standards for the exercise of the disciplinary power, judgment of whether or not there exist reasons for discipline, or other questions concerning the application of the standards of discipline.[1]

1119. In its comments on the further statement of the Japan Postal Workers' Union the Government stated that collective bargaining between the postal authority and the complainant was conducted according to the P.C.N.E.L.R. Law and the Agreement on Methods and Procedures of Collective Bargaining concluded between the two. Matters which fell under one of the following headings were, therefore, not treated as appropriate for collective bargaining: matters relating to the management and operation of the postal service, in so far as they were not related to working conditions; matters in respect of which employees' working conditions were fixed by legislation; non-jurisdictional matters and matters to be settled by means of the grievance machinery provided in section 12 of the P.C.N.E.L.R. Law.[2]

1120. To the information contained in the Government's comments on the Japan Postal Workers' Union's further statement the Deputy Director of the Personnel Bureau of the Ministry of Posts and Telecommunications, in his evidence, added that as regards managerial and operational matters which might affect the working conditions of the employees, such as mechanisation or modernisation of facilities for the operation of the services, it was the policy of the authority to supply information to the complainant and to exchange fully views between the two parties in advance. The witness further stated that " an understanding has already been reached between the postal authority and the union as to the procedure to be followed in such cases ".[3]

1121. In its comments on the further statement of the National Railway Workers' Union the Government stated that the Japanese National Railway Authority had, in collective bargaining with the complainant, brought to the union's attention all matters relevant to it and had explained to the union that substance of the matters which pertained to management and operation. The Government stated, in addition, that in accordance with the " Agreement on Conferring in Advance on Matters Relating to the Mechanisation, Automatisation, Modernisation and Rationalisation of Facilities and Equipment or Operations " concluded between the complainant and the Authority on 14 April 1960[4], the Authority had always conferred with the union " sufficiently prior to executing the decision". The Government stated that there was no truth in the allegation that the Government hindered the improvement of working conditions.[5] In his evidence the Director of the Staff Administration Department of the Japanese National Railways, in reply to a question of the Commission, repeated the information contained in the Government's comments on the complainant's further statement in regard to the operation of the prior consultation clause of the aforementioned collective agreement.[6]

[1] *Record of Hearings*, XV/5.
[2] Doc. No. 100, pp. 4-5.
[3] *Record of Hearings*, XVIII/36.
[4] Doc. No. 101; Appendix 1 purports to be a copy of the text of this agreement.
[5] Ibid., p. 15.
[6] *Record of Hearings*, XX/11.

CHAPTER 26

THE FULL-TIME UNION OFFICER SYSTEM

I. Statements and Evidence of the Complainants

1122. With respect to the intention of the Government of Japan, if the proposed Bills to amend the legislation governing the public sector so as to permit persons other than employees to serve as union officers were to be adopted to abolish the existing system of allowing a certain number of employees to be granted leave, without pay but with retention of status, in order to serve as full-time union officers, the General Council of Trade Unions of Japan contended, in its comments [1] on the Commission's draft analysis of the legislation, that such abolition would involve a serious violation of the right to organise in the light of conditions prevailing in Japan. In this connection the complainant pointed out that the I.L.O. Meeting of Experts on Conditions of Work and Service of Public Servants (Geneva, 25 November-6 December 1963) had stated in paragraph 24 of its conclusions:

> Public servants who are occupied full- or part-time by representative organisations should be granted special leave which would have no effect on the normal progress of their career, e.g. on the calculation of their seniority or on promotion or pension rights. Their right to total or partial wages should be decided by agreement, taking into account the national situation of each country.[2]

1123. The representatives of the Public Services International expressed the view that, as existing law made provision for the granting of leave to public servants in order to enable them to serve as full-time officers, the abolition of this provision in conjunction with ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), would be contrary to article 19 (8) of the Constitution of the International Labour Organisation.[3]

1124. The witness for the General Council of trade Unions of Japan was asked [4] by the Commission whether his organisation would continue to object to the abolition of the present practice of permitting a certain number of employees to be granted leave, without pay but with retention of status, in order to serve as full-time union officers, if at the same time the legislation were to be amended to permit non-employees to serve as union officers. He replied that the basic attitude of his organisation was that the question of full-time union officers should be decided voluntarily between the union and management and not be prescribed by law.[4]

1125. In reply to a question by the Commission as to what would be the effects on local unions of the abolition of the full-time union officer practice, in conjunction

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[1] Doc. No. 87, p. 34.

See *Official Bulletin*, Vol. XLVII, No. 1, Jan. 1964, p. 62.

[2] *Record of Hearings*, I/23. Article 19 (8) of the I.L.O. Constitution provides: " In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation. "

[4] Ibid., III/13.

with amendments to permit non-employees to hold union office, the witness expressed the view that local unions would be placed in a very embarrassing position.[1] The Commission asked the witness to state from what source local unions would most likely recruit their full-time officers if the legislation were to be amended so as to permit non-employees to serve as union officers but without changing the present full-time union officer system. He answered that they would probably choose them from among union members who were at the same time employees.[1]

1126. In reply to a further question the witness referred to the National Railways as one of the sectors in which the unions particularly needed the retention of the present system. He explained that, as railway stations were spread all over the country, the local unions of the railway workers were correspondingly dispersed, so that the National Railway Workers' Union needed more officers to co-ordinate activities among local unions and also to be able to send persons to assist local unions, and contrasted this situation with that of a union of employees of a public enterprise concentrated in one locality.[2]

1127. The witness for the All-Japan Prefectural and Municipal Workers' Union was asked by the Commission what would be the consequences for the affiliates of his organisation if, in conjunction with the amendment to the legislation to permit non-employees to serve as union officers, the present full-time union officer system was abolished.[3] He replied that the organisation had 1,000 employees working as full-time officers. The abolition of this practice would not greatly affect national headquarters but would have serious adverse effects in the case of regional headquarters and local affiliates through the need to recruit officers from outside. Especially in big cities and prefectures the local unions were widely dispersed and the officers who served the local unions and branches needed to be very familiar with the situation in the localities. Great difficulty would arise for the prefectural and local unions, and this would weaken the organisation as a whole.[3] He contended that some local public bodies were already prohibiting union officers from serving their unions even on a part-time basis, for three or four hours a day.[4] He said that in these localities the officers would have to work for their unions outside working hours and to take some of their annual leave in order to attend conferences elsewhere.[4]

1128. In reply to a question by the Commission the witness for the Japan Teachers' Union stated that abolition of the full-time union officer system at the present time would cause much inconvenience to his union staff, but that the union was prepared to abolish it as a long-term measure as the situation developed.[5] The dispersal of schools and of local unions, often in remote areas, required the services of many full-time officers and, even if they were given the right to recruit non-employees, it would be difficult to find suitable persons.[5] He alleged that the Ministry of Education had already instructed local authorities to restrict the full-time officer system and that Gifu Prefecture had made by-laws limiting the leave of absence of employees to three years, after which the union would be obliged to change them.[6] The representative of the International Confederation of Free Trade Unions asked the witness whether

[1] *Record of Hearings*, III/13.
[2] Ibid., III/14.
[3] Ibid., IX/4.
[4] Ibid., IX/5.
[5] Ibid., X/4.
[6] Ibid., X/5.

the situation in Gifu Prefecture meant that, even before the amending legislation was enacted, the existing law of the land could be changed by a prefectural by-law, and the witness replied that existing law stated only that the local authority was permitted to grant leave to employees to serve as officers so that it could grant it or not as it wished.[1]

1129. The first witness for the Congress of Government Employees' Unions, Mr. Toromai Eda, stated that, if the full-time officer system were abolished and non-employees permitted to serve as union officers, such persons would not be familiar with conditions in government offices and workshops and this would cause much difficulty, especially for the country branches.[2] He was asked by the Commission whether it would not be possible to recruit former employees as officers, but replied that the Bill to amend the National Public Service Law would not allow former employees to serve on a full-time basis and contended that, even if it did, they would not be able to adapt themselves to the rapid changes which were taking place in widely dispersed regional bureaux such as, for example, those of the Ministry of Agriculture.[3]

1130. The representative of the Government of Japan asked the witness to state what provision in the Bill would bar former employees from full-time union office. The witness replied that he understood that the Bill would bar employees who had been dismissed during the previous year or against whom a case had been brought in the courts where the decision had not been handed down.[3]

1131. The witness was asked by the representative of the General Council of Trade Unions of Japan whether it would not be desirable to have dismissed employees serving the union on a full-time basis. He said that his union wished that they could.[4]

1132. The second witness for the Congress of Government Employees' Unions, Mr. Tsutomu Fujii, declared, in his opening statement before the Commission, that the Bill would force serving employees to give up their full-time union office.[5] In reply to a question by the Commission the witness stated that even if non-employees were enabled to serve as officers abolition of the present system would cause great difficultie for such unions as his own, the All Taxation Offices Employees' Union, which had eight regional federations with 300 local unions, all served by full-time officers; in his view the matter should be decided voluntarily by the unions and not by legislation.[6]

1133. In reply to a question by the representative of the International Confederation of Free Trade Unions the witness stated that if the unions were obliged to recruit non-employees as officers there would be a loss of the feeling of identification between the members and the officers which was necessary for effective activity.[7]

1134. The Congress of Government Employees' Unions, in its further statement, cited an alleged statement of policy at the Meeting on Finance of the Political Affairs Research Committee of the Liberal-Democratic Party on 14 March 1960, which

[1] *Record of Hearings*, X/13
[2] Ibid., XI/10-11.
[3] Ibid., XI/11.
[4] Ibid., XI/13.
[5] Ibid., XI/25.
[6] Ibid., XII/1.
[7] Ibid., XII/5.

expressed doubt as to the wisdom of complete abolition of the full-time union officer system with special reference to the All Taxation Offices Employees' Union (Zenkokuzei). The purported statement declared that abolition would mean not only that discharged officers of this union would be able to return and take a " high-handed attitude " towards management, but would also mean that the present officers of the rival union to Zenkokuzei, described as a " wholesome organisation ", would have to return to their workplaces, thus " causing difficulties in developing wholesome trade union activities ".[1]

II. Statements and Evidence of the Government

1135. In his opening statement before the Commission the Administrative Vice-Minister of Labour of Japan pointed out that, with the repeal of section 4 (3) of the P.C.N.E.L.R. Law and section 5 (3) of the L.P.E.L.R. Law, the unions would be enabled to elect non-employees as officers in full freedom.[2]

1136. The witness was questioned as to the reasons which caused the Government of Japan to consider it necessary to abolish the full-time officer system in the above sectors.[3] He replied that the employees concerned were under an obligation to engage exclusively in official duties in view of the public nature of the undertakings and enterprises in which they worked. The system had been allowed as a special case so long as the legal provisions referred to in the preceding paragraph subsisted [4]; after their repeal the unions would not encounter any serious difficulties in recruiting union officers.[4]

1137. The Commission had noted earlier [5] that, when asked for what reasons the said legal provisions restricting eligibility for union office to serving employees had been enacted in the first place, this witness had replied that the reasons had been, firstly, the need to ensure normal operation of the undertakings concerned and, secondly, " to protect trade union activities from being subjected to the interference by outside destructive elements ". The Commission asked the witness how the proposed abolition of the full-time officer system was to be reconciled with his earlier observation. The witness replied that the risk of a trade union being dominated by outsiders, if the union was enabled to recruit officers from outside, " could be forestalled by, for instance, making a minor amendment to article 17 of the Public Corporation and National Enterprise Labour Relations Law ".[4] He explained that the existing article 17 provided that " employees and their unions shall not engage in a strike, slowdown or any other acts of dispute hampering the normal course of operation of the public corporation and national enterprise, nor shall any employees conspire to effect, instigate or incite such prohibited conduct ". This would be altered by amending the final phrase to read: " nor shall any employees, officers and members of trade unions conspire to effect, instigate or incite such prohibited conduct. "[4]

1138. The Commission asked the witness whether the reasons for abolishing the existing system were so cogent that it was not considered desirable to continue to entrust discretion to the authorities concerned, as hitherto, in granting leave for

[1] Doc. No. 95, p. 28.
[2] *Record of Hearings*, XII/11.
[3] Ibid., XIII/14.
[4] Ibid., XIII/15.
[5] Ibid., XII/14.

union purposes. The witness repeated that the reason for repealing the provisions permitting the granting of such leave was the statutory obligation of the employees to engage exclusively in the official duties of the corporations and enterprises; to avoid inconvenience to the unions, however, instead of the repeal becoming effective at once they would be allowed three years to make the adjustment.[1]

1139. In reply to further questions by the Commission the witness stated that at present 2,030 out of the approximate total of 900,000 employees of the three public corporations and five national enterprises were serving their unions on a full-time basis.[2]

1140. Replying to a question by the representative of the International Confederation of Free Trade Unions the witness expressed the view that the abolition of the full-time officer system in conjunction with the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), would not run counter to article 19, paragraph 8, of the I.L.O. Constitution.[3]

1141. In his opening statement before the Commission the Director of the Administrative Bureau of the Ministry of Home Affairs, referring to the allegation that the abolition of the full-time officer system in local public services by the Bill to amend the Local Public Service Law would result in interference by the authorities in the organisation and management of trade unions, pointed out that the Bill would allow employees' organisations to elect officers in full freedom.[4]

1142. The Director of the Elementary and Secondary Education Bureau of the Ministry of Education informed the Commission, in his opening statement, that a survey conducted by the Ministry of Education on 1 June 1964 revealed that 969 teachers were serving as full-time union officers, with retention of their teacher status, of whom 273 had done so for over five years and 63 for from ten to 18 years.[5]

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[1] *Record of Hearings*, XIII/16.
[2] Ibid., XIII/16-17.
[3] Ibid., XIV/11.
[4] Ibid., XXII/8.
[5] Ibid., XXIII/17.

CHAPTER 27

DISSOLUTION OR SUSPENSION BY ADMINISTRATIVE AUTHORITY (SUBVERSIVE ACTIVITIES PREVENTION LAW)

I. Statements and Evidence of the Complainants

1143. In its comments on the Commission's draft analysis of the legislation the General Council of Trade Unions of Japan alleged that under the provisions of the Subversive Activities Prevention Law, enacted on 2 July 1952, a trade union organisation could be rendered liable to dissolution or suspension by administrative action.[1] In his opening statement before the Commission the witness for the Japan Teachers' Union stated that, in spite of the various allegations that his union engaged in subversive activities, the fact was that the Subversive Activities Prevention Law had never been applied to the complainant, nor had the complainant ever been investigated in connection with charges of such activities.[2]

II. Statements and Evidence of the Government

1144. In reply to a question from the Commission the Deputy Director-General of the Cabinet Legislation Bureau stated that the Subversive Activities Prevention Law was intended to regulate the violent and subversive activities conducted by any given organisation; such activities to which the Law was directed were envisaged as insurrection, acts of riot for political purposes and the like. The definition of such acts was included in the text of the Law itself. Under the operation of the Law organisations which habitually engage in such prescribed activities may be restrained from continuing to act in such a way. The witness stated that the law " in no way imposes restrictions on normal activities or functions of workers' organisations", but that for an organisation engaged in particular prohibited activities " there is a procedure for its suspension or dissolution " by means of a special administrative committee. The organisation had the right to have recourse to the courts in order to appeal the dissolution or suspension.[3]

1145. In his evidence before the Commission the Counsellor of the Criminal Affairs Bureau of the Ministry of Justice stated that, although the unions had alleged that the labour movement was subject to the Subversive Activities Prevention Law, it was " clear from the contents of these laws that they are not applicable to any legitimate activity of the unions, and no further explanation seems necessary on this point ".[4]

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[1] Doc. No. 87, p. 21.

[2] *Record of Hearings*, IX/15; to the same effect see also further statement of the Japan Teachers' Union. Doc. No. 93, p. 29.

[3] *Record of Hearings*, XVII/1.

[4] Ibid., XVIII/7.

CHAPTER 28

DENIAL OF THE RIGHT TO ORGANISE IN THE CASE OF CERTAIN CATEGORIES OF EMPLOYEES

I. Statements and Evidence of the Complainants

1146. In its comments on the draft analysis of the legislation the General Council of Trade Unions of Japan complained that section 98-4 of the N.P.S. Law excluded from enjoyment of the right to organise " personnel of the police services, fire services, Maritime Safety Board and penal institutions " and that the Bill to amend this Law would extend the right to organise to the fire services, while maintaining the other restrictions.[1] This meant the exclusion not only of police officers but of a large number of clerical and technical employees in these services who carried out in fact the same business as those in other bureaux and sections dealing with general administration.[1] Even women cleaners could not organise.[2]

1147. The position was the same, said the complainants, in the case of police and fire services covered by the L.P.S. Law, where the exclusion extended to persons performing the same clerical, skilled and semi-skilled jobs as employees in the various administrative divisions of municipalities [3]; thus the 2,889 police personnel of Niigata Prefecture included 409 clerical and other employees who were not policemen or police officers.[4]

1148. The All-Japan Prefectural and Municipal Workers' Union said in its further statement that the Toyoshima town authorities had decided to establish permanent fire prevention headquarters and assigned thereto five members of the Toyoshima Town Employees' Union, including a member of its executive, and also assigned to it on a part-time basis, concurrently with their general administrative service work, 13 young employees who were officers of the Youth Department of the union; it was possible, therefore, that all these persons—13 per cent. of the union's membership—would automatically become ineligible for union membership by virtue of section 52-4 of the L.P.S. Law.[5]

II. Statements and Evidence of the Government

1149. In his opening statement the Deputy Director-General of the Cabinet Legislation Bureau said that the official duties of the categories concerned were incompatible with the right to form and join organisations.[6]

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[1] Doc. No. 87, p. 19.
[2] Ibid., p. 40.
[3] Ibid., p. 25.
[4] Ibid., p. 26.
[5] Doc. No. 94, p. 10.
[6] *Record of Hearings*, XV/2.

1150. The Government declared in its comments on the further statement of the All-Japan Prefectural and Municipal Workers' Union that the transfer of personnel to the permanent fire defence headquarters in Toyoshima town was a just and proper measure and was not done in order to split their union.[1]

[1] Doc. No. 104, p. 8.

CHAPTER 29

SCOPE OF ORGANISATIONS UNDER THE LOCAL PUBLIC SERVICE LAW

I. Statements and Evidence of the Complainants

A. Scope of Basic or Unit Organisations

1151. In its further statement the All-Japan Prefectural and Municipal Workers' Union referred [1] to the fact that for the purposes of the application of labour legislation local public service employees were divided into—*(a)* " general administrative services " (personnel engaged in administrative services); *(b)* " educational personnel " (personnel engaged in school education); *(c)* " employees of local public enterprises "; *(d)* " persons employed for simple labour " (manual abour in general administrative agencies other than local public enterprises). the result of this demarcation, the complainants contended [2], was to require the organisation of separate unions, even of persons who might all be employed by one local public body, by general administrative employees (organisations under the L.P.S. Law limited to their category), educational personnel (teachers' unions under the L.P.S. Law), persons employed by local public enterprises (unions under the L.P.E.L.R. Law) and persons employed for simple labour (unions governed also by the provisions of the L.P.E.L.R. Law). If more than any one of these four categories united in the same union it could not be recognised.[3]

1152. A number of questions in this connection were put to the witness for the All-Japan Prefectural and Municipal Workers' Union. In reply to a question by the representative of the International Confederation of Free Trade Unions the witness explained that the application of no less than six different laws was the reason for local public service employees being forced to form so many small separate unions.[4]

1153. Questioned by the representative of the General Council of Trade Unions of Japan the witness confirmed that persons employed for simple labour, such as street-sweepers, could not form a single union together with other public servants in the same city or together with local public enterprise employees in the same local public body.[5] Legally speaking street-sweepers in one municipality might form a single union with street-sweepers in another municipality, but there would be no point in doing so because such a union would be unable to negotiate or enter into

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[1] Doc. No. 94, p. 9.

[2] A contention repeated by the witness for the All-Japan Prefectural and Municipal Workers' Union in his opening statement before the Commission. *Record of Hearings*, VIII/6.

[3] In his statement before the Commission the representative of the Public Services International said that not even the employees of one municipality could organise in a single trade union; there must be separate unions for administrative employees, labour staff, electricity workers, etc., so that there might be half a dozen unions in the same municipality. *Record of Hearings*, I/22.

[4] Ibid., IX/7 and 8.

[5] Ibid., IX/6.

agreements.[1] Because agreements concluded on their own were ineffective, workers in local public enterprises were increasingly trying to unite their efforts in negotiation with those of public service workers in the regular service.[1]

1154. The witness was questioned by the Commission concerning the organisations under the L.P.S. Law which supervisory staff in local public enterprises were allowed to form and also concerning the situation of supervisory grades in services covered by the L.P.S. Law. He explained, firstly, that supervisory staff in services covered by the L.P.S. Law could join the organisations of the general administrative personnel in such services and, secondly, that supervisors in local public enterprises could join the said organisations as well; however, there were very few cases in which supervisors in local public enterprises had joined the general administrative employees' organisations and he knew of no cases in which they had formed organisations of their own. [2]

1155. The witness for the Japan Teachers' Union was questioned by the Commission as to the scope of teachers' basic organisations under the L.P.S. Law. He stated that there were separate teachers' unions in 96 per cent. of Japan's 3,500 local public bodies.[3] He agreed that teachers could form a prefecture-wide union, as distinct from a federation, to cater for teachers in schools directly administered by the prefectural authority itself, but it could negotiate only with the prefecture and not with municipalities.[4]

1156. The All-Japan Prefectural and Municipal Workers' Union cited in its further statement a number of alleged specific cases showing what had happened—refusal of negotiation under the L.P.S. Law or of recognition for bargaining purposes—when unions of local public service employees had not limited the scope of their membership in accordance with the foregoing requirements.

1157. It was alleged that registration was refused or cancelled, because general administrative employees' organisations also admitted local public enterprise employees to membership, in the cases of the Takasaki Municipal Employees' Union (May 1963) [5], the Aioi Municipal Employees' Union (August 1963) [5], the Kitakyushu Municipal Employees' Union [6] and the Amagasaki Municipal Employees' Union [7]; registration was stated to have been refused in the case of the Nagasaki Prefectural Government Employees' Union because it elected as one of its officers a person working in a local public enterprise.[8]

1158. The admission to membership of persons engaged for simple labour was alleged to have been the reason or one of the reasons for registration being refused to the following general administrative employees' organisations: Kawaguchi Municipal Employees' Union[9], Kitakyushu Municipal Employees' Union[6], Sagae Municipal

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[1] *Record of Hearings*, IX/7.
[2] Ibid., VIII/14.
[3] Ibid., IX/22.
[4] Ibid., X/2.
[5] Doc. No. 94, p. 3
[6] Ibid., p. 4.
[7] Ibid., p. 6.
[8] Ibid., pp. 3-4.
[9] Ibid., p. 2.

Employees' Union [1], and that existing agreements had been abrogated for the same reason in the cases of the Sakata Municipal Employees' Union [2] and the Shobara Municipal Employees' Union.[3]

1159. The fact that organisations of the general administrative employees of the regular service could not include the persons employed for simple labour in the same regular service was alleged [2] to have had particularly serious effects on the conditions of service of the latter category, who were too weak, on their own, to draw any advantages from the provisions entitling them to form trade unions limited to their category and to bargain collectively in terms of the L.P.E.L.R. Law. In addition, it was alleged, persons employed for simple labour were discriminated against for having joined unions of general administrative employees.

1160. In the case of the Sakata Municipal Employees' Union, 236 of whose 700 members were persons employed for simple labour, it was alleged that contrary to existing wage agreements the conditions of the latter category were downgraded.[2] The Ishii Town Employees' Union was refused collective bargaining because two of its 96 members were persons employed for simple labour, but how, queried the complainants, could two persons form a union to protect their interests under the L.P.E.L.R. Law? [4] Bargaining was similarly refused in the cases of the Ajigasawa Town Employees' Union (17 of its 60 members being employed for simple labour) and the Shobara Municipal Employees' Union (30 of its 224 members being persons employed for simple labour).[3]

1161. In reply to questions by the Commission, the witness for the All-Japan Prefectural and Municipal Workers' Union said that in 1961 the conditions of persons employed for simple labour were governed by collective agreements in only 12 of the 46 prefectures and that since then the number had decreased.[5] Subsequently, the witness furnished written information to show that the number had fallen to nine in 1964.[6] The witness also stated [5], as his organisation had already done in its further statement [4], that even the statutory right of persons employed for simple labour to conclude collective agreements was not always respected, contending that the Director of the General Affairs Department of the Yamagata Prefectural Government, on the instruction of the Central Government, had instructed the Sendai city authorities that wages and working conditions of persons employed for simple labour could be fixed by by-laws and regulations.

1162. The All-Japan Prefectural and Municipal Workers' Union alleged in its further statement that the three national associations of heads of local governments and their co-ordinating council had expressed the united view that the registration of a local public service employees' organisation which accepted persons employed for simple labour as members must be cancelled.[7] The complainants stated that the Ministry of Autonomy issues " actual administrative examples " which bind the heads of the local public bodies in their application of the L.P.S. Law; thus, in March 1951,

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[1] Doc. No. 94, p. 4.
[2] Ibid., p. 14.
[3] Ibid., p. 16.
[4] Ibid., p. 15.
[5] *Record of Hearings*, VIII/16.
[6] Doc. No. 109.
[7] Doc. No. 94, p. 7.

the Ministry announced that an organisation of local public service employees whose members included employees of local public enterprises or persons employed for simple labour could not be registered.[1]

1163. The All-Japan Prefectural and Municipal Workers' Union also complained that, even where a union catered only for a single permitted category, its scope was further limited by the fact that persons who ceased to be employees could not retain union membership. Non-observance of these provisions had been one of the reasons for the deregistration of the Takasaki Municipal Employees' Union.[2] In this connection it cited a further " actual administrative example " issued by the Ministry of Autonomy, stating that in March 1951 the Ministry indicated that an organisation which retained as a member a person who had been dismissed could not be regarded as an employees' organisation even though an appeal against the dismissal might be pending.[1]

B. Scope of Federations

1164. In its comments [3] on the draft analysis of the legislation the General Council of Trade Unions of Japan alleged that organisations of local public employees in the regular service, with the exception of teachers, could not form a federation extending beyond the limits of a single local public body (city, town or village) or that, if they did, it would be a purely *de facto* body which could neither register nor negotiate with the authorities; the only organisation of such employees which could exist and negotiate at prefectural level was not a federation but a union formed directly by and limited to those local public service employees who were employed by the prefectural government itself, as distinct from those employed by other local public bodies within the prefecture.[4] The complainants contended that legal recognition should be given to federations at the prefectural level and also to national federations.[5]

1165. Nor could unions catering for different categories, e.g. teachers, administrative employees and local public enterprise employees, even join in one federation at the level of a simple local public body.[6]

1166. These restrictions had the result, for example, that recognition was denied to the All-Japan Prefectural and Municipal Workers' Union (Jichiro) and its prefectural headquarters and to federations, even in one local public body, consisting of its local unions and locals of the All Water Service Unions and the Federation of Municipal Transportation Workers' Unions.[7] The witness for the All-Japan Prefectural and Municipal Workers' Union explained in his opening statement before the Commission that Jichiro was a nation-wide federation made up of prefectural organisations in which municipal unions were grouped together but, since some of its affiliates catered also, apart from regular service employees, for teachers and public

[1] Doc. No. 94, pp. 7-8.
[2] Ibid., p. 3.
[3] Doc. No. 87.
[4] Ibid., pp. 29-30.
[5] Ibid., p. 30.
[6] Ibid., p. 31. This contention was repeated by the representative of the Public Services International in his statement before the Commission. *Record of Hearings*, I/22.
[7] Doc. No. 87, p. 31.

enterprise workers of both the central and prefectural governments, Jichiro was denied the right to negotiate collectively on the ground that it was not in compliance with the law in respect of the scope of its membership.[1]

1167. The position with regard to teachers' federations was somewhat different. The General Council of Trade Unions of Japan explained [2] that the Japan Teachers' Union organised four categories: *(a)* teachers in public schools, covered by the L.P.S. Law; *(b)* teachers in national schools, covered by the N.P.S. Law; *(c)* teachers in private establishments, covered by the Trade Union Law; *(d)* non-skilled employees (caretakers and catering employees, etc.), covered by the L.P.E.L.R. Law. Teachers' organisations formed in separate municipalities by employees in the first category only could federate up to prefectural level. But neither the Japan Teachers' Union itself nor any of its affiliated federations which were not limited exclusively to the first category could claim legal recognition.

1168. The witness for the Japan Teachers' Union stated that even a prefectural teachers' federation, consisting according to law of affiliated unions organised within the separate municipalities, could negotiate only with the prefectural government itself and not with the municipalities in respect of matters within their separate jurisdiction.[3]

II. Statements and Evidence of the Government

A. Scope of Basic or Unit Organisations

1169. In his opening statement before the Commission the Director of the Administrative Bureau of the Ministry of Home Affairs maintained that the distinction made by the L.P.S. Law and the L.P.E.L.R. Law between the local public service employees in regular administrative service and those employed in local public enterprises or for simple labour was based on reasonable grounds having regard to the difference in their duties; nevertheless, he said, employees of different public services or of different local public bodies were entirely free to form unit or united organisations and, in fact, such organisations had been formed and operated.[4]

1170. The Deputy Director-General of the Cabinet Legislation Bureau, in reply to a question by the Commission, confirmed that under the existing law an organisation of general administrative employees formed under the L.P.S. Law could admit to membership supervisory employees engaged in local public enterprises.[5]

1171. The Commission questioned the Director of the Elementary and Secondary Education Bureau of the Ministry of Education concerning basic organisations formed by teachers. The witness stated that teachers in schools administered directly by the prefecture and not by municipalities could form a prefecture-wide union, as distinct from a federation, and that such union could also join the prefectural federation formed by all the teachers' unions within the prefecture, but that if the teachers employed both by the prefecture and by the municipalities formed a prefecture-wide union (not a federation) it could not be registered, although it could negotiate with

[1] *Record of Hearings*, VIII/6.
[2] Doc. No. 87, p. 32.
[3] *Record of Hearings*, X/1.
[4] Ibid., XXII/8.
[5] Ibid., XVIII/7-8.

the prefectural authorities.[1] Asked why, in view of the fact that only the prefectural government could negotiate their terms and conditions of employment, teachers were required to form their basic organisations at the city, town or village level, the witness explained that, while their salaries were fixed by the prefectural authorities, teachers of elementary and lower secondary schools had the status of civil servants of the municipalities; he agreed that opinions were held in some quarters that it might be easier if teachers' organisations were founded at the prefectural level and that the question would be worthy of study in the future.[2] He was not able to say how many separate unions of teachers existed in the 3,500-odd municipalities [3], but agreed that the fact that the teachers were divided among so many small organisations could create inconvenience and considered that the matter should be decided by the teachers' organisations.[4]

1172. In its comments [5] on the further statement of the All-Japan Prefectural and Municipal Workers' Union the Government referred to the cases cited by this complainant with regard to certain unions which had not complied with the legal provisions restricting the scope of basic organisations.[6]

1173. The Government declared that all the measures taken by the authorities in these cases had been due to the fact that the unions concerned had failed to comply with the L.P.S. Law.

1174. The Takasaki Municipal Employees' Union, alleged to have been deregistered because, *inter alia*, it admitted local public enterprise employees to membership, had later split up into a union of water service employees, with about 150 members, and a union of about 800 other employees, the latter having been registered and undertaken negotiations with the authorities; the original union had then only about 20 members and had not sought to negotiate.[7]

1175. The Aioi Municipal Employees' Union could not be registered because it admitted as members persons employed in local public enterprises [8], and the Kitakyushu Municipal Employees' Union[9], the Sagae Municipal Employees' Union[9] and the Amagasaki Municipal Employees' Union[10] because they admitted both persons employed in local public enterprises and persons employed for simple labour, while the Nagasaki Prefectural Government Employees' Union was refused registration because one of its officers was employed in a local public enterprise, although it had been registered after he gave up his office.[8]

1176. Registration was refused in the case of the Kawaguchi Municipal Employees' Union because it admitted persons employed for simple labour and also clerks employed by the union, who were not local public service employees.[11]

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[1] *Record of Hearings*, XXIV/5.
[2] Ibid., XXIV/6.
[3] Ibid., XXIV/7.
[4] Ibid., XXIV/8.
[5] Doc. No. 104.
[6] See paras. 1157-1160 above.
[7] Doc. No. 104, p. 3.
[8] Ibid., p. 4.
[9] Ibid., p. 5.
[10] Ibid., pp. 6-7.
[11] Ibid., p. 2.

1177. With regard to the alleged acts of discrimination [1] in the case of unions which admitted persons employed for simple labour the Government made the following comments. The agreement with the Sakata Municipal Employees' Union was not unilaterally abrogated, but was replaced by a revised negotiated agreement.[2] Negotiation with the Ishii Town Employees' Union was refused not because persons employed for simple labour were members but because outsiders tried to take part in the negotiation.[3] The Government denied that negotiation was refused in the case of the Ajigasawa Town Employees' Union.[4]

1178. With regard to the notice issued by the Chief of the General Affairs Department of Yamagata Prefecture [5], the Government stated that this was an advice to Sendai city to establish a reasonable system of pay and not a directive to fix pay for persons employed for simple labour unilaterally.[3]

1179. In his evidence the Director of the Administrative Bureau of the Ministry of Home Affairs stated that the working conditions of persons employed for simple labour were fixed by collective agreement in two prefectures.[6]

1180. The Government stated in its comments that the " actual administrative examples " issued by the Ministry of Local Autonomy [7] were justifiable interpretations of the existing law.[8] In reply to a question by the Commission concerning the allegation that, according to one of these " examples ", if a dismissed employee retained his union membership, even pending his appeal for review, his union should not be recognised, the Director of the Administrative Bureau of the Ministry of Home Affairs stated that the Ministry of Local Autonomy had received a question as to local practice in this matter and answered to the effect that the practice under the existing law was that the members of the union must be employees, not dismissed employees. In the event of the dismissed employee remaining a member the union might be recognised as an employees' organisation but could not be registered, and the Ministry had advised the local public bodies to that effect; however, organisations in that position had been recognised as workers' organisations and been able to conduct negotiations.[9]

B. Scope of Federations

1181. In its comments [10] on the draft analysis of the legislation the Government stated that a federation within the meaning of the L.P.S. Law was a federation of organisations of employees (other than teachers) within a local public body.[11] A federation of organisations of employees belonging to different local public bodies was a *de facto* united organisation, and only a federation of organisations of employees in the same local public body could be treated as a federated employees' organisation under the law and be entitled to be registered as such; as an exception,

[1] See para. 1160 above.
[2] Doc. No. 104, p. 10.
[3] Ibid., p. 11.
[4] Ibid., p. 12.
[5] See para. 1161 above.
[6] *Record of Hearings*, XXII/12.
[7] See paras. 1162 and 1163 above.
[8] Doc. No. 104, p. 7.
[9] *Record of Hearings*, XXIII/8.
[10] Doc. No. 88.
[11] Ibid., p. 10.

employees' organisations of employees of the schools established by the prefecture of municipalities within the prefecture could form a federation within the prefecture and be entitled to be registered.[1] But there was freedom to form other federated organisations in practice, and such organisations as the All-Japan Prefectural and Municipal Workers' Union and the Japan Teachers' Union not only existed freely but were " also presenting their views on pay-raise, etc., of member employees to the authority concerned " and were " freely engaged in other activities ".[2]

1182. In reply to questions by the Commission the Deputy Director-General of the Cabinet Legislation Bureau confirmed the above description of the situation, and explained further that it was by reason of the fact that there were special methods for the determination of conditions of teachers that teachers, by virtue of the dual application of the L.P.S. Law and the Special Law concerning educational public service employees, could form a prefecture-wide federation recognisable by law.[3]

1183. The Director of the Elementary and Secondary Education Bureau of the Ministry of Education was asked by the Commission whether a teachers' prefectural federation could negotiate directly with a municipality in respect of the teachers it employed, on matters within the powers of the municipality, or whether such negotiation must be conducted by the affiliated municipal teachers' union concerned.[4] The witness stated that " the municipality had to respond to requests for negotiations from both ".[5]

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[1] Doc. No. 88, p. 14.
[2] Ibid., p. 10.
[3] *Record of Hearings*, XVII/2-3.
[4] Ibid., XXIV/5.
[5] Ibid., XXIV/6.

CHAPTER 30

REGISTRATION OF EMPLOYEES' ORGANISATIONS UNDER THE LOCAL PUBLIC SERVICE LAW

I. Statements and Evidence of the Complainants

1184. The complainants, and in particular the All-Japan Prefectural and Municipal Workers' Union, criticised the system and methods of registration on a number of grounds which, in their view, constituted infringements of freedom of association. These criticisms fell under four heads: *(a)* the procedure of registration; *(b)* conditions attached to registration; *(c)* registration as a prerequisite to the right to negotiate; *(d)* registration as a prerequisite to the acquisition of legal personality.

A. Procedure of Registration

1185. In his statement before the Commission the representative of the Public Services International drew attention to the fact that in the local public service registration was effected by the employing authority itself.[1]

1186. The witness for the All-Japan Prefectural and Municipal Workers' Union gave evidence with respect to effects of the provisions of the L.P.S. Law requiring organisations to be registered by the personnel commissions or, if there be no such commission, by the head of the local public body concerned. He stated that, of 2,326 unions, 1,681 had been registered, and that in all but seven cases the registrations had been effected by the heads of the municipalities concerned.[2] He complained in his opening statement that the granting or the denial of registration was often handled irresponsibly in the villages, towns and cities where there were no personnel commissions; these matters were dealt with " whimsically " by the mayors and governors to whom authority to register had been delegated.[3] In reply to a question by the representative of the International Confederation of Free Trade Unions the witness replied that there were cases in which local public bodies had not even enacted by-laws governing registration, so that organisations could not apply for registration if they wished to do so.[4]

1187. In its comments on the draft analysis of the legislation the General Council of Trade Unions of Japan contended that an employees' organisation had no right to appeal to the courts against refusal of registration.[5]

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[1] *Record of Hearings*, I/22.

[2] Ibid., IX/1.

[3] Ibid., VIII/5.

[4] Ibid., IX/8. The General Council of Trade Unions of Japan made the same assertion in its comments on the draft analysis of the legislation. Doc. No. 87, p. 33.

[5] Ibid.

B. Conditions Attached to Registration

1188. Three of the conditions attached to registration were criticised by the complainants: (i) compliance with the provisions relating to the scope of organisations; (ii) compliance with the provisions relating to election of officers; (iii) compliance with the provisions prohibiting dismissed employees from being officers or organisations.

1. *Provisions relating to the Scope of Organisations.*

1189. In Chapter 29 above, relating to the scope of organisations under the L.P.S. Law, reference was made to the statements and evidence submitted by the complainants and the Government with regard to the conditions governing the membership scope and area scope of organisations and to specific cases in which registration was alleged to have been refused to certain organisations because they had not complied with those conditions.

2. *Provisions relating to Election of Officers.*

1190. In his opening statement before the Commission, the witness for the All-Japan Prefectural and Municipal Workers' Union complained that the Government had been demanding that local public employees' organisations should comply with the requirement of obtaining an absolute majority vote of the whole membership in respect of the election of officers; if their rules did not provide for elections accordingly their registration could be refused or cancelled.[1] His organisation cited two cases in which this happened in the further statement which it submitted to the Commission. Firstly, it was alleged, one of the grounds on which the Sagae Municipal Employees' Union (Yamagata Prefecture) was refused registration, in October 1962, was that its shop committeemen had been elected on a workshop basis by the members in the respective workshops; the city authorities called upon the union to hold an election in which all union members participated, even though, according to the complainants, it had never been the practice of personnel commissions to regard shop committeemen as union officers.[2] Secondly, it was alleged, after seven of its officers had been dismissed on 1 April 1963, the municipal authorities wrote to the Takasaki Municipal Employees' Union stating that it must " elect new officers by a majority vote of all union members by a direct secret ballot "; as the union failed to comply with this directive it was deregistered.[3]

3. *Provisions Prohibiting Dismissed Employees from Holding Union Office.*

1191. The All-Japan Prefectural and Municipal Employees' Union alleged in its further statement that in October 1959 the Ministry of Autonomy announced, in the form of an " actual administrative example " binding upon local authorities, that, although there is no provision in the L.P.S. Law corresponding to section 5 (3) of the L.P.E.L.R. Law, the L.P.S. Law should also be interpreted as prohibiting persons other than employees of a local public body from becoming members or officers of an employees' organisation defined in the Law and that, should a discharged

[1] *Record of Hearings*, VIII/5.
[2] Doc. No. 94, pp. 4-5.
[3] Ibid., p. 3.

officer continue in his post, the registration of the union concerned might be cancelled on that account.[1] On 9 April 1963, it was alleged, the competent authorities informed the Koganei Municipal Employees' Union that its registration was disapproved on the ground that its newly elected officers included a discharged employee.[2]

C. Registration as a Prerequisite to the Right to Negotiate

1192. In its comments on the draft analysis of the legislation the General Council of Trade Unions of Japan maintained that registration is tantamount to being compulsory because an employee organisation cannot negotiate with the authorities unless it is registered.[3] The All-Japan Prefectural and Municipal Workers' Union declared in its further statement that the three organisations of heads of local governments—the National Association of Towns and Villages, the National Association of Mayors of Cities and the National Association of Governors of Prefectures, and their joint Council on Measures to Promote Local Autonomy, all of which received guidance from the Ministry of Local Autonomy, had expressed their united view that " Government authorities are not obliged to bargain with an employees' organisation which is not registered ".[4] The complainant adduced a purported copy of a communication dated 12 October 1962 from the Chief of the National Council of Towns and Villages to the Chief of the Prefectural Council of Towns and Villages containing the words: " It has been interpreted that the authority has the obligation to comply with the proposal for negotiation submitted by an employees' organisation duly registered. The authority has no obligation to do so in respect of an employees' organisation not registered." [5]

1193. The witness for the All-Japan Prefectural and Municipal Workers' Union stated that, while in fact some unregistered organisations did negotiate, the request for negotiation could also be refused, that the local authorities could make the registration system an excuse for refusing to bargain at any time they wished, and that, in the case of unregistered organisations, negotiation was refused more often than it was granted.[6] The All-Japan Prefectural and Municipal Workers' Union could not register and in the majority of cases in which it proposed bargaining talks it was turned down.[7]

1194. The witness for the Japan Teachers' Union declared in his opening statement that the fact that the L.P.S. Law prevented a federation wider in scope than that defined in the Law from being registered or existing as anything more than a *de facto* organisation resulted in such federation being regarded as incapable of conducting negotiations with the authorities, and alleged that the Ministry of Education had had recourse to this provision as a reason for refusing to negotiate with the Japan Teachers' Union.[8]

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[1] Doc., No. 94, p. 8.
[2] Ibid., p. 5.
[3] Doc. No. 87, p. 32.
[4] Doc. No. 94, p. 7.
[5] Ibid., Appendix, p. 8.
[6] *Record of Hearings*, VIII/19.
[7] Ibid., IX/1.
[8] Ibid., IX/16.

1195. The All-Japan Prefectural and Municipal Workers' Union referred in its further statement to the following cases in which negotiation was alleged to have been refused to organisations on the specific ground that they were not registered.

1196. When registration had been refused to the Kawaguchi Municipal Employees' Union, the city government announced to union members through its newspaper that it would not negotiate with the union.[1] After cancelling the registration of the Takasaki Municipal Employees' Union the city authorities refused to negotiate with it.[2] Registration having been refused to the Nagasaki Prefectural Government Employees' Union in 1962 because its officers included one who was not eligible, the prefectural government refused to negotiate with it on the ground of its being an unregistered organisation.[3]

1197. In support of its contention that negotiation was refused to the Kitakyushu Municipal Employees' Union because it had been denied registration[3], the complainant adduced a copy of a purported communication dated 26 March 1964 from the Assistant Mayor of the city to the chairman of the union, stating: " Your union has not been registered with the personnel commission. Consequently, the negotiations with your union and . . . have been hampered under the present circumstances. As a result maintenance of healthy and sound labour-management relations cannot be expected." [4]

1198. Finally, the complainant adduced a purported copy of a communication from the Yohkaichiba city authorities to the chairman of the Chiba Equity Commission containing the statement: " As the Yohkaichiba City Employees' Organisation has not been registered in conformity with the Local Public Service Law, it is not an employees' organisation under the Local Public Service Law, but is a voluntary *de facto* organisation. Accordingly, it has legally no right for negotiation." [5]

D. Registration as a Prerequisite to the Acquisition of Legal Personality

1199. In its comments on the draft analysis of the legislation the General Council of Trade Unions of Japan, referring to the fact that under the L.P.S. Law only registered organisations could acquire legal personality, pointed out that federations at prefectural level and national federations had come into possession of a considerable amount of property but, as they could not register, they could not have legal personality and had no legal right to own property, and so were obliged to establish legal persons separate from the organisations and place their property under their ownership and custody; hence, legal personality was necessary for the normal functioning of unions.[6] The All-Japan Prefectural and Municipal Workers' Union represented an extreme case where a nation-wide organisation could not be the legal owner of the building which it had itself had constructed.[7]

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[1] Doc. No. 94, Appendix, p. 2.
[2] Ibid. p. 3.
[3] Ibid., p. 4.
[4] Ibid., Appendix, p. 5.
[5] Ibid., p. 7.
[6] Doc. No. 87, p. 30.
[7] Ibid., p. 42. This situation was referred to also in the statement made to the Commission by the representative of the Public Services International. *Record of Hearings*, I/21.

II. Statements and Evidence of the Government

A. Procedure of Registration

1200. In reply to questions by the Commission, the Director of the Administrative Bureau of the Ministry of Home Affairs stated that, apart from the six main cities and Sendai city, no municipalities had personnel commissions; in these cases, therefore, registration was handled by the heads of the public bodies.[1]

1201. He explained that at the present time, if registration were refused or cancelled, there was a right of appeal to the courts under the present law in accordance with the provisions of the Administrative Suit Cases Law [2], but then added that one of the changes the Government had in mind was to make equity commissions responsible for registration and to provide for a right of appeal to the courts.[3] In reply to a further question by the Commission he reaffirmed that a right of appeal already existed under the present law.[3]

B. Conditions Attached to Registration

1. *Provisions relating to the Scope of Organisations.*

1202. The attitude of the Government on this aspect of the matter is reviewed in Chapter 29 above, in the section relating to the scope of organisations.

2. *Provisions relating to Election of Officers.*

1203. The Deputy Director-General of the Cabinet Legislation Bureau was asked by the Commission on what grounds the provision in section 53 (3) of the L.P.S. Law, which made the registration of an employees' organisation dependent on its constitution providing for the election of its officers by a " majority of all members ", was interpreted by some local bodies as meaning " a majority of the total membership " and whether the question had been tested in the courts. The witness expressed the view that this was a literal and correct interpretation of the words " all members " and stated that, so far as he was aware, no decision on this point of interpretation had been given by the courts.[4]

1204. With regard to the two cases cited by the complainants in this connection [5] the Government made the following remarks in its comments [6] on the further statement of the All-Japan Prefectural and Municipal Workers' Union. The Sagae Municipal Employees' Union had not been registered because, *inter alia*, its procedure for electing its officers was not in conformity with the L.P.S. Law.[7] It did not in this context comment on the allegation relating to the Takasaki Municipal Employees' Union, but stated [7] that similar non-compliance was also one of the reasons for the refusal of registration in the case of the Kitakyushu Municipal Employees' Union.[8]

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[1] *Record of Hearings*, XXII/16.

[2] Ibid., the Government made the same statement in its comments on the draft analysis of the legislation. Doc. No. 88, p. 11.

[3] *Record of Hearings*, XXII/17.

[4] Ibid., XVI/1.

[5] See para. 1190 above.

[6] Doc. No. 104.

[7] Ibid., p. 5.

[8] See para. 1197 above.

3. *Provisions Prohibiting Dismissed Employees from Holding Union Office.*

1205. In its comments on the further statement of the All-Japan Prefectural and Municipal Workers' Union the Government declared that the " actual administrative example " of the Ministry of Autonomy to the effect that if a discharged employee continued to hold office in an organisation its registration might be cancelled was a justifiable interpretation rendered under the existing law.[1] The refusal of registration of the Koganei Municipal Employees' Union on this ground was justifiable.[1]

C. Registration as a Prerequisite to the Right to Negotiate

1206. In its comments on the draft analysis of the legislation the Government stated that the words " may negotiate " in the L.P.S. Law implied that negotiation might be opened with the authority concerned, which would be placed in a position to respond positively to the request for negotiation made by a registered organisation of employees, which alone could enter into negotiation in this sense; however, even non-registered organisations were not denied their existence and activities or their competence for negotiation and were often negotiating with the authority concerned.[2]

1207. The Director of the Administrative Bureau of the Ministry of Home Affairs said in his opening statement before the Commission that registration was not compulsory but was a procedure for confirming and attesting that the employees' organisations met certain requirements which any democratic employees' organisation should satisfy; it was a procedure which was regarded as an adequate formula to ensure normal labour-management relations—without being intended to grant any privilege to registered organisations—by adopting the principle that the authorities of a local public body would " respond positively " to requests for negotiation.[3] In reply to a question by the representative of the International Confederation of Free Trade Unions the witness replied that he was aware that section 55 (1) of the L.P.S. Law provided that registered organisations might, under the conditions and circumstances fixed by by-laws, negotiate with the authorities but that this provision was not intended to deprive non-registered organisations of the right to negotiate.[4]

1208. With regard to the specific cases raised by the All-Japan Prefectural and Municipal Workers' Union [5] the Government made the following observations in its comments [6] on the further statement submitted to the Commission by the said organisation.

1209. The Government denied that the Kawaguchi city authorities ever announced in their newspaper that they would not negotiate with the Kawaguchi Municipal Employees' Union and stated that negotiations had been conducted to date with the union.[7] The Takasaki Municipal Employees' Union had split in November 1963, 950 of its members having left to form new unions, since which time the old union, with its membership reduced to about 20, had never asked to negotiate.[8]

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[1] Doc. No. 104, p. 7.
[2] Doc. No. 88, p. 9.
[3] *Record of Hearings*, XXII/7.
[4] Ibid., XXIII/13.
[5] See para. 1196 above.
[6] Doc. No. 104.
[7] Ibid., p. 3.
[8] Ibid., p. 4.

1210. With regard to the allegation that the Nagasaki Prefectural Governor refused to negotiate with the non-registered Nagasaki Prefectural Government Employees' Union, the Government declared that negotiations had been continued by the Vice-Governor and the Chief of the General Affairs Department.[1] The Government stated also that negotiations on working conditions had continued with the non-registered Kitakyushu Municipal Employees' Union [2] and Yohkaichiba Municipal Employees' Union.[3] Despite not being registered, the municipal authorities had continued to negotiate with the Aioi Municipal Employees' Union [1], as they had with the Amagasaki Municipal Employees' Union.[4]

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[1] Doc. No. 104, p. 4.
[2] Ibid., p. 5.
[3] Ibid., p. 6.
[4] Ibid., p. 7.

CHAPTER 31

REGISTRATION OF EMPLOYEES' ORGANISATIONS UNDER THE NATIONAL PUBLIC SERVICE LAW

I. Statements and Evidence of the Complainants

A. The Registration System

1211. Mr. Eda, witness for the Congress of Government Employees' Unions, said in his opening statement that registration under the N.P.S. Law was not just a formality and that, in order to be able to register, an organisation had to comply with strict and detailed requirements, so that the system put " statutory shackles on public workers' organisations ".[1] The second witness for the complainants, Mr. Fujii, said that registration with the National Personnel Authority had to be effected every year.[2]

B. Conditions Attaching to Registration

1212. The witness for the Congress of Government Employees' Unions, Mr. Eda, said that the Rules of the National Personnel Authority, including those relating to registration, were adopted after deliberation among personnel officers of the Authority and were then promulgated by the head of the Authority, but the unions were not consulted in any way in the matter.[1]

1213. The representative of the General Council of Trade Unions of Japan asked the witness whether it was not the case that, while the N.P.S. Law contained no provision requiring that officers of an organisation must be serving employees, this had been laid down by Rules of the National Personnel Authority as a condition of eligibility for registration.[1] The witness agreed that this was the case and said that the requirement had been laid down by Rule No. 14-2 of the Authority.[1]

1214. The witness referred to the case of the All Taxation Offices Employees' Union, stating that, having been denied registration because its officers included dismissed employees, the union had been obliged to elect new officers from among those who enjoyed employee status, and that this had affected the operation of the union very seriously.[3]

1215. Mr. Fujii, witness for the Congress of Government Employees' Unions, said that, in order to obtain its annual registration, the All Taxation Offices Employees' Union had to affirm every year that all dismissed employees had already been relieved of any union offices that they held.[2]

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[1] *Record of Hearings*, XI/3.
[2] Ibid., XII/1.
[3] Ibid., XI/10.

1216. In its further statement submitted to the Commission the Congress of Government Employees' Unions stated that the Federation of Prime Minister's Office Workers' Unions had been refused registration because a dismissed employee had been elected as one of its officers.[1] According to the copy of the purported reply of the Director of the National Personnel Authority to the Federation's application adduced by the complainants, the registration was refused not only on the above ground but also because the rules did not provide for "disorganisation", did not state clearly how the executive members were elected and did not clearly specify the positions of the officers.[2]

C. Registration as a Condition of the Right to Negotiate

1217. Mr. Eda, witness for the Congress of Government Employees' Unions, said in his opening statement that unless a public employees' organisation was registered its right to negotiate collectively was not recognised.[3] He stated subsequently, that, as the non-registered organisation could not negotiate, this seriously affected the working conditions of employees, which in turn affected the membership, as the members then lost confidence in their organisation.[4] Mr. Fujii, witness for the same complainants, stated that the original rules of the Authority had not required registration as a prerequisite to negotiation, but that at an early stage in its existence the Authority had introduced this requirement, thus contravening the law pursuant to which it was empowered to promulgate rules.[5]

1218. Thus, said Mr. Fujii, when the All Taxation Offices Employees' Union was denied registration for nearly a year it could not negotiate with the authorities, and the Federation of Prime Minister's Office Worker's Unions was not able to negotiate for the same reason.[6] On 24 March 1964 the Executive Director of the Science Council of Japan, under the Prime Minister's Office, had replied to a request for negotiation by the Federation by a statement that it could not comply with the request " because the union is not registered with the Personnel Authority " [7]—an allegation already made by the Congress of Government Employees' Unions in its further statement[8], in which it declared further that proposals for negotiation addressed by the Federation to the General Affairs Chief of the Prime Minister's Office, on 12 October 1962 and 6 March and 5 October 1963, had all been rejected on the ground that it was not registered.[1] Finally, said the complaining organisation, a proposal for negotiation made by the Yokohama branch of the All-Japan Customs Employees' Union in 1962 had been refused because the union headquarters had not at that time obtained approval of changes in its registration from the National Personnel Authority.[9]

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[1] Doc. No. 95, p. 92.
[2] Ibid., p. 99.
[3] *Record of Hearings*, XI/3.
[4] Ibid., XI/9-10.
[5] Ibid., XII/4.
[6] Ibid., XI/28.
[7] Ibid., XI/23.
[8] Doc. No. 95, p. 100.
[9] Ibid., p. 94.

II. Statements and Evidence of the Government

A. The Registration System

1219. The Chief of the Public Service System Planning Room in the Prime Minister's Office said in his opening statement that the registration system was not a compulsory procedure but a procedure solely to confirm and attest the fact that employees' organisations satisfied the requirements which democratic workers' organisations should possess; the system was regarded as an adequate formula prescribed by national legislation for employees' organisations to secure their normal functions, and was not intended to give any special rights only to the registered organisations.[1]

1220. In its comments on the draft analysis of the legislation the Government stated that, in consequence of provisions in the National Constitution, appeals against cancellation or refusal of registration could be filed with the courts under the Administrative Suit Cases Law.[2] The Chief of the Employee Association Section of the Bureau of Employee Relations of the National Personnel Authority said in evidence that in the case of cancellation or revocation of registration the Authority had to give an opportunity for oral proceedings to the employees' organisation concerned before it cancelled the registration; the employees' organisation could appeal to the courts against cancellation.[3]

B. Conditions Attaching to Registration

1221. The Deputy Director-General of the Cabinet Legislation Bureau said in his opening statement that, in order to be registered, an employees' organisation had to make provision for certain matters in its constitution, to be attached to its application for registration, including provisions concerning representatives and other officers and a procedure for the election of officers by a majority vote of all members.[4]

1222. The Chief of the Employee Association Section of the Bureau of Employee Relations of the National Personnel Authority was reminded by the Commission that it had been alleged that section 98 (2) of the N.P.S. Law accorded to personnel and their organisations the right to designate representatives of their own choice and that nothing in the existing Law prevented the representation of a union by non-employees; it had also been claimed that this had been recognised by the National Personnel Authority itself because its Rule No. 14-2 (3) originally provided that an application for registration must contain particulars of the names and addresses of directors, representatives or other officers and official positions " if in the government service ".[5] The witness stated that section 98 (2) of the N.P.S. Law provided for the right of personnel to join or not to join organisations and this had been interpreted as meaning that officers of the employees' organisations formed by national public service employees were confined to members of such organisations.[5] He agreed that the Rule in its original form included the words " if in the government service ".[5] He

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[1] *Record of Hearings*, XXVI/22.
[2] Doc. No. 88, p. 11.
[3] *Record of Hearings*, XXVI/16.
[4] Ibid., XV/4.
[5] Ibid., XXVI/13.

said that for a short period just after the establishment of the National Personnel Authority the interpretation adopted was that officers need not necessarily be employees, but since that very short period the authorities had maintained the thesis that the officers must be confined to national public service employees.[1]

1223. The witness said that the change in the original wording of the said Rule had been made on 17 August 1949 and said that this was done in view of the purpose of section 98 (2) of the N.P.S. Law, which provided that employees might form employees' organisations.[1] Reminded by the Commission that section 98 (2) was already in force when the Rule was issued in its original form, the witness said that this was the case but that a different interpretation of the section had been adopted then.[1] He explained that, " at a later stage ", section 4 (3) of the P.C.N.E.L.R. Law provided that officers of employees' organisations were confined to the employees of such corporations and that, in view of this provision and also of the special nature of the employment conditions of national public service employees, a different interpretation came to be adopted.[1]

1224. The Commission asked the witness whether it was fair to say that the restriction of officers of national public service employees' organisations to such employees was by virtue of interpretation by the National Personnel Authority and not by virtue of the statute [2]; the witness replied that the interpretation was adopted directly from the provision of the law.[2] To a further question the witness answered that the P.C.N.E.L.R. Law was enacted in December 1948.[2] Asked if the position was that the interpretation was changed because of section 4 (3) of this Law, the witness said that it was not because of the enactment of the Law, but that the National Personnel Authority at that time had adopted the interpretation in the wrong way and then realised that the provision should be interpreted in the same way as at present; the enactment of the P.C.N.E.L.R. Law and the interpretation of the phrase " of their own choice " in section 98 (2) of the N.P.S. Law meant that the employees might choose their officers or representatives in freedom among the employees themselves and also the members of the employees' organisations confined to national public service employees.[2]

1225. The witness said that the National Personnel Authority rejected the registration application of the All Taxation Offices Employees' Union because—(1) non-employees were officers or representatives; (2) there was a provision in the constitution of the organisation which admitted non-employees to membership; (3) some other matters did not comply with requirements of the registration procedure.[3]

1226. In its comments on the further statement of the Congress of Government Employees' Unions the Government stated that the rejection of the application for registration made by the Federation of Prime Minister's Office Workers' Unions was based on the fact that among the officers persons other than those employees were included and there was also insufficiency in filling items required under Rule No. 14-2 of the National Personnel Authority.[4]

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[1] *Record of Hearings*, XXVI/14.

[2] Ibid., XXVI/15.

[3] Ibid., XXVI/16.

[4] Doc. No. 105, pp. 116-117.

C. Registration as a Condition of the Right to Negotiate

1227. In its comments on the draft analysis of the legislation the Government stated that the words " may negotiate " in the existing N.P.S. Law and Rules of the National Personnel Authority implied " that a negotiation may be opened with the authority concerned which will, by virtue of these provisions, be placed in a position to respond positively to the request of negotiation by an organisation of employees, and, therefore, registered organisations of employees alone can enter into a negotiation in the above sense ".[1]

1228. However, said the Government, even non-registered organisations of employees were denied neither their existence and activities nor their competence for negotiation, and actually such organisations were often negotiating with the authority concerned.[1]

1229. Paragraph 1 of Rule No. 14-2 of the National Personnel Authority provided that " an organisation of employees must apply for and secure official notice of registration by the Authority . . . ".[1] " However ", the Government stated, " this rule has been stipulated as a procedure provided for in section 98 (2) of the National Public Service Law and merely signifies that an organisation of employees must be registered in order to negotiate with the authority concerned in the sense stated " in paragraph 1227 above; under the above legislation " non-registered organisations are not denied their existence, activities and competence for bargaining, and actually there are cases of bargaining by such organisations ".[1]

1230. In his opening statement the Deputy Director-General of the Cabinet Legislation Bureau said that national public service employees' organisations could negotiate " if they are registered as being in compliance with statutory conditions by . . . the National Personnel Authority ".[2] He then went on to say:

> This implies that the Authority will be placed in a position to respond positively to the request for the discussion in a meeting at a fixed place with the employees' organisation, in order that the employees' organisation may support its complaints or demands which are submitted to the Authority for consideration. In other words, the submission to the Authority of such a request from employees' organisations may place the Authority in the position of not avoiding discussions with the employees' organisations. This has therefore emanated from such consideration so as to secure the autonomy and democracy of employees' organisations, by offering supplementary facilities to the registered employees' organisations. Whether employees' organisations are registered or not, they may, with full competence, hold discussions with the Authority in order to support the complaints or demands which they submit and request the consideration thereon by the Authority. The difference is simply whether or not the Authority may be placed in a special position as mentioned.[2]

1231. The witness was asked by the representative of the International Confederation of Free Trade Unions whether the real crux of the matter was that a non-registered organisation might submit a request but the authority could ignore it and that, in order to be taken into account, the request must come from a registered organisation.[3] The witness repeated that employees or organisations, whether registered or not, could present their demands and express their complaints to the authority concerned; the only difference was that the registered organisation would have been certified as being in compliance with statutory requirements in respect of its composi-

[1] Doc. No. 88, p. 9.
[2] *Record of Hearings*, XV/7.
[3] Ibid., XVII/13.

tion and, therefore, " the pertinent authority will be in the position to respond positively to requests for discussions made by such employees' organisations ".[1] He said that no confirmation or ascertainment had been made of the autonomy or democracy of the non-registered organisations so that these matters were left in fact to the judgment of the parties concerned; the registered organisations were given the facilities which he had mentioned, but the " relations between the authority and the non-registered organisations " were " subject to the judgment of the parties concerned ".[1]

1232. The Commission, stating that it had noted that section 98 of the N.P.S. Law made no reference to the need for an organisation to be registered in order to negotiate and that the requirement of registration and various conditions attaching to it were laid down by Rule No. 14-0 of the National Personnel Authority, asked the witness which legal provisions empowered the Authority to make such a rule; the witness said that section 98 (2) of the Law contained the words " subject to the procedures of the Authority ".[2] Asked whether the fact that negotiation was to be in compliance with procedures prescribed by the Authority was not another and minor thing than to give the Authority the right to prescribe that only registered organisations could negotiate, the witness replied that this point was not within his competence and should be put to the witness for the National Personnel Authority.[2]

1233. The Chief of the Employee Association Section of the Bureau of Employee Relations of the National Personnel Authority was told by the Commission that it had been alleged that nothing in the N.P.S. Law required an organisation to be registered to be entitled to negotiate but that the requirement was imposed by Rules No. 14-2 and 14-0 (3) of the Authority and that in making these rules the Authority had exceeded its statutory power; the Commission asked him whether the legality of these rules had ever been tested in the courts.[3] The witness replied that the Authority maintained that the enactment of Rule No. 14-2 was pursuant to its power to prescribe procedures in accordance with section 98 (2) of the Law, the purpose of which provision was to provide that, if an employees' organisation requested negotiation in accordance with the procedures defined in rules of the Authority, the authorities would be " placed in the position of responding positively to such a request "[4]; therefore, Rules Nos. 14-0 and 14-2 of the Authority were designed to facilitate negotiations.[5] He could not remember the Rules ever having been tested before a court.[5] The witness was asked whether, if an organisation had not been registered, the authorities would respond to its request for negotiation " in some way other than positively "; he said that in such cases negotiations were " left to the free discretion of both parties ", but that, if non-registered organisations requested negotiations, " the authorities may respond to such a request and negotiate with them, but the authorities are not under an obligation to respond to such request ".[5]

1234. The witness agreed that it was a fair summary to say that " if a non-registered organisation requests negotiation, negotiations will be held only if the authority wants to hold them " but that, in the case of a registered union, the authori-

[1] *Record of Hearings*, XVII/14.
[2] Ibid., XVI/12.
[3] Ibid., XXVI/11.
[4] Ibid., XXVI/11-12
[5] Ibid., XXVI/12.

ties must negotiate " unless there are special circumstances ".[1] By this phrase he meant such circumstances as those in which the number of employees' negotiators was so large as to render negotiation difficult, or in which negotiation was asked in matters not within the jurisdiction of the authorities concerned.[2] Asked whether the words " special circumstances " were not so wide as to permit any authority not specially interested in negotiating always to find a reason for not negotiating, the witness said that he did not think that exceptions were frequent and that in fact authorities did in most cases respond to requests for negotiation.[2]

1235. The Commission asked the witness how, having regard to Rule No. 14-0 (3) of the National Personnel Authority, a deregistered organisation could exercise the right to represent the workers in labour relations.[3] He repeated that registration was necessary only to place the authorities in the position of having to respond positively to requests for negotiation and said that negotiation could be conducted freely with deregistered organisations.[3]

1236. The witness said that the National Personnel Authority itself had negotiated on many occasions with the Congress of Government Employees' Unions, which was not a registered organisation.[3]

1237. The witness was reminded by the representative of the General Council of Trade Unions of Japan that Mr. Kiyoshi Asai, a former President of the National Personnel Authority, had published a book in 1960 in which it was stated that an unregistered organisation did not have the ability to negotiate with the authorities and was merely a *de facto* organisation.[4] The witness said that these were the personal opinions of Mr. Asai and that he was not in a position, in his official status, to give an answer on the point.[4]

1238. The Chief of the Public Service System Planning Room in the Prime Minister's Office said that both registered and non-registered organisations had competence to negotiate and that the authorities were in no way prohibited from negotiating with non-registered organisations.[5] The representative of the General Council of Trade Unions of Japan asked the witness whether the Government had not, in 1960, been interpreting the law as meaning that a non-registered organisation could not negotiate and when had it changed this interpretation.[6] The witness replied that the authorities had maintained all the time that non-registered organisations had competence to negotiate, but said that negotiations with registered organisations might be different from those with non-registered organisations.[6] He agreed that the Commission was correct in understanding the position to be that the registered organisation had a right to negotiate with the authorities that could not be denied, but that, while the non-registered organisation could request negotiations, it was for the authorities to decide whether or not negotiation took place.[6]

1239. The witness said that it was true that, on 24 March 1964, the Executive Director of the Science Council of Japan in the Prime Minister's Office had said, in reply to a request for negotiation from the Federation of Prime Minister's Office

[1] *Record of Hearings*, XXVI/12.
[2] Ibid., XXVI/13.
[3] Ibid., XXVI/17.
[4] Ibid., XXVI/19.
[5] Ibid., XXVI/22.
[6] Ibid., XXVII/9.

Employees' Unions, that bargaining could not be undertaken because " the union is not registered with the Personnel Authority ".[1] In its comments on the further statement of the Congress of Government Employees' Unions the Government said that " since the Federation was an unregistered organisation, and in such situation the authorities were not in a position that they had to respond to the application for a negotiation . . . the negotiation was rejected ".[2]

1240. The Counsellor of the Directors' Secretariat of the National Tax Administration Agency agreed that " the National Taxation Bureau did not engage in negotiation " with the All Taxation Offices Employees' Union " after the National Personnel Authority refused to register it ".[3]

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[1] *Record of Hearings*, XXVII/8.
[2] Doc. No. 105, p. 117.
[3] *Record of Hearings*, XXVII/18.

CHAPTER 32

COLLECTIVE NEGOTIATION UNDER THE LOCAL PUBLIC SERVICE LAW

I. Statements and Evidence of the Complainants

A. Denial of the Right to Conclude Collective Agreements

1241. In his statement before the Commission the representative of the General Council of Trade Unions of Japan objected to the fact that unions registered under the L.P.S. Law could not conclude collective agreements but could only negotiate; the "negotiation" in his view was merely an act of "petitioning".[1] A similar objection was raised by the witness for the Japan Teachers' Union.[2]

1242. When the case was examined by the Governing Body Committee on Freedom of Association the point had been made on a number of occasions that the reason why local civil servants' organisations could not conclude collective agreements was that they enjoyed statutory terms and conditions of employment fixed by local by-laws. The Commission asked the witness for the All-Japan Prefectural and Municipal Workers' Union whether he had statistics showing the proportion of local public bodies which had enacted such by-laws.[3] The witness stated that he had not but said that in most cases terms and conditions were fixed by this method, but in many cases there was no procedure for enforcing the by-laws.[4] He explained that in some municipalities the by-laws provided for wage schedules and nothing more and that, as regards the implementation of those schedules, the employees did not know in which grade they would be classified, which wages would be offered and what would be the starting rate in certain kinds of positions; the by-laws did not say which scales would apply to each grade or which positions would be included in each grade, so that municipal authorities could arbitrarily classify employees as they liked.[4]

1243. The witness stated that in the case of some prefectural and municipal bodies, by-laws governing labour standards such as wages and fringe benefits did not even exist.[5] In these cases the authorities generally made use of the wage schedules of national public service employees, but they did not follow these in quite the same way and used them arbitrarily to classify the wages of employees in their discretion.[6]

1244. Because some by-laws existed only in form, without substance, and were bad in content, his organisation felt that wages and conditions of employment should

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[1] *Record of Hearings*, 1/4.
[2] Ibid., IX/24.
[3] Ibid., VIII/16.
[4] Ibid., VIII/17.
[5] Ibid., VIII/6 and 17.
[6] Ibid., VIII/18.

be fixed by by-laws as well as by collective agreements, using a combination of both methods.[1]

1245. The General Council of Trade Unions of Japan, in its further statement [2], said that the only agreement which organisations could conclude was a " written agreement " within the terms of the L.P.S. Law, which must not conflict with the by-laws of the local public body, and this had no legal effect whatever. Although the Law stated that the municipal authority and the employee organisation must observe the written agreement " with sincerity and responsibility " the local public bodies in fact often refused to implement the agreements, contending that they had no legal effect; the complainants considered that such agreements should be made legally binding.[2]

1246. In reply to a question by the Commission the witness for the All-Japan Prefectural and Municipal Workers' Union used as an example a written agreement concluded between the Kyoto Prefectural Employees' Union and the governor of the prefecture, which related not to wages or working conditions but to the handling of grievances and the presentation of the union's views on certain matters; the witness alleged that after the agreement had been concluded the Minister of Autonomy wrote to the prefecture stating that it would not be enforced or reorganised as a voluntary agreement unless most of the agreed items were eliminated from it.[3] When the Law was enacted, said the witness, the members had imagined that "written agreement " meant the same thing as a collective agreement, but the authorities interpreted the term so narrowly that they formed the view that written agreements were meaningless and their present view was that they had no actual value.[3]

B. Refusal by Authorities to Engage in Negotiations

1247. In his opening statement the witness for the All-Japan Prefectural and Municipal Workers' Union said that his organisation tried to have officers of its prefectural headquarters attend bargaining between local unions and municipal authorities, but that the latter often refused to negotiate on the grounds that they were officers of unlawful unions and that, even if they did not refuse, little progress was made in the negotiations; in the complainants' view this violated the workers' right to elect negotiators of their own choice.

1248. In its further statement [3] the All-Japan Prefectural and Municipal Workers' Union referred to three alleged specific cases.

1249. The complainants alleged that when the Karatsu Municipal Employees' Union proposed negotiation on the question of summer bonuses the municipal authorities refused even to accept the proposal because it was signed by the president of the union's prefectural headquarters.[4]

1250. In autumn 1962, it was alleged, when the Sagae Municipal Employees' Union wished to negotiate all wages, the city authorities refused because the general secretary from the union's prefectural headquarters was present at the bargaining table, stating that they " could not negotiate with the union if someone other than the employees of the municipality participated in bargaining ".[5]

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[1] *Record of Hearings*, IX/8.
[2] Doc. No. 87, p. 35.
[3] *Record of Hearings*, VIII/15.
[4] Doc. No. 94.
[5] Ibid., p. 16.

1251. When the Ishii Town Employees' Union proposed to the municipal authorities that bargaining be conducted with the participation of an officer from the union prefectural headquarters the authorities were alleged to have rejected the proposal and to have refused to negotiate with the union ever since.[1]

1252. The complainants referred also to another kind of case. The Koganei Municipal Employees' Union was alleged to have been refused negotiation because an officer who was a dismissed employee was present at the bargaining table.[2]

C. Collective Negotiation and the All-Japan Prefectural and Municipal Workers' Union

1253. In its comments on the draft analysis of the legislation the General Council of Trade Unions of Japan observed that, while the wages, hours and other conditions of local public employees were fixed by local by-laws, the overwhelming majority of local public bodies had insufficient revenues of their own and operated on the basis of subsidies from the central Government, so that they had lost their financial independence.[3] Thus the national standards set one-sidedly by the central Government, maintained the complainants determined the working conditions of local public service employees, and in most cities, towns and villages the by-laws fixed conditions below these standards; because of the Government's refusal to negotiate with national federations employers could fix the conditions of local public employees unilaterally.[3]

1254. The witness for the General Council of Trade Unions of Japan was asked by the Commission what areas governed by the L.P.S. Law would benefit if the parties were permitted to decide at what level—local, regional or national—negotiations on conditions of work should take place.[4] The witness considered that the workers and employers should have freedom to decide at what level they would choose to negotiate; in one instance they might want to negotiate at national level and in other instances at prefectural or municipal level, because problems differed at the separate levels.[4] The Commission asked the witness what advantages would accrue to employees engaged in local public services if they were allowed to choose which organisation should represent them at regional or national level.[5] He explained that in certain cases the national Government prescribed or fixed standards with regard to various matters affecting working conditions and standards by which local public bodies, municipalities and prefectures must abide, and in these cases it was not much use for unions to negotiate at the prefectural or municipal level.[5] Hence it was necessary for the membership of the All-Japan Prefectural and Municipal Workers' Union that the standards set by the national Government be negotiated at the national level, while there were certain areas in which the prefectural government fixed the standards for lower local public bodies in which the municipalities in the prefecture had to abide, so that in these cases it was necessary to negotiate at the prefectural level.[5] In yet other areas municipalities had autonomy to fix their own standards.[5]

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[1] Doc. No. 94, p. 15.
[2] Ibid., p. 5.
[3] Doc. No. 87, p. 30.
[4] *Record of Hearings*, III/14.
[5] Ibid., III/15.

1255. In his opening statement the witness for the All-Japan Prefectural and Municipal Workers' Union said that his organisation had 730,000 members, divided into 1,622 local unions, mostly in relatively large municipalities, whereas less than a quarter of the potential membership in smaller towns and villages was organised.[1] It was in this relatively unorganised area that wages and other conditions were very inferior.[2]

1256. He alleged that because of the dependence of the majority of municipalities on the national treasury the central Government meddled increasingly with local public administrations, especially through financial assistance and personnel appointment.[2] The over-all total of national government aid to local governments in 1964 would amount to about 50 per cent. of their total budgets.[2] At the same time, aid in the social welfare field was inadequate, so that in this respect the local administrations were hard put to it to finance what should be national programmes.[3]

1257. The result of this financial preponderance of the Government, declared the witness, was manifested especially in the control exercised by the Ministry of Autonomy; almost all the items such as wages and hours or work, the main concern of local public workers, were being enforced at the direction of this Ministry.[3] Under existing conditions it was almost impossible for local, municipal and prefectural governments to have independence in financial administration.[4] It was therefore essential that unions in the towns, villages, cities and prefectures should be able to bargain at whatever level they chose.

1258. In reply to questions by the Commission the witness stated that the fact that the All-Japan Prefectural and Municipal Workers' Union could not register meant that it would negotiate in some municipalities but not in others; rather more often than not it would hold " discussions ", but where the organisation proposed bargaining talks it was, more often than not, turned down.[5] The witness was asked to express his opinion as to how the conditions of local public service workers would be affected if the All-Japan Prefectural and Municipal Workers' Union were both registered and recognised for purposes of negotiation with local public bodies.[5] He considered that wages and conditions, which were especially bad in towns and villages, would be improved; local public bodies usually refused representation by national headquarters, but registration would entitle the organisation to intervene in collective bargaining with the small public bodies.[5]

D. Non-Recognition of the Japan Teachers' Union

1259. In his statement before the Commission the representative of the International Federation of Free Teachers' Unions complained that, because of the non-recognition of the Japan Teachers' Union, there was no organisation which could define the demands of the teachers of Japan, contrary to the situation in the majority of Western countries, where the central governments negotiated with the national trade unions before laying down general policy on wages, qualifications and staff

[1] *Record of Hearings*, VIII/1.
[2] Ibid., VIII/2.
[3] Ibid., VIII/3.
[4] Ibid., VIII/3-4.
[5] Ibid., IX/1.

regulations, and where there often existed permanent machinery for the purpose of maintaining constant contact between the education authorities and the unions.[1]

1260. The Japan Teachers' Union in its further statement asserted that, when the Government justified its denial of the right of bargaining to the Japan Teachers' Union on the ground that teachers' salaries and working conditions were fixed by prefectural by-laws and their salaries paid by the prefectural governments, which were the appointing authorities, it was concealing the real state of labour-management relations by referring only to the formal aspects of the legal system.[2]

1261. Section 25-5 of the Special Law for educational public service employees provided that " the kinds and levels of salaries for teaching public service personnel serving at public schools, for the time being, shall be accorded in accordance with the standards applied to those employed at the state-managed schools "; this, said the complainant, showed that local public bodies had no discretionary power in respect of the salaries of educational public servants.[2] To show that the words " in accordance with the standards " were strictly binding, the complainant said that in 1953 the wage levels for state-managed schoolteachers were revised and new ones put into effect in January 1964 and that, in reply to questions by prefectural authorities, the Chief of the Public Service Personnel Section of the Central Government Autonomy Agency stated, in a document dated 24 December 1953, that if the by-laws were not revised in accordance with the revision in the national salaries, the prefectural authorities would be contravening the said section 25-5; hence, the by-laws were revised in all the prefectures in conformity with the revised national standards.[3] Various allowance levels had also been adjusted to national standards pursuant to the same law, as was clearly stated in a document issued on 5 September 1957 by the Regional Section Chief of the Elementary and Secondary Education Bureau of the Ministry of Education.[3] All these points were repeated by the witness for the Japan Teachers' Union in his opening statement before the Commission.[4]

1262. The witness for the Japan Teachers' Union also contended that in fact a Ministry of Education survey had shown that teachers worked an average of 58 hours per week but that they received no overtime allowance at all, because no provision was made for overtime pay in the Government Law on share in the expenses for the wages of teachers in municipal, town and village schools; thus it was impossible to solve the question of overtime pay by negotiation at the prefectural level.[5]

1263. Again, said the complainant, as regards the question of personnel strength, which closely influenced working hours, the number of prefecture-employed teachers was strictly controlled on the basis of government-set standards (Law on the standards of class formation of public schools on the compulsory level and on personnel strength).[6] This law provided that the maximum number of pupils per class in 1964 should be 49; the number of teachers was set correspondingly, and these standards were applied universally all over the country.[7] The standards in question,

[1] *Record of Hearings*, I/18.
[2] Doc. No. 93, p. 24.
[3] Ibid., p. 25.
[4] *Record of Hearings*, IX/11-12.
[5] Ibid., IX/12.
[6] Doc. No. 93, p. 25.
[7] Ibid., p. 26.

said the witness for the Japan Teachers' Union, were set by government ordinance or ordinance issued at the instance of the Minister of Education.[1]

1264. Of the 46 prefectures, 42 were subsidised by the Government and local government finance, according to the complainant, was only 30 per cent. autonomous; once the central Government decided the personnel strength, the number of local public workers to be prescribed by by-law was automatic, irrespective of any recommendations that might have been made by personnel commissions.[2]

1265. In the complainant's view, therefore, local organisations of the Japan Teachers' Union had little possibility of participating in decisions on wages and personnel strength through negotiation with local authorities, whatever the Government might say; for this very reason the Japan Teachers' Union bargained directly with the Government for a long period after the war.[2] The complainant alleged that it was apparent that the Government's present refusal to negotiate with it was motivated entirely by political reasons.[2] Thus the wage level and personnel strength of teachers were unilaterally decided in the absence of any direct contact between employers and workers.[3]

1266. The witness for the Japan Teachers' Union stated that, once the wages and personnel strength of teachers in state schools were determined, the prefectural ordinances applicable to municipal, town and village schools were a mere formality [4]; the national education budget for 1964 was 415,000 million yen and 60 per cent. of it was for local education, which meant that the Ministry of Education had a corresponding voice in the educational affairs of each prefecture and exercised a corresponding influence on them.[4] He said that the Minister of Education admitted at the 46th Session of the Diet, which closed on 24 June 1964, that " the Ministry of Education is concerned through laws and budget measures with the wages and other working conditions of teachers in public schools " but still insisted that " their employers are the prefectural boards of education, prefectural governors, municipal, town and village authorities ".[5]

1267. The witness for the Japan Teachers' Union said that his contention that prefectural authorities were not able independently to decide wages and personnel strength through negotiation with local organisations was also proved by the fact that every year the National Federation of Chairmen of Prefectural Boards of Education and the National Federation of Chiefs of Education Departments of Prefectural Governments submitted requests to the Ministry of Education, in connection with the compilation of the national budget, covering the following items: *(a)* increase in the wages of local public schoolteachers; *(b)* reduction of the number of working hours per week; *(c)* increase in the number of clerical workers and course teachers at schools; *(d)* increase in the number of teachers at small-scale schools.[6] He asked why these requests should be submitted to the Ministry of Education by prefectural boards of education which, according to the Government, were supposed to have the right to decide teachers' wages and other working conditions.[4]

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[1] *Record of Hearings*, IX/11-12.
[2] Doc. No. 93, p. 25.
[3] Ibid., p. 27.
[4] *Record of Hearings*, IX/13.
[5] Ibid., IX/14.
[6] Ibid., IX/12-13.

1268. The witness considered that the law which denied recognition to teachers' organisations whose scope extended beyond the prefectural level was irrational when standards of wages and other conditions must be defined at national level.[1]

1269. He was asked by the Commission what would be the financial effect of direct negotiation between the Japan Teachers' Union and the Ministry of Education so far as the improvement of wages was concerned.[1] He said that, firstly, the union would be able to let the Minister know that, for teachers all over Japan, wages were low and conditions were bad, and to ask him to take measures to improve this situation; secondly, educational policy, which was closely connected with wages and conditions, would be less one-sided and better conditions might be secured; thirdly, the fact that the union could not negotiate with the Ministry at the central level had caused many teachers to think that there was no point in being a union member.[1]

1270. The Commission asked the witness to say what in fact was the present procedure for negotiation. The witness said that the L.P.S. Law provided that in each prefecture teachers could negotiate with the education committee on behalf of teachers in public schools, but they could not conclude a collective agreement, but where they discussed working conditions or the numerical strength of teachers at each school the education committee of the prefecture would refuse to negotiate, saying " these matters are fixed by the Ministry of Education " and, with regard to wages, the committee said " the wages are decided on the national level according to the Wage Law and the prefecture has nothing to do with the wages problem ".[2] But if the union went to the Ministry the latter would refuse negotiation, saying " the teachers are covered by the Local Public Service Law and the Ministry of Education has no right to negotiate with them "; so there was no one with whom they could negotiate.[3]

1271. The witness was questioned (after having been recalled for this purpose after the government witness had given evidence) concerning an allegation by his organisation that on 19 August 1960 the Minister of Education, at a joint meeting of the National Prefectural Education Chiefs' Conference and the National Conference of Chairmen of Prefectural Education Commissions, urged the prefectural authorities not to recognise the Japan Teachers' Union. As the witness for the Ministry of Education had stated[4] that he could find no such reference in the minutes of the said meeting, the Commission asked the complainants' witness to furnish a reference.[5] The witness argued that it was quite possible that it was not in the minutes because it was the usual practice for the Minister to give guidance to the meeting in statements off the record; he affirmed, however, that the Minister had clearly stated on the occasion in question that the Japan Teachers' Union had no competence or ability to negotiate with the authorities concerning wages and working conditions of education personnel, and that the Minister had also stated that, even if the prefectural headquarters of the union made a representation or a request for discussion on matters relating to education policies, the Prefectural Education Board should deny the request because such matters were considered outside the scope of discussion.[5]

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[1] *Record of Hearings*, IX/23.
[2] Ibid., IX/23-24.
[3] Ibid., IX/24.
[4] See para. 1305 below.
[5] *Record of Hearings*, XXVI/8.

The Commission pointed out that the original allegation was something more than he had just stated, but the witness replied that the Minister had stated that the union should not be recognised not only on this particular occasion.[1] Asked whether he maintained the allegation that on the particular occasion referred to the Minister " urged the prefectural authorities not to recognise the Japan Teachers' Union", the witness answered " Yes ".[2]

1272. The witness said that the former Minister of Education, in a nation-wide tour, had said: " It is important for me to fight and defeat the Japan Teachers' Union", and that his successor in 1963, Mr. Nadao, had refused to meet with the leaders of the union, saying: " There is a danger that social peace and order may be disturbed if the nation receives the impression that the nation's education policy is decided in consultation with the Japan Teachers' Union "[3], while Mr. Aichi, who became Minister in July 1964, later told the press that he would not meet the union for negotiation.[4] The witness alleged that the Ministry had published large quantities of publications attacking and slandering the union and distributed them to education boards and school principals and deputy principals throughout the country.[4] He said that the Government had charged the union with being subversive; in that case, said the witness, why had the provisions of the Subversive Activities Prevention Law never been applied against the union and why had it never been investigated on suspicion of being a subversive organisation ?[4] He accused the Ministry of Education of slandering the union in order to justify its refusal to negotiate with it.[4]

1273. The witness was asked by the representative of the Government of Japan whether it was not a fact that the Prime Minister had received the President of the Japan Teachers' Union in the spring of 1964 and whether this was recognition or not, to which he replied that the Prime Minister met the representatives of the General Council of Trade Unions of Japan, the President of the Japan Teachers' Union being among them, so that he could not say that the Prime Minister met him in his capacity as a representative of the Japan Teachers' Union.[5]

1274. In its further statement the Japan Teachers' Union sought to refute charges that its members had committed acts of violence in opposing the establishment of the efficiency rating system in 1958. The complainant contended that the system was undemocratic and secret and that teachers did not know how they were rated, stating that it had been condemned as harmful both to education and teachers by the Annual Assembly of Delegates of the World Confederation of Organisations of the Teaching Profession in Washington in 1959.[6] The Japan Teachers' Union said that the Government and prefectural authorities had refused to negotiate on the matter although the Urawa District Court had ruled on 29 September 1962 that the efficiency rating system, having close relationship with the working conditions of teachers, could be an object of collective bargaining.[7] The witness for the Japan Teachers' Union said

[1] *Record of Hearings*, XXVI/8.

[2] Ibid., XXVI/9.

[3] Ibid., IX/14.

[4] Ibid., IX/15.

[5] Ibid., X/12.

[6] Doc. No. 93, p. 27. The representative of the International Federation of Free Teachers' Unions stated his view that to make teachers' careers depend on such assessments as the merit-rating system opened the door to favouritism and to the introduction into promotion questions of factors completely extraneous to the results which should be sought and that his organisation had advised the Government not to adopt the system. *Record of Hearings*, I/18.

[7] Doc. No. 93, p. 28.

that reports of the teachers' expert committee of the I.L.O. in 1958 and 1963 had pointed out that the merit rating of teachers should be a subject of negotiation between the authorities and the union and that, when the Ministry of Education decides an important educational policy affecting teachers, teachers' organisations should be consulted.[1]

1275. In this connection the Japan Teachers' Union referred in its further statement to two cases which the Government had cited as evidence of violence by members of the union. With regard to one case, in Wakayama, the complainant stated that members did not attack the police as suggested but were themselves attacked by other persons, and pointed out that no indictment was ever brought against demonstrating members.[2] In the other case, at Kyoto, alleged the complainant, members were indicted on the basis of distorted facts, but were acquitted by the Kyoto District Court on 5 March 1964.[3]

1276. The complaining union further stated that it has been accused of wishing to use direct action " to virtually nullify the existing laws ", in connection with the campaign of 1960 against ratification of the Japan-United States Security Treaty.[3] The complainants contended that there was a nation-wide campaign against ratification by the whole population and that the union was merely one element in it.[4] They adduced several purported extracts from the Japanese press with a view to showing that the Government's attitude towards the union was meeting with general public criticism.[5]

1277. With regard to charges that the union had used violence to oppose the putting into practice of the achievement test for school children, the union said that all teachers opposed the test as undemocratic and that the correctness of their stand was proved by the judgment of the Fukuoka District Court, on 16 March 1964, declaring that the achievement test violated the Law concerning the organisation and operation of local educational administration and the Basic Law of Education.[6] The complainants also cited the judgment of Fukuoka High Court, on 13 May 1964, as proving that the resistance movement of union members was neither illegal nor destructive but was designed to protect the law.[7]

1278. The complainants then referred to references made by the Government to the union's Code of Ethics for Teachers which were cited in paragraph 154 of the 54th Report of the Governing Body Committee on Freedom of Association and stated that they were annexing to their statement a full text of the Code so as to demonstrate that the passages cited did not exist in it at all.[8] The complainants accused the Government of having made citations out of their context from another document, a pamphlet entitled " Commentary on Code of Ethics for Teachers ".[9] In conclusion, the complainants stated that " the Japan Teachers' Union has no intention at all of any destructive nature ... it is a democratic trade union protected under the Con-

[1] *Record of Hearings*, IX/19.
[2] Doc. No. 93, pp. 28-29.
[3] Ibid., p. 29.
[4] Ibid., pp. 29-30.
[5] Ibid., pp. 31-34.
[6] Ibid., pp. 34-35.
[7] Ibid., p. 35.
[8] Ibid p. 36.
[9] Ibid., p. 37.

stitution and organising the majority of Japanese teachers. It is a trade union striving for general social progress by contributing to the promotion of democratic education as well as the improvement of wages, rights and other working conditions of its members."[1]

II. Statements and Evidence of the Government

A. Denial of the Right to Conclude Collective Agreements

1279. The Director of the Administrative Bureau of the Ministry of Home Affairs was asked by the Commission, having regard to the fact that the Government had stated that local public servants' organisations could not negotiate collective agreements in the normal sense of the term because local public servants enjoyed statutory wages and conditions, to comment on the allegation that in many cases by-laws had never been enacted.[2] The witness replied that in the past there had been a few municipalities which had not established such by-laws but that they had been advised to enact them and all of them had done so.[2] The witness was then asked to comment on the case of Ishikawa Prefecture referred to in the complaint of the All-Japan Prefectural and Municipal Workers' Union dated 10 February 1962. He stated that in this case a survey had been conducted and it was found that in some cases no by-laws or regulations had been made because the matters to be dealt with therein were already laid down in other local enactments.[2] The Commission pointed out to the witness that the complainant had specifically stated that many, and in some cases a majority, of the local authorities in Ishikawa Prefecture had not enacted regulations concerning such essential matters as pay for regular personnel, increases in pay, allowances for extra services, working hours, etc.[2] The witness stated that he had no definite information on this because no survey of the situation in Ishikawa Prefecture had been made, but speaking generally, it had been found that some municipalities and towns and villages had had no by-laws on salaries; they had received guidance and had enacted by-laws so that there remained very few municipalities which had no by-laws of this kind.[3] He agreed, however, that he could not say specifically whether the municipalities in Ishikawa Prefecture had such by-laws or not.[3]

1280. The witness stated that when relevant by-laws were proposed by the head of a local public body he held discussions with the representatives of the personnel organisation, so that its wishes might be taken into consideration, after which he submitted the draft by-law to the assembly of the local public body.[4] In reply to questions by the Commission the witness said that members of the organisation could attend the meetings of the assembly and its committees and were permitted to speak before the assembly took action.[5] On this point the witness was asked by the representative of the General Council of Trade Unions of Japan whether the assembly was required by law to hear the opinion of the employees' organisation when it was adopting by-laws concerning wages and working conditions and whether or not the head of the local public body was required to consult with the organisation before submitting draft Bills on these matters to the assembly.[6] The witness stated that no

[1] Doc. No. 93, p. 39.
[2] *Record of Hearings*, XXII/12.
[3] Ibid., XXII/13.
[4] Ibid., XXIII/13.
[5] Ibid., XXIII/4.
[6] Ibid., XXIII/11.

legal provision required the assembly to hear the organisation; discussion and negotiation with the organisation by the head of the local body before proposing the by-laws to the assembly was implied in the L.P.S. Law and was the general practice.[1]

1281. The Deputy Director-General of the Cabinet Legislation Bureau was asked to explain the difference between a " written agreement " under the L.P.S. Law and a collective agreement. The witness said that the collective agreement was fundamentally based on the equality of both parties—they concluded the agreement on an equal basis by expressing their views on equal terms, thereby making the agreement binding on both parties.[2] The written agreement was not based upon this fundamental principle of equality; in order to secure conditions of employment which were generally provided for by law in the case of local public service employees the system of the written agreement was established, so that the authorities might give attention to the conditions of employment of such employees.[2] Section 55 (3) of the L.P.S. Law provided that a written agreement should be carried out with sincerity and responsibility [2]; the effect of a collective agreement was determined by the agreement itself but a written agreement was a kind of gentleman's agreement.[3] In reply to a further question he stated that a collective agreement was naturally signed by both parties while the written agreement might be signed by one or both; if it were signed only by the head of the local public body it would still be a written agreement, which both parties were obliged to implement with sincerity and responsibility.[3]

1282. The witness stated that, when supervisory employees of local public enterprises exercised their right to form or join an employees' organisation under the Local Public Service Law, the agreement which the organisation could enter into on their behalf was a written agreement within the meaning of the Local Public Service Law.[2] This situation was confirmed by the Director of the Administrative Bureau of the Ministry of Home Affairs [4], who said also that written agreements on behalf of such personnel had been negotiated.[5]

B. Refusal by Authorities to Engage in Negotiations

1283. With regard to the allegation [6] that the authorities had refused to negotiate with the Karatsu Municipal Employees' Union because its proposal to negotiate had been signed by the president of the union's prefectural headquarters, the Government stated, in its comments on the further statement of the All-Japan Prefectural and Municipal Workers' Union, that on 1 June 1964 the municipality refused to receive the proposal because it was signed not only by the chairman of the municipal employees' union but also by a person from the prefectural headquarters, which " was an organisation in fact, and the municipality hoped to negotiate only with the municipal employees' union "; however, on 2 June the deputy mayor received the document and negotiations had since been held.[7]

1284. Referring to the Sagae case [8], the Government said that on the occasion in question the General Secretary of the prefectural headquarters of the All-Japan

[1] *Record of Hearings*, XXIII/11.
[2] Ibid., XV/16.
[3] Ibid., XV/17.
[4] Ibid., XXII/10.
[5] Ibid., XXII/11.
[6] See para. 1249 above.
[7] Doc. No. 104, p. 11.
[8] See para. 1250 above.

Prefectural and Municipal Workers' Union was not allowed to take part in negotiations because he did not have a formal letter of procuration.[1]

1285. In the Ishii Town Employees' Union case [2] negotiation was refused by the municipal authority because outsiders attempted to participate therein without having formal letters of procuration.[3] The Director of the Administrative Bureau of the Ministry of Home Affairs stated, however, that this local public body did not refuse to negotiate with the employees' organisation, even when it was represented by members of its parent organisation, provided that they had the letters of authority which they needed to empower them to enter into negotiations.[4] In the particular instance alleged, the question was that the persons involved had no letter of authority and not whether or not they were members of the parent organisation.[4]

1286. The witness was reminded by the Commission that the Japan Postal Workers' Union had reached a compromise with the postal authorities under which dismissed employees could retain their union offices but the union must appoint another person to represent them in negotiations, and was asked whether he knew of any case in which a local public body had agreed to a similar compromise in such circumstances.[5] He said that there were cases in which local public bodies were actually negotiating or discussing with employees' organisations which had dismissed employees in office.[4]

C. Collective Negotiation and the All-Japan Prefectural and Municipal Workers' Union

1287. The Director of the Administrative Bureau of the Ministry of Home Affairs was asked a number of questions by the Commission on matters arising out of the allegations that the control resulting from central government subsidies was such that it was necessary for negotiations, in order to be effective, to be held at the national level as well as at the local level.

1288. The witness was asked to what extent and in what circumstances the Law for special measures to promote financial reconstruction of local governments permitted the Government to determine or require changes in the standards laid down in by-laws by local public bodies. He stated that under article 3 of the said Law the Reconstruction Organisation must prepare the plan for construction through its own decision and apply for recognition to the Minister of Local Autonomy, but the latter was not in a position to alter or change by-laws of the municipality.[6] He added that the assemblies of local public bodies might alter or change by-laws to meet their reconstruction programmes, and the Commission asked him what would prompt them to do so, to which the witness replied that the aforesaid Law would be applied by the local public bodies [6] and, where they found themselves in a financial stringency, they might change by-laws through the decision of the assembly of local public bodies.[7] To the question whether this was because there was a threat that the central Govern-

[1] Doc. No. 104, p. 5.
[2] See para. 1251 above.
[3] Doc. No. 104, p. 11.
[4] *Record of Hearings*, XXIII/9.
[5] Ibid., XXIII/8-9.
[6] Ibid., XXI/13.
[7] Ibid., XXII/14.

ment might withhold funds for reconstruction purposes if they did not change their by-laws, the witness said that this was not the reason; the reason was that when the local public bodies were having great difficulties in their financement they tried to reconstruct themselves financially.[1] The witness said that he had never known of a case in which the application of this Law had resulted in the standards of by-laws being lowered.[1] The witness was asked whether the Law had not had this effect in the case alleged by the complainants to the effect that in December 1959 the Government had directed Osaka-fu Prefecture not to apply certain wage increases.[1] The witness answered that he was not directly connected with that case but considered that the Government's instructions to this prefecture had not been intended to change the wage by-laws but to check the over-all rise in wages in the prefecture, as such a rise in wages would have been against the reconstruction programme.[1] To the question: " Is not that precisely what the Law might result in ? " the witness replied " Yes, that is the case ".[1]

1289. The Commission asked the witness whether it would be correct to assume that the provisions of the Reconstruction Law would similarly influence or require changes in the standards set by local public bodies in by-laws relating to employees of local public enterprises, but he stated that the Law did not apply to local public enterprises.[1] The witness was asked by the Commission whether, if a collective agreement were to be concluded so as not to conflict with an existing by-law and the Government thus required a change in the by-law under the Reconstruction Law as a condition for assistance in financial reconstruction, this would invalidate the terms embodied in the collective agreement.[2] The witness explained that the reconstruction programme was not prepared by the central Government but by the local public bodies; the central government would in no case instruct or press the local public bodies to change the by-laws.[2] Asked whether it was not possible that the central Government might make it clear that unless the by-laws were revised the subsidy to help with the reconstruction programme might be withheld, the witness said: " I think such a case may occur in which the central Government extends financial assistance to the local public bodies on condition that there will be some change in the by-law. This may happen." [2]

1290. The witness was asked by the representative of the General Council of Trade Unions of Japan whether it would be desirable for unions of local public service employees to be able to negotiate with government authorities at national level, prefectural level and municipal level.[3] The witness expressed the view that it was not necessary to lay down by law discussion between government authorities and the unions at national or local level; when necessary the Ministry of Local Autonomy did have discussions with the All-Japan Prefectural and Municipal Workers' Union.[4]

1291. The witness was asked by the representative of the International Confederation of Free Trade Unions whether the fact that he could not furnish data concerning teachers' problems, in spite of their being covered by the L.P.S. Law, meant that all decisions made by local public bodies in the case of teachers were " being supervised by the Ministry of Education ", to which he replied " Yes, they

[1] *Record of Hearings*, XXII/14.
[2] Ibid., XXII/15.
[3] Ibid., XXIII/11.
[4] Ibid., XXII/12.

are ". To the question whether these decisions included " local by-laws covering wages and working conditions of teachers " the witness answered " Yes ".[1]

1292. The Chief of the Public Service System Planning Room in the Prime Minister's Office was asked by the representative of the International Confederation of Free Trade Unions whether, in view of the fact that the policy was to increase at the same time wages of regular personnel of the national public service, of special personnel of the national public service and of local public service personnel, the national Government had any consultation in such cases with the All-Japan Prefectural and Municipal Workers' Union.[2] The witness said that he heard that talks had been conducted between the union and the authorities of the Ministry of Home Affairs concerning wages of local public service employees.[2] To the further question as to whether the Ministry of Home Affairs considered itself to be wholly or partly the employer of the local public service the witness replied that the Ministry was in charge of local autonomy and dealt with matters concerning local public service employees, but that it was not the appointing authority of such employees at the municipal or prefectural level.[2]

D. Non-Recognition of the Japan Teachers' Union

1293. In its comments on the further statement of the Japan Teachers' Union the Government declared that the standards relating to pay provided for by section 25 (5) of the Special Law for educational public service employees did not have such rigid binding power that the local public entities could not decide the payment independently.[3] The reply of the Chief of the Public Service Personnel Section of the Autonomy Agency referred to by the complainants [4] was merely a denial that local public entities could, as regards teachers in municipal schools, prepare a payment scale quite different from that applying to teachers in national schools, and a statement of the most widely accepted interpretation of the said section 25 (5).[3]

1294. The Law concerning the standards of class-size and fixed number of educational personnel in public compulsory schools, said the Government [5], did not regulate as strictly as alleged [6]; by this law the State " shows only the fixed number serving as the standards in the necessity of maintaining the level of compulsory education " and " each prefectural authority may decide independently the fixed number of its educational personnel ".[5]

1295. Government grants were intended to equalise local financial resources and to maintain a certain standard of administration throughout the country, and the utilisation of the grant was left to the decision of local public entities.[5] Indication by the State of the standards for maintaining a certain level of education throughout the country was not intended at all to deny the independence of local autonomy and, in the Government's view, the allegation by the Japan Teachers' Union that its local

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[1] *Record of Hearings*, XXIII/13-14.

[2] Ibid., XXVII/10.

[3] Doc. No. 103, p. 6.

[4] See para. 1261 above.

[5] Doc. No. 103, p. 7.

[6] See para. 1263 above.

organisations had been deprived of the possibility of deciding the payment and fixed number of educational personnel through negotiation was a " one-sided view lacking in comprehension of the purpose and contents of the system ".[1]

1296. The Director of the Elementary and Secondary Education Bureau of the Ministry of Education explained to the Commission that the founders of elementary and lower and upper secondary schools were the local public bodies and the prefectural or municipal boards of education were responsible for the schools in the name of the inhabitants of the prefecture or municipality.[2] The Ministry could only give guidance and advice, its powers being clarified in the Ministry of Education Establishment Law; however, compulsory education was very important from the State's point of view and it was necessary to maintain unified levels of compulsory education and, in that sense, the State was responsible for maintaining and unifying the standards of compulsory education, as an example of which, he said, educational contents must be considered to be decided at the national level.[2] To maintain the standards at a certain level it was necessary for the State " to assume responsibility for teachers' salaries " because in the past some local public bodies had difficulty in paying them because of financial stringency, and so the State bore up to one-half of the salaries.[3] The State had also been bearing responsibility for the expense of school buildings and educational facilities.[4] But these matters must be decided voluntarily by the local public bodies, as founders of the schools, so the assistance given by the Ministry was based on the programmes prepared by the local public bodies.[5]

1297. Questioned by the Commission, the witness confirmed that the salaries of teachers, as local public servants, were decided by the prefectural by-laws in accordance with the Law for special regulations concerning educational personnel.[5]

1298. The Commission asked the witness whether the Government, because it contributed to educational expenses, could influence the policies followed by prefectural educational authorities, in particular in respect of the salaries and other conditions of teachers in public schools.[6] The witness stated that the salaries were fixed by the prefectural authorities and the State's assistance was automatically paid according to the salaries that had actually been paid by local public bodies; the State was ready to pay one-half of what they had paid even if the salaries had been fixed at a higher level than was paid in the national public service or to teachers in national schools; in fact, local teachers had been receiving higher salaries than teachers in national schools, when comparison was made on the basis of similar educational qualifications and hours of work.[7]

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[1] Doc. No. 103, p. 7.

[2] *Record of Hearings*, XXIV/1.

[3] Ibid., XXIV/1-2.

[4] Ibid., XXIV/2.

[5] Ibid., XXIV/2-3.

[6] Ibid., XXIV/3.

[7] Ibid. The witness was asked subsequently by the representative of the International Confederation of Free Trade Unions how payments made " automatically " were related to the budget. He said that the prefectural authorities submitted their requests for the appropriation of one-half of what they paid, and if the current budget did not include sufficient appropriations these were provided for in the budget for the following years but sometimes there was a supplementary budget in the same year. He was asked whether the reason why teachers in some prefectures in certain years did not receive statutory annual increments was the fact that no supplementary budgets were proposed. The witness replied that regular increments were not obligatory, so that there might be cases where they were not planned or implemented. *Record of Hearings*, XXV/9.

1299. The Commission asked the witness to imagine an extreme case in which a prefecture, desiring to secure as many qualified teachers as possible, fixed salaries at double those normally paid in national schools, and to say whether that would be accepted without any protest by the Minister or finance authorities, so that the State would pay 50 per cent. of the double salaries.[1] The witness said that this would be a very extreme case but that the Minister of Finance was ready to pay one-half of salaries fixed at a considerably higher level.[2]

1300. The witness was asked what intervention could be made, if any, by the Minister of Education, by virtue of his powers under sections 48 and 52 of the Local Education Administration Law, if he thought that there were considerable salary variations between different prefectures.[2] He replied that, while the Minister could provide guidance and make recommendations to local public bodies when he found that administration was not satisfactory, he had never done so with regard to salaries—although there were always slight salary variations between different prefectures according to their financial stituation—nor, so far as he knew, with regard to other conditions of employment.[2]

1301. The argument that collective bargaining took place between the Minister of Education and the Japan Teachers' Union for a considerable length of time after the war and that his refusal to bargain was the result of political considerations and a violent act of non-recognition of the union, said the Government in its further statement, was a false contention avoiding intentionally reference to institutional changes; prior to enactment of the Law for special regulations concerning educational personnel in 1949 there was such national bargaining because at that time municipal school personnel were national public servants, whereas under the existing system such personnel had the status of local public servants and the prefectural board of education appointed them and, as employer, was the party to collective bargaining.[3] These observations were repeated in substance in his opening statement by the Director of the Elementary and Secondary Education Bureau of the Ministry of Education.[4] The witness stated further that, while the personnel could negotiate on working conditions with the local public bodies, they could not claim to negotiate with the Minister of Education, who had no legal authority as an employer, a matter which, in the view of the witness, was not directly related to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).[5] As head of the organ of the State for educational administration, the Minister was concerned with educational administration by local public bodies only through the preparation of relevant laws, ordinances and budgetary estimates and through technical and professional guidance and advice; naturally, " members of the unions " were " free to convey their wish or express their views to the Minister " if they so wished, a point concerning which the Governing Body Committee on Freedom of Association had expressed its views in paragraph 188 *(f)* of its 54th Report in terms the interpretation of which had been discussed in Japan.[5]

1302. The witness considered that the discussion desired by the union with the Minister was closely connected with the right of collective bargaining and the right

[1] *Record of Hearings*, XXIV/3.
[2] Ibid., XXIV/4.
[3] Doc. No. 103, p. 8.
[4] *Record of Hearings*, XXIII/19-20.
[5] Ibid., XXIII/20.

to strike and was a preliminary step to obtaining those rights; Ministers who had had discussions with the union had often had bitter experiences.[1] He declared that the Governing Body Committee on Freedom of Association had stated in effect, in its 54th Report, that it agreed that the determination of the broad lines of educational policy, although a matter on which it might be normal to consult teachers' organisations was not one for collective bargaining between such organisations and the education authorities.[1]

1303. The witness was asked whether the possible adoption of a national wages policy in respect of teachers had been pursued or studied by the Ministry of Education or the Government, to which he replied that the Ministry might make recommendations about salaries but they were actually fixed by the local public bodies.[2] He was then asked whether the Ministry or other branch of Government had studied the possibility of changing the present legislation so that the Government could implement such a national wages policy.[3] The witness said that a national policy had been studied by the Cabinet as regards national public service employees, whose salaries were determined by the National Personnel Authority.[3]

1304. The Commission reminded the witness that, when it adopted the 54th Report of its Committee on Freedom of Association, the Governing Body of the I.L.O. had expressed the view that, while the employing authorities have the right to decide whether they will negotiate at the regional or national level on their side, the workers should—in accordance with the principle that workers should be able to establish and join organisations of their own choosing—be entitled to choose as they wish the organisation which shall represent them in the negotiations; the Commission asked him whether the competent government authorities had given any consideration to the situation as regards the right of organisation and negotiation of teachers' organisations in the light of the views expressed by the Governing Body.[4] The witness said that the prefectural teachers' unions could negotiate with prefectural authorities but that the Japan Teachers' Union, being a nation-wide organisation, could not; he recognised, however, that after ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), this point would have to be examined.[4] The witness was asked whether or not the Government sought the views of the Japan Teachers' Union when formulating the nation's policies on education and drawing up the national education budget, in so far as these matters had repercussions on the salaries and conditions of employment of teachers.[4] The witness said that the Government did not seek its opinion.[5] He agreed that it was normal practice in many countries to consult with as many organisations as possible in determining the national education policy and said: " There are many educational organisations in Japan in addition to the Japan Teachers' Union and the Ministry of Education is ready to seek useful opinions from the various organisations. But so far as the Japan Teachers' Union is concerned, the Ministry is not seeking its opinion." [5]

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[1] *Record of Hearings*, XXIII/21.
[2] Ibid., XXIV/4.
[3] Ibid., XXIV/5.
[4] Ibid., XXIV/8.
[5] Ibid., XXIV/9.

1305. The witness was asked to comment on the allegation [1] that on 19 August 1960 the Minister of Education, at a joint meeting of the National Prefectural Education Chiefs' Conference and the National Conference of Chairmen of Prefectural Education Commissions, asked the prefectural authorities not to recognise the Japan Teachers' Union.[2] Witness said that he could find no reason for such a statement and that as far as he knew it had never been made [2]; he did not think it possible that the Minister would have given such a directive, for although he criticised the activities of the union he had never denied its existence.[3]

1306. In reply to further questions the witness stated that in 1963 there were 31,967 teachers in national schools and universities, who formed unit organisations for each school, and these were registered by the National Personnel Authority; of these teachers 27,592 worked in universities, 374 in other technical colleges and the rest, about 4,000, in national elementary, secondary and high schools; there were 283 national schools.[3] Where the national schools were attached to universities the teachers' organisations were included in organisations covering universities and schools.[4] As these teachers had the status of national public servants, whereas the members of the Japan Teachers' Union were local public servants, the former could not be represented by that union.[4] The Commission suggested that, if the rules of the Japan Teachers' Union were formulated so as to cover also the national schools, teachers in those schools could not be prohibited from belonging to it; the witness did not agree with this idea and said that if national public service employees wanted to negotiate on working conditions they could be represented only by organisations of national public service employees, although some teachers in national schools had joined the Japan Teachers' Union.[4] In reply to a question by the representative of the General Council of Trade Unions of Japan, the witness repeated that a few teachers in national schools were members of the Japan Teachers' Union but that, while it could negotiate on matters concerning conditions of employment of local public service employees, it was not competent to negotiate on behalf of national public service employees.[5]

1307. In reply to a question by the representative of the Government of Japan the witness said that, even though it could not register, the Japan Teachers' Union did negotiate at the prefectural level.[6]

1308. In its comments on the further statement of the Japan Teachers' Union the Government said [7] that the union had resorted to unlawful acts of dispute and violent acts in opposing over-all educational measures by the Government and the exercise of administration, including the carrying out of merit assessment.[8] With reference to the judgment of the Urawa District Court [8] to the effect that the merit assessment would be the subject of collective bargaining, the Government stated that an appeal on this case was pending and that the Tokyo District Court had ruled that the merit assessment had no relationship with working conditions.[9]

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[1] See para. 1271 above.
[2] *Record of Hearings*, XXIV/9.
[3] Ibid., XXIV/10.
[4] Ibid., XXIV/11.
[5] Ibid., XXV/8.
[6] Ibid., XXV/7-8.
[7] Doc. No. 103, p. 8.
[8] See para. 1274 above.
[9] Doc. No. 103, pp. 8-9.

1309. The Director of the Elementary and Secondary Education Bureau of the Ministry of Education was asked to explain the factors on which an individual's efficiency rating was based. As major factors, the witness mentioned the question whether a teacher was able to give adequate guidance through teaching and the question whether or not he was working regularly every day.[1] The teachers knew what factors were taken into consideration but he found it natural that they did not know how the principals assessed their work [1]; no account was taken in this connection of a person's trade union membership or activities.[1] The witness said that the Minister of Education had not had consultations with the Japan Teachers' Union before the efficiency rating system was adopted; although the assessment was nationwide, it was conducted by the prefectural authorities and not by the Ministry, but a considerable number of the prefectural boards of education consulted with the prefectural teachers' unions on the matter.[1] The initiative to establish the system came from the superintendents of the prefectural boards of education and not the Minister; they did not propose its adoption to him, but decided upon it themselves and notified the Ministry.[2] He agreed that the Urawa District Court had ruled that the efficiency rating system, having close relations to working conditions, was appropriate for collective bargaining, but stated that an appeal against the decision was pending and that the Tokyo District Court and one other court had ruled to the contrary.[2]

1310. The Government said in its comments on the further statement of the Japan Teachers' Union that the Kyoto case referred to by the complainants [3], in which union members were acquitted of charges of committing violent acts, was the subject of an appeal pending in the Osaka High Court.[4]

1311. With respect to the achievement test [5] the Director of the Elementary and Secondary Education Bureau of the Ministry of Education said in his opening statement before the Commission that the union had obstructed the conduct of the test and taken away test papers by force.[6]

1312. In this connection the Government stated in its comments on the further statement of the Japan Teachers' Union that the union had failed to mention that the Fukuoka Court had nevertheless found members guilty of violent acts in connection with the implementation of the achievement test and had not mentioned other judgments which had gone against the union in the Kumamoto District Court, the Kochi District Court and the Takamatsu High Court and which had made it clear that the achievement test did not contravene legislation.[7]

1313. With regard to the action policy of the Japan Teachers' Union the Government said in its comments on the union's further statement that its action policy for 1960 was based on the lessons drawn from the 1959 struggles against the Security Treaty, the merit assessment system, educational and cultural activities, the peace movement and international co-operation, etc., and showed that the union devoted itself primarily to political strife; now it had, instead of remaining neutral, decided

[1] *Record of Hearings*, XXV/6.
[2] Ibid., XXV/7.
[3] See para. 1275 above.
[4] Doc. No. 103, p. 9.
[5] See para. 1274 above.
[6] *Record of Hearings*, XXIII/21.
[7] Doc. No. 103, pp. 15-16.

to support the Japan Socialist party, to which almost all its executive members belonged.[1] The Government said that article 6 of the union's rules provided that it aimed at " raising the economic, social and political status of the union members, democratising education and study and constructing a cultural State ", while among the activities to achieve these aims set forth in article 7 were listed " matters concerning the maintenance and improvement of the treatment and working conditions of educational personnel ", " matters concerning the democratisation of academic study and research " and " matters concerning the construction of democratic education ".[2]

1314. The Director of the Elementary and Secondary Education Bureau of the Ministry of Education said in his opening statement that the union had strong political tendencies and aimed at establishing the standards for the curricula itself irrespective of laws and regulations and set forth these aims in its annual action policy; he alleged that it criticised and sometimes obstructed educational policy and claimed that such policy should be decided by collective bargaining between the union and the Minister, and so the Minister had been reluctant to discuss with the leaders of the union, as this would give the nation a false idea that the educational policy of the country could be decided through collective bargaining.[3]

1315. In its comments on the further statement of the Japan Teachers' Union the Government referred to various newspaper extracts with a view to refuting the allegation that its attitude to the union had brought it under public criticism.[4]

1316. The Government referred to the claim by the union [5] that it had taken citations against the union from its Commentary on its Code of Ethics for Teachers and not from the Code itself and contended that the terms of the Commentary showed that it could not be divorced from the Code, while the Code made it clear that the union considered that it had the historic task of denying the present social structure and of establishing a new social system based upon the philosophy of class strife.[6]

1317. The Director of the Elementary and Secondary Education Bureau of the Ministry of Education was asked by the Commission why the Ministry of Education had accused the Japan Teachers' Union of being a subversive organisation because of the publication of its Code of Ethics, and the witness replied that he was not saying that the union was engaged in subversive activity by adopting the Code but that the Code was one-sided politically and morally.[7]

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[1] Doc. No. 103, pp. 10-11.
[2] Ibid., pp. 18-19.
[3] *Record of Hearings*, XXIII/20.
[4] Doc. No. 103, pp. 11-13.
[5] See para. 1278 above.
[6] Doc. No. 103, pp. 16-17.
[7] *Record of Hearings*, XXV/10.

CHAPTER 33

COLLECTIVE NEGOTIATION UNDER THE NATIONAL PUBLIC SERVICE LAW

I. Statements and Evidence of the Complainants

A. Denial of the Right to Conclude Collective Agreements

1318. Mr. Eda, witness for the Congress of Government Employees' Unions, said in his opening statement that section 98 of the N.P.S. Law stipulated that collective bargaining may not include the right to conclude collective agreements.[1]

B. Representatives for Negotiating Purposes

1319. The witness was reminded by the Commission that his organisation had alleged that nothing in the N.P.S. Law prevented a union being represented by persons who were not employees and he was asked whether in practice a union which had officers who were not employees negotiated with the competent authorities.[2] The witness replied in the negative, but said that in fact none of the unions affiliated to the Congress was represented in negotiation by persons who were not employees.[2] He stated further that the Rules of the National Personnel Authority permitted a union, by power of attorney, to delegate authority to negotiate to a person who was neither a union officer nor a union member, but that the Authority could refuse to negotiate with such a person except on " technical and professional matters "; in fact, such delegation had never been made.[3]

1320. Mr. Fujii, the second witness for the Congress of Government Employees' Unions, was asked by the Commission whether a union which had officers who were not employees could negotiate with the authorities, and he replied that in such cases negotiation was refused until the union replaced such officers by persons who were employees.[4]

C. Scope of Negotiation

1321. Mr. Eda, witness for the Congress of Government Employees' Unions, said that the N.P.S. Law excluded disciplinary matters from the scope of collective negotiation.[1] Asked by the Commission whether negotiations between the authorities and unions affiliated to the Congress included questions relating to the appointment or dismissal of employees, the witness said that they could negotiate on wage increases and upgrading of positions, but not on disciplinary matters, in respect of which a

[1] *Record of Hearings*, XI/3.
[2] Ibid., XI/9.
[3] Ibid., XI/14.
[4] Ibid., XI/28.

union could merely submit its opinions.[1] The witness was asked by the representative of the General Council of Trade Unions of Japan whether such matters as appointment and grading were not excluded from negotiation on the ground that they were items which affected operation and management; the witness expressed the view that the smaller unions affiliated to the Congress were not negotiating on such matters in practice, but said that his own union, the All Agriculture and Forestry Ministry Workers' Union, did negotiate on wage increases of individual employees, promotions, etc., but that, if no agreement was reached, the authorities declared unilaterally that these subjects fell within the scope of matters affecting management and operations.[2]

1322. The witness was asked to explain what in fact was the scope of the matters covered in negotiation and he replied that these were, firstly, matters concerning the working conditions of employees, such as hours, breaks, etc.[3]

1323. The second witness for the complainants, Mr. Fujii, said that there had been cases in which the authorities had refused to negotiate on reassignment or promotion of employees, allocation of houses to employees, and even the replacement of old desks by new ones, on the pretext that these were matters pertaining to the administration and operation of the Government.[4]

1324. This witness said that the scope of negotiation was further limited by the fact that the heads of field offices of the central Government had been deprived of their ability to negotiate even on local issues.[4]

II. Statements and Evidence of the Government

A. Denial of the Right to Conclude Collective Agreements

1325. The Deputy Director-General of the Cabinet Legislation Bureau stated that, as public service employees were required to " attend to their duties in the interest of the public as servants of the whole community ", their conditions of employment were determined in the form of law, and thus they were placed in " a position that leaves no room for concluding agreements on their conditions of employment ".[5] In such event negotiation with the authority was entered into by the submission of complaints or demands for consideration by the authority through the organisation to which the employees belonged.[5]

1326. The Chief of the Employee Association Section of the Bureau of Employee Relations of the National Personnel Authority stated that, while a collective agreement could not be concluded, the National Personnel Authority took into consideration information or requests submitted by employees' organisations and, in August 1964, when it made recommendations, the Authority included measures related to such requests.[6]

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[1] *Record of Hearings*, XI/9.
[2] Ibid., XI/12.
[3] Ibid., XI/8.
[4] Ibid., XI/24.
[5] Ibid., XV/7.
[6] Ibid., XXVI/20.

B. Representatives for Negotiating Purposes

1327. The Chief of the Public Service System Planning Room in the Prime Minister's Office stated that it was true that some authorities had requested the exclusion of non-employees as union representatives, but that this was proper, as the existing law provided that representatives of organisations should be employees in service.[1] The witness was asked by the Commission whether, in the case of any organisations of government employees, consideration had been given to adopting compromise arrangements similar to those adopted in the case of the Postal Workers' Union, according to which the union retained dismissed employees as officers but appointed another person to negotiate; he replied in the negative.[2]

1328. The witness was also asked whether it was normal for representatives of a higher-level organisation to be able to attend negotiations with a lower-level organisation[3]; he replied that while representatives of the organisation at the workplace normally negotiated this did not preclude the participation of representatives from the higher-level organisation.[4]

C. Scope of Negotiation

1329. The Deputy Director-General of the Cabinet Legislation Bureau stated that employees' representatives had the right to negotiate, with a view to promoting and protecting the workers' interests, on matters relating to conditions of employment; even " matters affecting the management and operation", such as the disciplinary power, could be the subject of negotiation so far as they were related to conditions of employment—e.g. the establishment and application of standards for the exercise of disciplinary power.[5]

1330. The Chief of the Employee Association Section of the Bureau of Employee Relations of the National Personnel Authority was asked to explain the scope of the matters excluded from negotiation as being matters affecting management and operation; he replied that disciplinary matters were excluded by virtue of Rule No. 14-0 of the National Personnel Authority.[6] The act of appointment of individuals could not be the subject of negotiation, but conditions of appointment in relation to appointments might be; the position was the same in respect of dismissal.[7]

1331. The Chief of the Public Service System Planning Room in the Prime Minister's Office said that when a proposal was made to negotiate on matters affecting management or operation which had no relation to working conditions, or even matters concerning working conditions which were beyond the discretion or control of the negotiating authority, such proposal was naturally refused.[8]

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[1] *Record of Hearings*, XXVI/25.
[2] Ibid., XXVII/2.
[3] Ibid., XXVII/4.
[4] Ibid., XXVII/5.
[5] Ibid., XV/5.
[6] Ibid., XXVI/10.
[7] Ibid., XXVI/11.
[8] Ibid., XXVI/24-25.

CHAPTER 34

PROHIBITION OF STRIKES AND LACK OF COMPENSATORY GUARANTEES (LOCAL PUBLIC SERVICE LAW)

I. Statements and Evidence of the Complainants

1332. The General Council of Trade Unions of Japan, the Japan Teachers' Union and the All-Japan Prefectural and Municipal Workers' Union all submitted to the Commission, in their comments or further statements or through their witnesses, evidence intended to show that, on a number of grounds, the machinery established as the counterpart of the denial of the right to strike did not offer sufficient compensatory guarantees to protect the interests of the workers adequately.

1333. In his statement before the Commission the representative of the General Council of Trade Unions of Japan declared that both paragraph 2 of Article 8 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the reports of the Governing Body Committee on Freedom of Association had been construed as establishing the principle that, where workers were denied the right to strike, there must be established compensatory machinery which would ensure adequate protection of the interests of the workers; while the unions did not necessarily approve of the denial of the right to strike in Japan, he had to point out that the workers had suffered great loss because no adequate compensation for the loss of the right to strike had been provided.[1]

A. Alleged Partiality of Personnel and Equity Commissions

1334. The General Council of Trade Unions of Japan, the Japan Teachers' Union and the All-Japan Prefectural and Municipal Workers' Union all alleged that the personnel and equity commissions, the bodies established under the L.P.S. Law for the purpose mainly of making recommendations to the employing authorities concerning the pay and other conditions of employment of local public servants and of hearing appeals of employees against adverse treatment, were not impartial bodies.

1335. In its comments on the draft analysis of the legislation the General Council of Trade Unions of Japan declared that employee organisations had no voice at all in the appointment of the members of the commissions, who were named by the heads of the local public bodies, the legal system thus permitting them to appoint only those who were favourably disposed to them, which is what they did in practice.[2] Hence it was very rarely that a commission gave a verdict in favour of an employee who appealed against adverse action taken against him on the ground of legitimate union activity, and the unfairness and partiality of the commissions, together with the lack of authority for the wage and other recommendations they might make, had reduced them " to a totally incompetent existence as a compensatory machinery for

[1] *Record of Hearings*, I/5.

[2] Doc. No. 87, p. 38.

the loss of the right to resort to dispute acts ".[1] The complainant considered that either the posts of commission members should be made elective, by direct ballot of the people, or employee organisations should be represented on the commissions.[2]

1336. The Japan Teachers' Union, in its further statement, declared that, in the absence of any adequate guarantees to ensure fairness, high-ranking public servicemen, who sided with the employers, were appointed to the personnel commission, either leaving their other posts or remaining incumbents.[3] The complainant agreed that the position was especially serious for local public service employees, because they had no right of challenge against commission members, whereas national public service employees could challenge equity commission members whose background and position were inconsistent with the fair review of cases, pursuant to Rule No. 13-1 of the National Personnel Authority.[4]

1337. The complainant cited certain alleged specific cases.

1338. It was alleged that the Gifu Prefectural Personnel Commission consisted of Mr. S. Tsuchikawa, ex-treasurer of the Prefectural Government, Mr. K. Awano, concurrently the Head of Ibigawa town, and Mr. A. Ninomiya, who became Mayor of Toki city, in the same prefecture two months after this appointment to the commission in October 1963, but continued as a member.[5]

1339. Saitama Prefectural Personnel Commission included as a member Mr. M. Watanabe, who was appointed in September 1963. He had been Chief of the Prefectural Police Board—the official supervising all local public activities—from April 1961 to March 1963. A teacher, Mr. K. Iizuka, arrested as a suspect in a case of offences in connection with demands for collective bargaining handled by Mr. Watanabe during his police office, appealed to the commission against his disciplinary dismissal and the same Mr. Watanabe was now handling his appeal for review of dismissal.[6]

1340. Mr. T. Yoshinaga, a member of the Ibaraki Personnel Commission, was at the same time auditor of the Ibaraki Mutual Bank and had previously been Governor of Wakayama, Ibaraki and Hiroshima Prefectures and superintendent of the Metropolitan Police Board.[6] Mr. B. Kimura, another member appointed in October 1963, had been chief of the General Affairs Department of the prefectural government and, from 1959 to September 1963, treasurer of the prefectural government; as chief of the General Affairs Department he had been involved in the imposition of punishments on teachers in a case which had become the subject of review by the Commission to which he was appointed.[7]

1341. Mr. J. Nakagawa, chairman of the Osaka Prefectural Personnel Commission, had been a high-ranking police leader at Osaka headquarters from July 1955 to September 1958, during which time he commanded arrests and raids when the Osaka Prefectural Teachers' Union had opposed the efficiency-rating system. The court had acquitted them but administrative sanctions had been imposed. However, when

[1] Doc. No. 87, p. 38.
[2] Ibid., pp. 38-39.
[3] Doc. No. 93, p. 8.
[4] Ibid., p. 11.
[5] Ibid., pp. 8-9.
[6] Ibid., p. 9.
Ibid., p. 10.

they appealed to the Commission the same Mr. Nakagawa deliberated on their appeal.[1]

1342. The witness for the All-Japan Prefectural and Municipal Workers' Union also complained in his opening statement that the opinions of the unions were not taken into consideration in respect of appointments to personnel and equity commissions which were made by the governments in their discretion, the approval of the legislatures being a mere formality in most cases, so that the commissions were not neutral in character.[2] He declared that the Government was not giving consideration to the adoption of measures which would ensure that the numerical composition of the commissions would reflect equitably the interests of the various parties concerned and that their constituent members would be impartial persons commanding general public confidence, nor was it considering measures to give the interested parties an equal voice in the appointment of commissioners.[3] The procedure of appointment of equity commissions, the witness alleged, was so secretive that the unions did not even know what was going on inside the commissions, the situation being even worse in this respect than it was in the case of the personnel commissions.[4] He added subsequently that the members of the equity commissions were so partial that they could not be trusted by the unions.[5]

1343. In the further statement which it submitted to the Commission the All-Japan Prefectural and Municipal Workers' Union stated that 51.6 per cent. of the members of all the personnel commissions, in February 1964, were persons who should be regarded as representing the interests of employers.[6] Of the 159 members, the 82 regarded as representing employers consisted of 32 senior public servants, 35 managers of companies or banks, ten heads of municipalities and five secretaries-general of personnel commissions; the remainder consisted mainly of members of liberal professions (37 lawyers, four doctors) and 21 persons from learned walks of life. Only two represented trade union interests.[7]

1344. The complainant referred to a case before the Ibaraki City Equity Commission with a view to showing partiality on the part of the Commission and to demonstrating the fact that it was not prepared to defend the occupational interests of employees who had been deprived of the right to defend them by collective bargaining and strike action.[8] Three hundred and thirty-five members of the Ibaraki

[1] Doc. No. 93, p. 10.

[2] *Record of Hearings*, VIII/7.

[3] Ibid., VIII/7-8. At its 153rd Session (November 1962) the Governing Body of the I.L.O., adopting subpara. 2 *(b)* (iii), (iv) and (v) of para. 384 of the 66th Report of its Committee on Freedom of Association, had decided—

. . . . . .

(iii) to suggest to the Government once again that it may care to consider what steps can be taken to ensure that the different interests are fairly reflected in the numerical composition of the personnel commissions and that all the neutral or public members of the commissions are persons whose impartiality commands general confidence;

(iv) to suggest to the Government once again that it may care to consider also the advisability of providing that each of the respective parties concerned shall have an equal voice in the appointment of the members of the personnel commissions;

(v) to suggest to the Government that it may also take account, in the case of the equity commissions, of the suggestions contained in subparagraphs (iii) and (iv) above.

[4] *Record of Hearings*, VIII/8.

[5] Ibid., IX/7.

[6] Doc. No. 94, p. 24.

[7] Ibid., Appendix, p. 55.

[8] Ibid., p. 25.

City Employees' Union—acting as individuals because the procedure did not permit collective application by the union—applied to the Equity Commission for action to ensure implementation of the periodic wage increment which the Mayor had attempted to suspend from 1 April 1963 onwards.[1] Such increment was an acquired right and, according to the complainant, was clearly provided for in section 10 of Ibaraki City Ordinance No. 49 concerning salaries of city employees in general category, 1957.[2] The Commission found as facts that the payment of the increment had become customary practice by virtue of the ordinance, that the suspension of the increment had been effected because of the state of the city's finances and that salaries were not high enough to comply with section 24 (3) of the L.P.S. Law.[3] The Commission rejected the application because of " the financial need of the city, the will of the city assembly and the trend of public opinions ".[4] In the view of the complainant the partiality of the Commission was proven because it—*(a)* obeyed the will of the Mayor and the assembly; *(b)* misrepresented as public opinion the opinion of a few influential citizens close to the Mayor; *(c)* failed to fulfil its duty to make statistical comparisons and investigation into wages as required by law; *(d)* viewed the situation solely from the point of view of the authorities and gave no consideration to whether the Mayor's action adversely affected working conditions or not.[5]

1345. Three members of the Yohkaichiba Municipal Employees' Union applied on 5 June 1963 to the Equity Commission in Chiba Prefecture for action against suspension of increment in their case only because it was alleged they had not furnished evidence on union activities in writing which the authorities had demanded so that they could use it against the officers of the union. By 25 June 1964, when the further statement was submitted, the Equity Commission had taken no proceedings at all in respect of the application.[6]

B. Recommendations of Personnel Commissions and Equity Commissions

1. *Ex Officio Recommendations by Personnel Commissions Only.*

1346. In its comments on the draft analysis of the legislation the General Council of Trade Unions of Japan stated that only personnel commissions, and not equity commissions, had the statutory function, by virtue of section 8-1 (2), of making a continuous study on compensation, etc., and submitting the results thereof to the local public body.[7] In this connection the witness for the All-Japan Prefectural and Municipal Workers' Union criticised the fact that most local public bodies did not have personnel commissions, although they had equity commissions.[8]

1347. However, the General Council of Trade Unions of Japan alleged, many personnel commissions were practically under the control of the authorities of local

[1] Doc. No. 94, p. 25.

[2] Ibid., pp. 25-26.

[3] Ibid., p. 26. Section 24 (3) of the L.P.S. Law provides that— " The compensation of the personne must be fixed by taking into consideration the cost of living, the compensation of the personnel of the National Government and other local public bodies and the employees of private enterprises and other circumstances ".

[4] Doc. No. 94, pp. 26-27.

[5] Ibid., p. 27.

[6] Ibid., p. 28.

[7] Doc. No. 87, p. 37. The All-Japan Prefectural and Municipal Workers' Union made the same complaint in its further statement. Doc. No. 94, p. 23.

[8] *Record of Hearings*, VIII/7.

public bodies, so that, not infrequently, they made studies without hearing the views of employee organisations and submitted to the authorities only the results which suited their convenience.[1] The witness for the All-Japan Prefectural and Municipal Workers' Union declared that with regard to wages many personnel commissions made no recommendations at all, while in others they were made only in general terms, such as: " We recommend the same recommendations as were made by the Personnel Authority of the National Government." [2]

1348. The equity commission, said the General Council of Trade Unions of Japan, could only make a recommendation if an application was made to it for action concerning compensation, work hours and other working conditions.[1]

2. *Application to Commissions for Action on Wages, Etc.*

1349. The General Council of Trade Unions of Japan complained in its comments on the draft analysis of the legislation that the right to make requests for action was granted only to individual employees and not to their organisations.[3] Even if organisations filed requests for action on issues inseparably related to the organisations the commissions generally turned them down without bothering to make any examination or investigation on the ground that they did not have the right to file such requests; in the complainant's view this was proof that the commissions did not compensate for loss of the right to strike—such requests by individual employees were tantamount to being meaningless.[1] Requests for action on wages and conditions needed the preparation of considerable data and this made it necessary to permit organisations to file requests themselves.[4]

3. *Implementation of Recommendations.*

1350. The witness for the Japan Teachers' Union claimed that personnel commissions made almost the same recommendations as were made to the National Government by the National Personnel Authority and that, as the latter were rarely fully implemented, the position at the local level was the same. Some parts of the recommendations were ignored and others not fully implemented; thus, the National Personnel Authority recommended the national Government to implement wage increases as from May 1964, but actual implementation was postponed until October, and the same thing then happened in the case of teachers and other local public service employees.[5] Even then, he said, it would not be implemented retroactively to the date of 1 May but only as from 1 October.[6] In the case of the teachers who were local public servants the personnel commissions made recommendations annually, but so far none had ever been fully implemented.[5] These recommendations generally included wage schedules for teachers and commencing salaries and the effective date for wage increases, but generally, even though made in the first place on the basis of

[1] Doc. No. 87, p. 37.

[2] *Record of Hearings*, IX/7.

[3] Doc. No. 87, p. 37. The All-Japan Prefectural and Municipal Workers' Union made the same contention in its further statement (doc. No. 94, p. 25), which was the reason why, when the Ibaraki City Employees' Union wished to apply for action to the equity commission, its 335 members had to file individual aplications (see para. 1344 above). In support of this argument the complainant cited a decision (*Gyojitsu*, 9 Oct. 1951, Chijiko-Hatsu No. 444) to the effect that the organisation could not file a general application or an application on behalf of an individual, and another decision (*Gyojitsu*, 24 Oct. 1951, Chijiko-Hatsu No. 482) to the effect that the organisation could not even be designated as proxy. Doc. No. 94, Appendix, p. 53.

[4] Doc. No. 87, pp. 37-38.

[5] *Record of Hearings*, X/7.

[6] Ibid., X/8.

faulty comparisons, they were implemented only after the Government had made detrimental revisions.[1] In reply to a question by the Commission, the witness affirmed that no recommendation during the past 15 years had been fully implemented.[1] He complained that the Personnel Commission was only an advisory organ which could take no action binding the authorities even with regard to teachers' wages.[2]

1351. In its further statement[3], the Japan Teachers' Union referred to certain decisions of the courts in support of the contention that recommendations of personnel commissions did not compensate for the loss of the right to strike.

1352. The complainant cited the following purported extract from a judgment of the Saga District Court on 28 August 1962:

For any working persons, strike is the almost sole effective means of placing themselves, through force of unity, on an equal footing with the employers, of conducting collective negotiations favourably and of acquiring proper working conditions. Therefore, fairly effective compensatory measures should be taken if this right is to be taken away from working persons.

Nevertheless, the above-mentioned compensation cannot be said to be very sufficient for replacing the right to strike. Whereas by-laws concerning the wages and working hours for personnel as well as recommendations and opinions of the Personnel Commission can take effect only when the executive organ of the local public service body thoroughly carry them out, in fact the heads of local governments and other organs including local assemblies frequently fail to put these steps into practice for budgetary and other reasons. When this is the case, opinions and recommendations of the Personnel Commission have no legal effects to bind the organs concerned. They have only moral power. There is no counter-measure on the part of working persons in case the organs concerned do not implement the Commission's recommendations earnestly.[4]

1353. The following purported extract from a judgment of the Osaka District Court dated 31 March 1964 was cited by the complainant:

If recommendations and opinions of the Personnel Commission concerning the wages and other working conditions of the public workers are to play their normal functions for the guarantee of fair working conditions, they must be faithfully implemented by local public bodies. Actually, however, the local assemblies and other organs of the local public bodies do not necessarily execute the recommendations earnestly and sincerely. The above-mentioned recommendations and opinions of the Personnel Commission have no binding effects upon the party concerned. Their effects are only moral. There is no effective step in case the party concerned fails to carry out the recommendations faithfully. Since this is the case, the various compensatory steps as provided by the Local Public Service Law cannot be regarded as sufficiently effective as compensation for the negation of the right to strike.[5]

1354. These two verdicts, argued the complainants, showed that recommendations of the commissions did not compensate for the denial of the right to strike and on this ground the persons before these courts were acquitted on charges of having committed unlawful acts of dispute.[6]

1355. On the other hand, declared the complainants, persons were convicted on similar charges by the Fukuoka District Court (21 December 1962) and the Wakayama District Court (25 October 1963) and sentenced to hard labour in violation of the

[1] *Record of Hearings*, X/8.
[2] Ibid., IX/18.
[3] Doc. No. 93.
[4] Ibid., pp. 5-6.
[5] Ibid., p. 6.
[6] Ibid., p. 7.

Abolition of Forced Labour Convention, 1957 (No. 105), because these courts "affirmed that full compensatory steps were taken for the absence of the right to strike".[1]

1356. The witness for the All-Japan Prefectural and Municipal Workers' Union argued that the Government should establish arbitration machinery for the settlement of disputes.[2] He did not think that it was always feasible and practical to introduce compulsory arbitration machinery in the case of smaller local public bodies; the unions would prefer voluntary arbitration such as that which existed under the Trade Union Law and which was more concentrated and had wider jurisdiction.[3]

C. Deterioration of Wages and Other Conditions of Employment

1357. The witness for the All-Japan Prefectural and Municipal Workers' Union contended that the wages of local public servants had suffered by reason of the present system. According to figures issued by the National Personnel Authority the salaries of national public servants were 12 per cent. inferior to salaries in the private sector. Despite the contrary case in some big cities, the salaries of local public servants were generally low in comparison with those of national public servants.[4] According to his own organisation's survey in May 1964, covering 177 local public bodies, there were 170 in which starting salaries were lower than in the national public service; in 55 cities, towns and villages the starting salary was less than $30 a month.[4] In the worst case it was $20.13, whereas under the Life Protection Law people who needed government relief received $45.20, an amount higher than the salaries of 20 per cent. of the local public servants even in large cities.[5] He argued that in many cases the salaries of local public servants were lower than those of national public servants performing the same work, this being due mainly to the lack of adequate compensatory machinery in the case of the former.[6] Since 1960 the average wage levels of local public servants had tended to rise on the whole.[7]

1358. On 21 September 1964 the All-Japan Prefectural and Municipal Workers' Union submitted certain statistics to the Commission.[7] According to these tables a survey made by the Aomori Prefectural Government in April 1963 showed that, while the average wage in private enterprises employing 500 or more workers was 25,414 yen, the salaries of local public servants in eight cities of the Prefecture varied between 25,057 and 19,622 yen. A survey in April 1964 by the Federation of Mutual Aid Associations covering its affiliated cities, towns and villages revealed that the average wage of the local public servants employed by them was 23,727 yen, whereas a National Personnel Authority survey showed that the average wage in private enterprises employing 100 workers or more was 35,536 yen.

1359. In its further statement this complainant contended that the situation was worse in the cases of the municipalities which did not have personnel commissions but only equity commissions, stating that figures put out by the Ministry of Local Autonomy on 31 May 1963 showed that the average wage of prefectural employees

[1] Doc. No. 93, p. 7.
[2] *Record of Hearings*, VIII/7.
[3] Ibid., IX/8.
[4] Ibid., VIII/12.
[5] Ibid., IX/3.
[6] Ibid., IX/4.
[7] Doc. No. 109.

was 28,165 yen per month, that of city employees 24,300 and that of town and village employees 19,568.[1]

1360. The witness for the Japan Teachers' Union said that in general the wages of public servants were lower than those in private enterprises; moreover, wage increases for public service employees were based on surveys made two years earlier and so there was a two years' lag compared with the position of private enterprise workers.[2] The results of the recent application of the children's achievement tests had led to teachers' working hours being increased to 58 hours a week, according to a Ministry of Education survey, or 63 hours, according to a union survey. The law prescribed 42 hours a week but no overtime allowance was paid.[3] Even during the 35 days' school vacation teachers were required to attend seminars and training courses or prepare work for the coming term or care for children on vacation; only in the vacation period could teachers take their annual 20 days' holiday with pay.[3]

D. Acts of Dispute and Disciplinary and Penal Sanctions

1361. The All-Japan Prefectural and Municipal Workers' Union contended in its further statement that all the foregoing circumstances forced the unions to resort to acts of dispute to protect the interests of workers employed under substandard working conditions, and this in turn led to disciplinary and penal sanctions in disregard of the recommendation made by the Governing Body of the I.L.O. when it adopted paragraph 25 *(b)* of the 64th Report of its Committee on Freedom of Association.[1] A similar contention [4] was made in the further statement of the Japan Teachers' Union. Witness for the Japan Teachers' Union said that 10,000 teachers had been subjected to disciplinary sanctions for unlawful acts of dispute and that the penal sanction of forced labour could also be imposed under section 61 (4) of the L.P.S. Law even in the absence of any acts of violence.[5]

1362. The representative of the General Council of Trade Unions said in his opening statement that such advantage as ever accrued from recommendations was only after they had been enforced by united action on the part of public service workers, for which they had to pay a heavy price by way of victimisation.[6]

1363. In its comments on the draft analysis of the legislation the General Council of Trade Unions of Japan contended that the judgment of the Osaka District Court on 31 March 1964 was one of the rare verdicts upholding its argument that the application of penal sanctions in the case of strikes under such circumstances was unconstitutional.[7]

1364. The Japan Teachers' Union, in its further statement, cited the Osaka Court as having said:

> Even supposing that some steps are required to restrict the right of teachers to strike, it is impossible to find enough grounds to justify the negation of this right and punishment of teachers in case they exercise this right and to justify the thesis that the inhabitants' right of education is above the

[1] Doc. No. 94, p. 23.
[2] *Record of Hearings*, X/2.
[3] Ibid., X/3.
[4] Doc. No. 93, pp. 15-16.
[5] *Record of Hearings*, IX/20.
[6] Ibid., I/7.
[7] Doc. No. 87, p. 35.

teachers' right to strike. This is particularly so under the present circumstances featured by insufficient compensation for teachers provided by the Local Public Service Law. Section 61 (4) of the Local Public Service Law constitutes violation of articles 18 and 28 of the Constitution.[1]

E. Appeals for Review of Adverse Action by Personnel and Equity Commissions

1. *Right of Application.*

1365. The All-Japan Prefectural and Municipal Workers' Union complained in its further statement that only individuals, and not the union on their behalf, could file appeals against adverse treatment with personnel or equity commissions.[2]

1366. This complainant also contended that protection was afforded only to individuals and that unions themselves had no means of protection against repressive acts and unfair labour practices committed by municipal authorities[3], equity commissions having no power to accept unions' complaints against acts of domination or interference.[4] Consequently, argued the General Council of Trade Unions of Japan in its comments on the draft analysis of the legislation, there existed no protection of the right to organise of local public servants and their organisations.[5]

1367. Moreover, stated the General Council of Trade Unions of Japan, temporary employees were totally excluded from the right to appeal against adverse treatment to a personnel or equity commission. This was serious because temporary employees were doing work which should be done by regular employees and because temporary employees were being used by local authorities to split the unions. At the same time municipal authorities engaged in unfair labour practices against temporary employees because they knew that no remedies were open to them.[6] In reply to questions by the Commission the witness for the General Council of Trade Unions of Japan stated that temporary employees on a daily basis were not union members but that temporary employees who were on a long-term basis were admitted to union membership [7]; contrary to the position in the private sector, no union in the public sector catered exclusively for temporary employees.[8] The witness for the All-Japan Prefectural and Municipal Workers' Union said that the employees' organisations generally admitted to membership temporary employees who had worked for over six months or who were in practice in positions of a permanent nature [9]; there remained just a very few organisations consisting solely of temporary employees.[10]

2. *Delay in the Hearing of Cases by Personnel and Equity Commissions.*

1368. The Japan Teachers' Union, in its further statement, contended that reviews of appeals were greatly delayed because the composition of the commissions was partial and because they consisted mostly of part-time members, for whose convenience proceedings were often suspended; hearings took several years, and even after the end of the hearings it took another year before a final decision was given.[11]

[1] Doc. No. 93, p. 7.
[2] Doc. No. 94, pp. 28-29.
[3] Ibid., p. 24.
[4] Ibid., p. 19.
[5] Doc. No. 87, p. 39.
[6] Ibid., p. 25.
[7] *Record of Hearings*, III/15.
[8] Ibid., III/16.
[9] Ibid., IX/5.
[10] Ibid., IX/6.
[11] Doc. No. 93, p. 11.

In some cases the position was aggravated through undue delay in appointing members of the commissions.[1]

1369. The complainants referred to a case of 56 applications filed with the Osaka Personnel Commission in June 1959; by June 1964, 90 hearings had been held and, at the rate of progress thus far, it would take 15 years in all to complete the case.[2] Eleven persons filed an appeal on 10 April 1957 with the Saga Personnel Commission and by 23 April 1964 21 hearings had been held; the proceedings had been suspended for a period of two years and four months because of the illness of the Chairman of the Commission.[3]

1370. The All-Japan Prefectural and Municipal Workers' Union cited a number of cases in its further statement.[4] Thus appeals had been made in 1962 to the Tokyo Prefectural Personnel Commission, the Sakai City Equity Commission, the Fukuoka City Equity Commission and the Kyoto City Personnel Commission, but there was no prospect of an early conclusion in any of these cases.[5] On 13 June 1963 seven dismissed officers of the Takasaki Municipal Employees' Union appealed to the Equity Commission, which did not hold the first hearing until 25 January 1964; three officers of the Tsuyama City Employees' Union appealed to the Equity Commission on 6 January 1962, but only seven hearings had so far been held.[6] The complainant alleged that in the Tokyo and Sakai cases the delays were made to suit the other commitments and convenience of commission members[7], and that in the Fukuoka case the proceedings were deliberately sabotaged by the Commission, which had held only three hearings.[8] The complainant similarly criticised the attitude adopted in two other cases before the Tokyo Commission and in cases before the Chiba Equity Commission and the Ibaragi City Equity Commission.[9]

3. *Conduct of Hearings.*

1371. The All-Japan Prefectural and Municipal Workers' Union claimed that employing authorities responsible for the decision appealed against were not made to attend the hearings.[10] The complainant said that in the Sakai case the Commission merely " entreated " the person responsible to co-operate, and the latter refused to attend[11]; in the Chiba case the Commission refused to call upon the person responsible, the Mayor of Yohkaichiba City, to attend, and the latter, it was alleged, was even putting pressure on witnesses[12]; the Tokyo Commission was alleged to have threatened not to fix the date of the hearing unless the union ceased to demand the presence of the Mayor[13]; in the Tsuyama case, said the complainant, the Commission recognised the need for the Mayor to attend but did not insist when he said it was not convenient.[14]

[1] Doc. No. 93, p. 15.
[2] Ibid., pp. 13-14.
[3] Ibid., p. 14.
[4] Doc. No. 94.
[5] Ibid., pp. 29-31.
[6] Ibid., p. 31.
[7] Ibid., pp. 41-42.
[8] Ibid., pp. 40-41.
[9] Ibid., pp. 31-32.
[10] Ibid., p. 32.
[11] Ibid., pp. 33-34.
[12] Ibid., p. 34.
[13] Ibid., p. 35.
[14] Ibid., pp. 35-36.

1372. The complainant alleged that in the Sakai case witnesses for the appellant were not allowed to attend unless they took the time off as vacation with pay [1] and difficulties were also raised in the Chiba, Takasaki and Ibaragi cases.[2]

1373. Again, it was alleged, citing the Chiba case as an example, the commissions did not oblige the authorities to submit the documentary and other evidence material to the case.[3]

1374. According to the law the authority or person responsible for taking the adverse action was obliged to give a written explanation therefor to the employee concerned (L.P.S. Law, s. 49). However, said the complainant, often no clear explanation was given. When the appellant asked for clarification, the commissions refused to help him.[4] In the Sakai case, it was alleged, the person responsible was allowed to alter the reasons previously given so as to defeat the appellant's case.[5]

II. Statements and Evidence of the Government

1375. The Director of the Administrative Bureau of the Ministry of Home Affairs said in his opening statement before the Commission that strikes by local public servants were prohibited because they enjoyed statutory terms and conditions of employment.[6]

A. Alleged Partiality of Personnel and Equity Commissions

1376. In its comments on the further statement of the All-Japan Prefectural and Municipal Workers' Union the Government stated that members of the commissions had to act neutrally and fairly; they were appointed by the head of the local public body with the consent of the representative assembly and could not be regarded as partial to the employers' or employees' or any other interests, and they were judged for appointment on the basis of their character, knowledge and experience.[7]

1377. In the Ibaraki case cited by the complainants [8] a fair judgment was given after careful consideration of wage levels and the financial position of a city designated a Financial Rehabilitation Organisation.[9] The right to receive pay raises was not a vested right but was based on work evaluation and budgetary limits.[10]

1378. With regard to the Chiba case [11] the Equity Commission did not examine the application for action on pay until it had first examined the related appeal against adverse treatment which had been submitted to it separately.[10]

1379. In its comments on the further statement of the Japan Teachers' Union the Government stated that the complainant had cited very exceptional cases [12] in support of its contention that the commissions were constituted on a partial

[1] Doc. No. 94, pp. 35-36.
[2] Ibid., p. 37.
[3] Ibid., pp. 37-38.
[4] Ibid., pp. 39-40.
[5] Ibid., p. 43.
[6] *Record of Hearings*, XXII/8.
[7] Doc. No. 104, p. 20.
[8] See para. 1344 above.
[9] Doc. No. 104, pp. 20-21.
[10] Ibid., p. 21.
[11] See para. 1345 above.
[12] See para. 1336 above.

basis and repeated that their members were chosen from among persons of the highest moral character and integrity, possessing knowledge and sound judgment of personnel administration, on an independent and fair basis irrespective of their past history.[1]

1380. The Director of the Administrative Bureau of the Ministry of Home Affairs stated in evidence that, for the reasons given by the Government and indicated in the preceding paragraphs, the neutrality of the members of the commissions was secured and it was not considered necessary to change the existing methods of appointing them.[2] Similar observations were made in his opening statement [3] when he referred to the suggestion by the Governing Body of the I.L.O. that the Government might consider taking steps to ensure that the different interests were fairly reflected in the composition of the commissions and consider the advisability of providing that each of the respective parties should have an equal voice in the appointment of their members.

B. Recommendations of Personnel Commissions and Equity Commissions

1. *Ex Officio Recommendations by Personnel Commissions Only.*

1381. With reference to the complainants' contention that equity commissions, unlike personnel commissions, could take action with regard to wages and other conditions only if application were made to them [4], the Director of the Administrative Bureau of the Ministry of Home Affairs testified that this was indeed the case.[5]

2. *Application to Commissions for Action on Wages, Etc.*

1382. Questioned with regard to the contention that only individuals, and not their organisations, could make application for action to the commissions [6], the Deputy Director-General of the Cabinet Legislation Bureau stated that, in accordance with the L.P.S. Law, employees could apply on their own behalf or the officers of employees' organisations could apply on behalf of the employees concerned. He was not familiar with the actual practice but could say that the personnel were able to designate the officers of employees' organisations as their substitutes and appeal through them.[7]

1383. The Director of the Administrative Bureau of the Ministry of Home Affairs said that applications must be made in the name of the individual or under the name of the representative of the organisation as his substitute.[8]

3. *Implementation of Recommendations.*

1384. Asked in how many cases recommendations of personnel or equity commissions had been fully implemented by the local public bodies concerned, the Director of the Administrative Bureau of the Ministry of Home Affairs said that he did not have statistical data available but could safely say that almost all of them had been implemented.[8]

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[1] Doc. No. 103, p. 1.
[2] *Record of Hearings*, XXIII/3.
[3] Ibid., XXII/9.
[4] See para. 1348 above.
[5] *Record of Hearings*, XXIII/13.
[6] See para. 1349 above.
[7] *Record of Hearings*, XVII/4.
[8] Ibid., XXIII/2.

1385. The Director of the Elementary and Secondary Education Bureau of the Ministry of Education said that he considered it most desirable that local public bodies should put recommendations into effect as early as possible, but sometimes local public bodies could not do so because of financial difficulties or other special considerations.[1] As far as he knew a considerable number of recommendations had been put into effect—but not always promptly, because of financial and other conditions.[1]

1386. The witness was asked to comment on allegations that in Saga Prefecture from 1953 onwards periodic increments had not been paid or had been postponed. He agreed that this was true but said that this was one of the poorest prefectures in Japan and for several years, during the period of financial reconstruction, it had been impossible for the authorities there to take measures to raise the salaries of the educational personnel, although the Personnel Commission had made recommendations once in 1953, three times in 1955 and three times in 1956.[2]

1387. The witness was asked whether the recommendations made by the Chiba Commission on 23 June 1961 had ever been implemented by the prefectural authorities. He replied that the reason for non-implementation was that the recommendation related to basic problems concerning the hours of work of teachers. They worked a 44-hour week. The basic problem was whether hours in excess of that should be paid. They received salary during vacations and also when they went home early. In August 1964 the National Personnel Authority recommended that a study of teachers' hours and other conditions should be made. The matter was of such general importance that the Chiba authorities themselves could not implement the recommendations.[3]

1388. With regard to the verdicts of the Saga and Osaka District Courts cited by the complainants [4] the Government said in its comments on the further statement of the Japan Teachers' Union that they were exceptional in that they stated that the personnel commissions did not function so as to compensate fully the denial of the right to strike; the Government forwarded the texts of the judgments of the Tokyo and Fukuoka District Courts expressing the contrary view.[5]

1389. In his opening statement the Counsellor of the Criminal Affairs Bureau of the Ministry of Justice expressed the view that the Osaka District Court had made errors of fact and of interpretation of the Constitution and laws in forming the judgment.[6] In evidence the witness stated that in the Saga case the court took the view that the personnel commission was not functioning very well and that its compensatory functions were not very satisfactory but that the Tokyo and Wakayama courts had expressed the contrary view, which he shared.[7]

1390. The Director of the Administrative Bureau of the Ministry of Home Affairs said in his opening statement that, as local public service personnel had statutory terms and conditions, the adoption of arbitration machinery whose awards would be binding was not envisaged.[8] In evidence he repeated that arbitration

[1] *Record of Hearings*, XXIV/13.
[2] Ibid., XXIV/15.
[3] Ibid., XXIV/14-15.
[4] See paras. 1352 and 1353 above.
[5] Doc. No. 103, p. 1.
[6] *Record of Hearings*, XVIII/19.
[7] Ibid., XVIII/26.
[8] Ibid., XXII/9.

machinery was not necessary for this reason and because the personnel organisations could negotiate on wages and working conditions with the heads of local public bodies.[1]

1391. The Director of the Elementary and Secondary Education Bureau of the Ministry of Education also considered arbitration machinery unnecessary for local public servants who enjoyed statutory conditions, and expressed the view that their status was also guaranteed by the fact that they could apply to personnel or equity commissions for measures to be taken concerning conditions of employment and could appeal to them if they were subjected to adverse treatment.[2]

C. Deterioration of Wages and Other Conditions of Employment

1392. In its comments on the further statement of the All-Japan Prefectural and Municipal Workers' Union the Government referred to the figures submitted by the complainant as evidence that wages were particularly bad in smaller towns and villages. The Government said that these were 1962 figures relating to basic pay but not taking account of other allowances, that they were based on the age, education and other records of all employees and that the amount of wages could not be assessed simply by comparing average wages for individuals; the Government had advised that the wages of local public employees should be kept proportionate to those of national public service personnel.[3]

1393. The Director of the Administrative Bureau of the Ministry of Home Affairs said that the commission system had helped to raise the living standards of local public service personnel.[4] He could not give comparative statistics for the private and public sectors but the wages of local public service personnel were kept in proportion to those of national personnel.[4] A comparative research study had been made on the matter and, although the findings were not yet made known, he could safely say that the salaries of local public service personnel had been raised as those of national public service employees had been raised.[5]

1394. The witness was questioned by the Commission as to a letter stated to have been sent by the Director of the Labour Standards Office to the Mayor of Shimizu on 24 December 1960 concerning the working conditions of the municipal employees. The witness said that the Director had made a recommendation, after which the city authorities took appropriate steps to improve the conditions: they had to conclude an agreement on overtime work under section 36 of the Labour Standards Law, to give hours of recess according to law, and to take certain safety and hygiene measures.[6] Asked about a directive dated 9 February 1960 from the Chief of the General Affairs Department of the Ishikawa Prefectural Government to all the municipal authorities in the Prefecture, the witness said that the directive was issued because some municipal employees' salaries were comparatively low and the by-laws unsatisfactory; these matters were improved in compliance with the directive.[7] In addition, it was found that the salary systems of municipal employees in some other

[1] *Record of Hearings*, XXIII/3.
[2] Ibid., XXIII/16.
[3] Doc. No. 104, p. 18.
[4] *Record of Hearings*, XXII/17.
[5] Ibid., XXII/18.
[6] Ibid., XXIII/1.
[7] Ibid., XXIII/1-2.

areas were not satisfactory, so, on 1 April 1960, the Ministry of Local Autonomy itself sent a notification to all prefectural governors telling them to improve the systems.[1]

1395. Subsequently the Government furnished the full text of this notification.[2] The items to which attention was drawn therein included basic policy for rationalisation of the compensation system (pointing out that no proper compensation system had yet been established in some of the cities, towns and villages); adjustment of by-laws and regulations concerning compensation and their proper application (pointing out that in the case of some cities, towns and villages the pay schedules needed to be improved); adjustment of the system of appointment and its proper application (pointing out that with regard to initial appointment the L.P.S. Law was not fully represented in some cases); rationalisation of administrative organisation and personnel placement; rationalisation of personnel composition; rationalisation of expenditure relative to compensation; adjustment of work hours and working conditions other than compensation (pointing out that work hours, holidays and leave of absence must be properly regulated by adjusting the by-laws and regulations with the national system as the basis); enhancement of ability of personnel.

1396. The Director of the Elementary and Secondary Education Bureau of the Ministry of Education was questioned with regard to the allegations that, comparatively, teachers' working conditions had much deteriorated since 1950.[3] The witness stated that the salaries of teachers who were local public servants were higher than those of teachers who were national public servants, in the case of personnel with the same educational career and length of service, by an amount equal to from one to three grades, i.e. 1,000 to 3,000 yen per month.[4] Salaries of teachers in public elementary schools were 7,000 yen higher than those paid in private elementary schools—the difference was 4,000 yen in the case of lower secondary schools and 12,000 yen in the case of upper secondary or high schools; thus the salaries and conditions of teachers in public schools had not deteriorated, and then salaries had increased as those of national public service employees had increased.[4]

D. Acts of Dispute and Disciplinary and Penal Sanctions

1397. In its comments on the further statement of the All-Japan Prefectural and Municipal Workers' Union the Government maintained that all disciplinary actions taken in respect of acts of dispute had been occasioned by the unlawful acts of those concerned.[5] In an annex to its comments the Government listed 15 cases in which unions, for various causes, had held rallies during working hours or individual members had committed acts such as sit-down strike, walk-out or failed to carry out duties or obey orders; in one case employees were said to have distributed photographs they had taken of the taxation ledger.[6]

1398. The Director of the Administrative Bureau of the Ministry of Home Affairs said in evidence that all the disciplinary sanctions referred to by the complainants were the result of unlawful acts, including acts of dispute, and were imposed

[1] *Record of Hearings*, XXIII/2.
[2] Doc. No. 110.
[3] *Record of Hearings*, XXIV/11.
[4] Ibid., XXIV/12.
[5] Doc. No. 104, p. 19.
[6] Ibid., pp. 30-33.

in accordance with the laws designed to maintain order in the public service; these acts were not permissible even under the guise of trade union activities, from which they were far removed.[1]

1399. The Director of the Elementary and Secondary Education Bureau of the Ministry of Education said in his opening statement that the Governing Body Committee on Freedom of Association, in its 54th Report, had recognised that " activities of a subversive character can claim no sanction from the principle of freedom of association ".[2] He said that educational personnel had committed such acts as demanding negotiation by imprisoning school principals until they had to be hospitalised, illegally entering a seminar and dragging people away by force, beating metal boards to make noise, illegally entering residences, resisting the police, etc., although acts of this kind had decreased since 1958.[3]

E. Appeals for Review of Adverse Action by Personnel and Equity Commissions

1. *Right of Application.*

1400. The Deputy Director-General of the Cabinet Legislation Bureau agreed that the provisions establishing the procedure whereby employees could appeal against measures of alleged adverse treatment to a personnel or equity commission did not apply in the case of temporary employees.[4]

2. *Delay in the Hearing of Cases by Personnel and Equity Commissions.*

1401. In its comments on the further statement of the Japan Teachers' Union the Government declared that the reason for delay in cases before the commissions such as those referred to by the complainants[5] were the great increase in the total number of cases owing to illegal acts by the union, and irrelevant propaganda issued during the procedure.[6]

1402. The Director of the Elementary and Secondary Education Bureau of the Ministry of Education was asked by the Commission what was the present position with regard to 29 applications stated by the Japan Teachers' Union to have been submitted to the Kochi Personnel Commission between 7 November 1958 and 17 November 1961.[7] The witness stated that, so far as he knew, the rulings had not yet been given, because the union filed many applications and tried to utilise the proceedings for the purposes of its struggle, and it was difficult for the Chairman of the Commission to do anything about it.[8] He did not agree that this implied that the Personnel Commission did not compensate for the prohibition of strikes and said that the tactics of the union made it difficult for it to perform its functions properly.[8] In reply to a further question the witness said that the average time between application for review by a personnel commission and the date of judgment was at least one year[8]; this was due to the large number of applications and the need to examine them carefully.[9] The witness went on to explain that the commissions consisted of

[1] *Record of Hearings*, XXII/9.
[2] Ibid., XXIII/16.
[3] Ibid., XXIII/17.
[4] Ibid., XVII/5.
[5] See para. 1368 above.
[6] Doc. No. 103, pp. 1-2.
[7] *Record of Hearings*, XXIV/17.
[8] Ibid., XXIV/18.
[9] Ibid., XXIV/19.

full-time and part-time members, who followed other occupations as well, but every review had to be dealt with by the full commission.[1] Asked whether this meant that whenever a part-time member was busy in his own occupation the commission could not make any rulings, witness said that theoretically this was so, although part-time members had to attend meetings of the commission several times a month.[2]

1403. The Director of the Administrative Bureau of the Ministry of Home Affairs was questioned on the allegations of the All-Japan Prefectural and Municipal Workers' Union that hearings before commissions lasted several years and that after the close of the hearings another year elapsed before a ruling was given, citing in particular applications made to the Saga and Osaka Commissions in April 1957 and June 1959 which were alleged to be still pending.[3] The witness agreed that the proceedings were rather prolonged; the cases were rather complicated and involved a considerable number of persons, including proxies for complainants.[3] He admitted that cases tended to remain unsettled for as long as from five to seven years.[4] The Government had been contemplating strengthening the secretariat of the Commissions and studying measures for simplifying the procedure; thus an amendment to the law in 1963 allowed easy cases to be submitted to the secretary-general of the secretariat of the commission or to specifically designated members of the commission, and further studies would be made.[4]

1404. The witness explained further that three months after filing an application to a commission a complainant could appeal to a court without waiting for the decision of the commission.[3] In this connection he was asked, with reference to still pending appeals made to the Kagoshima, Matsuyama and Laga District Courts in 1959, whether the hearing of such appeals by dismissed union officers normally took so long; he replied that the time varied, and confirmed that these cases were still pending.[5]

1405. In its comments on the further statement of the All-Japan Prefectural and Municipal Workers' Union the Government replied with reference to some of the cases of alleged delay raised therein.[6]

1406. The Government prefaced its comments by stating that examination of complaints was proceeded with promptly after they had been filed but delays occurred because the claimants and their union aimlessly disturbed the procedure, as many as 1,000 persons proposing irrelevant matters; also, if they wished, complainants could go straight to the courts three months after filing a complaint with a commission.[7] This was the kind of thing which delayed the Tokyo Commission case and the Sakai Commission case.[8] In the Kyoto Commission case there had been nine hearings.[9] In the Chiba case the complaints were filed when the whole membership of the Commission changed, but 14 hearings had been held and progress was being made.[9] Delay in the Takasaki case was due to the complainant failing to submit a procedural

[1] *Record of Hearings*, XIV/18-19.
[2] Ibid., XIV/19.
[3] Ibid., XXIII/6.
[4] Ibid., XXIII/7.
[5] Ibid., XXIII/5.
[6] See para. 1370 above.
[7] Doc. No. 104, p. 22.
[8] Ibid., p. 23.
[9] Ibid., p. 24.

document and the Tsuyama case was delayed because the complainant " unreasonably insisted that the examination be conditioned to the attendance of the Mayor ", although he had appointed a formal proxy.[1] In the case affecting members of the Tokyo Metropolitan Government Employees' Union examined by the Tokyo Commission the opening of the examination was delayed by the fact that it was necessary to examine the contents of claims submitted by 2,700 persons.[2]

3. *Conduct of Hearings.*

1407. The Government stated that mayors or other persons did not attend the proceedings in the cases cited [3] because their authorised substitutes attended.[2] In the Government's view the complainants demanded that mayors or others should attend examinations "in order to bear psychological pressure upon them" but contended there were no adequate reasons for such demands.[4]

1408. On this point the Director of the Administrative Bureau of the Ministry of Home Affairs expressed the view, in his evidence, that " it is not necessary to make persons inflicting adverse action attend, because the mayor will be present. In case the mayor is not able to be present the deputy mayor or section chief responsible for the general affairs of the city government will be present ".[5] The Commission pointed out that the mayor or deputy mayor would not have been present when the worker was supposed to have committed the offence that led to his being disciplined, to which the witness replied that he considered it most desirable that persons familiar with the case attend the hearing, but that if they could not the mayor or his deputy would be present.[5] The Commission asked the witness whether, if the appellant employee requested that the supervisor or individual in management who was responsible for making the decision to discipline him should attend, that person was brought into the proceedings, the witness replied that the procedure was decided by the rules of the personnel commission but that, if the employee against whom the adverse action was committed requested the personnel commission to have present the persons who were familiar with the action, the Commission " may ask " those persons to be present.[5] The witness, in reply to a further question, stated that it was the general practice to ask such persons to be present.[5] The witness's attention was drawn to the fact that the Government had objected to the requirement that such persons should be present because the reason for asking for their presence was " to bear psychological pressure upon them " and he was asked whether, in the light of that comment, he still said that it was the practice to have those persons present.[5] The witness replied: " Yes, it is." [6]

1409. As regards the complainants' contention [7] that difficulties were placed in the way of the attendance of witnesses for appellants the Government stated that, since every employee was obliged to devote his full-time attention to his service during duty hours, it was proper that there should be no exemption from service with

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[1] Doc. No. 104, p. 25.
[2] Ibid., p. 26.
[3] See para. 1371 above.
[4] Doc. No. 104, p. 27.
[5] *Record of Hearings*, XXIII/10.
[6] Ibid., XXIII/11.
[7] See para. 1372 above.

pay for reasons of " personal authorisation ".[1] If in all the cases where employees attended as substitutes these were given exemption from duty, the operation of administration could be greatly impeded.[1] Normally pleaders attended themselves or delegated as proxies lawyers who were not public employees.[1]

1410. In the Chiba case cited by the complainants [2], in which they objected to the fact that the Commission would not oblige the authorities to submit material, documentary and other evidence, the Government rejected the complainants' argument on the ground that this was a matter for the judgment of the Commission.[3]

1411. In the Sakai case, in which the Commission was alleged to have permitted the person responsible for the adverse action unfairly to change the written explanation originally given [4], the Government stated that, for reasons of necessity in the examination, the Commission itself had asked for further detailed statements.[3]

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[1] Doc. No. 104, p. 27.
[2] See para. 1373 above.
[3] Doc. No. 104, p. 28.
[4] See para. 1374 above.

CHAPTER 35

PROHIBITION OF STRIKES AND LACK OF COMPENSATORY GUARANTEES (NATIONAL PUBLIC SERVICE LAW)

I. Statements and Evidence of the Complainants

A. Supreme Court and Diet Personnel

1412. In its comments on the draft analysis of the legislation the General Council of Trade Unions of Japan explained that employees of the judicial courts and Diet personnel were members of the " special service ", as distinct from the " regular service ", to which other national public servants belonged.[1] In the case of court employees, requests for administrative action concerning working conditions and appeals for review of adverse treatment had to be submitted not to the National Personnel Authority, but to the Supreme Court, which itself took disciplinary actions; accordingly, it was alleged, these personnel could not expect fair review, judgments or recommendations.[1] In the case of Diet personnel, grievances as to adverse treatment and disciplinary sanctions were to be handled by the regulations concerning disposal of grievances which had been established by the Diet authorities themselves.[1]

1413. The Congress of Government Employees' Unions said in its further statement that, since December 1952, there had been ten applications in respect of unfavourable disciplinary sanctions, including dismissals; for each case the Supreme Court had to set up an equity commission, but, it was alleged, in all but one of these cases those who actually composed the equity commission were either directly under the control of the Supreme Court or ex-judges.[2] The complainant listed the offices held by these persons.[3] It was finally for the Supreme Court to pass judgment on complaints, taking into consideration the inquiries made by the equity commissions, and, said the complainant, not a single person had obtained relief and there was little or no way to relieve court employees in respect of disciplinary actions taken against them.[4] Mr. Eda, witness for the complainant, said that it would sometimes happen that an employee's request for review of an adverse action was handled by the direct supervisor of the very person who took the disciplinary action himself.[5]

1414. As regards working conditions, stated the Congress of Government Employees' Unions, the Supreme Court was to consider and decide, taking the place of the National Personnel Authority; since 1959 there had been 1,027 demands by union members for administrative action, 119 being accepted, two rejected after

[1] Doc. No. 87, p. 23.
[2] Doc. No. 95, p. 100.
[3] Ibid., p. 108.
[4] Ibid., pp. 100-101.
[5] *Record of Hearings*, XI/6.

acceptance and 96 rejected before acceptance, while the rest had not even had the chance of being accepted; no decision, said the complainants, had been taken on any of the demands accepted, so that it was obvious that lawful demands for administrative measures were actually being prevented from being implemented as compensatory measures.[1]

B. The National Personnel Authority and Working Conditions of National Public Servants in the Regular Service

1415. In its comments on the draft analysis of the legislation the General Council of Trade Unions of Japan stated that all acts of dispute by national public servants were absolutely prohibited and made subject to penalties of penal servitude for a term not exceeding three years or a fine not exceeding 100,000 yen.[2] The representative of the General Council of Trade Unions of Japan said in his statement before the Commission that the National Personnel Authority did not function as adequate compensatory machinery because it was not impartial or neutral and had no power of enforcement.[3]

1416. Mr. Eda, witness for the Congress of Government Employees' Unions, maintained that national public servants had precarious living conditions as a result of the ineffectiveness of the National Personnel Authority.[4] The second witness for this complainant, Mr. Fujii, said that not only trade union rights but also the wages and other working conditions of national public service employees had been deteriorating and had become inferior to those of persons employed in public corporations and national enterprises, to say nothing of private industry.[5] For several years, he alleged, recommendations of the Authority had not been implemented until six months later and, when account was taken of the time occupied in the making of surveys of wages in private enterprises, there was a lag of from 18 months to two years between the wages of public service employees and those in private enterprises.[5]

1417. The General Council of Trade Unions of Japan, in its comments on the draft analysis of the legislation, said that when demands were placed before the Authority by the unions officials of the Authority had declared on many occasions that they could not accept them because the Finance Ministry did not appropriate the necessary credits [6], and the representative of the General Council of Trade Unions of Japan stated before the Commission that recommendations of the Authority had never been fully implemented.[7] In this connection the Congress of Government Employees' Unions said in its further statement that, on 14 December 1963, the Authority had made a recommendation on the working conditions of nurses, following an application by the 21,000-strong All-Japan State Hospital Employees' Union, but that the Ministry of Public Welfare had failed to implement the recommendation and that the Authority had done nothing further about it.[8]

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[1] Doc. No. 95, p. 101.
[2] Doc. No. 87, p. 23.
[3] *Record of Hearings*, I/5.
[4] Ibid., XI/2 and 7.
[5] Ibid., XI/19.
[6] Doc. No. 87, p. 18.
[7] *Record of Hearings*, I/7.
[8] Doc. No. 95, pp. 101-102.

1418. The witness for the Japan Teachers' Union said that recommendations were made by the National Personnel Authority in respect of the wages of teachers in the national public service [1]; the Authority made a recommendation on 11 August 1964, but the Government announced publicly that it intended to honour the recommendation but that it might have to delay the effective date until October, although the recommendation called for implementation as from May.[2] He said that the implementation would not be back-dated to May and that such recommendations had usually been put in force in November or December and made retroactive to October but not to May, in accordance with the recommendations; in the 15 years since the Authority was set up, he alleged, no recommendation had been fully implemented.[2]

1419. Mr. Eda, witness for the Congress of Government Employees' Unions, said that the National Personnel Authority was not appointed on an impartial basis and that the recommendations or revision of wage scales which it was required to make every year were framed so as to accommodate the low wage policy of the Government and fell short of giving workers adequate living security.[3] He alleged that the methods that had been adopted by the Authority to survey wages in private enterprises in order to compare them with those of civil service employees were improper and deliberately intended to make the wages gap between enterprises in the private and government sectors appear smaller than it was; thus, the recommendation of the Authority for 1964 put the gap at only 8½ per cent., whereas Ministry of Labour statistics revealed a 14 per cent. rise in 1964 in the private sector.[3] The reasons for this, he said, were that the Authority surveyed only smaller enterprises in which wage increases were comparatively small, that it used the Lasfeyres formula which produced the smallest gap, and that the matching of jobs was inappropriate and arbitrary, higher-grade government jobs being matched with jobs in private enterprises which were not comparable in terms of responsibility.[4] This, he said, produced unsatisfactory recommendations, but even these had rarely been fully implemented.[5]

1420. In reply to a question by the representative of the International Confederation of Free Trade Unions the witness stated that the Labour Standards Law did not apply to the civil service.[6]

1421. Nevertheless, said the witness, when the workers participated " in allegedly unlawful union activities disciplinary measures were taken against them; of 9,506 disciplinary actions in 1963, 7,894, or about 80 per cent., were taken on the ground of having taken part in trade union activities ".[7]

C. Appeals of Regular Service Employees for Review of Adverse Action

1422. Mr. Eda, witness for the Congress of Government Employees' Unions, said that it was actually the Equity Committee of the National Personnel Authority which examined requests for review of actions and that, as its members were appointed

[1] *Record of Hearings*, X/7.
[2] Ibid., X/8.
[3] Ibid., XI/5.
[4] Ibid., XI/5-6.
[5] Ibid., XI/6.
[6] Ibid., XI/14.
[7] Ibid., XI/7.

by the personnel officer, there was a danger of it being under his thumb [1]; also, he claimed, as the members were selected from among the staff members of the Personnel Authority, the independence of the Committee in examining cases was considerably jeopardised.[1] The other witness for this complainant, Mr. Fujii, alleged that persons (personnel officers of the Authority) other than the Committee members (examiners) could actually exert an effective influence on the results of the hearing and the decision.[2] Referring to a case regarding which he himself had protested about the delay to Mr. Okada, then Director of the Equity Bureau of the Personnel Authority, he said that Mr. Okada had clearly told him that " personnel officers may put forward their own opinions regarding the decisions and have them rewritten "; this, said the witness, showed how equity reviews could be influenced by personnel officers who neither attended nor participated in the review proceedings.[3]

1423. In its further statement the Congress of Government Employees' Unions said that, the members of the Equity Committee being appointed by officials of the National Personnel Authority, the appointments were likely to be subjected to the whims of the officials and that the members had always been picked from among officials of the Authority, much to the detriment of the independent nature of the inquiry.[4] The complainants contended that original drafts of decisions of the Committee were frequently revised by personnel officials, who in fact made the decisions.[5]

1424. The complainant said that only individuals, and not trade unions, could make applications for review, even in cases connected with trade unions.[5] Suspension of salary and status raises and refusal of paid annual leave caused by participation in trade union activities were the kinds of things in which the trade unions should be a party, but only individuals could submit applications.[6]

1425. In its comments on the draft analysis of the legislation the General Council of Trade Unions of Japan stated that the N.P.S. Law denied to temporary employees the right to appeal for review of adverse treatment.[7]

1426. With regard to the conduct of hearings the Congress of Government Employees' Unions said in its further statement that union representatives attending had to take annual leave for the purpose but that the authorities' representatives were guaranteed full official protection for their activities.[8]

1427. The Congress of Government Employees' Unions complained in its further statement of the delays in dealing with appeals for review, stating that of 3,875 appeals filed between October 1949 and December 1962 847 were still pending.[9] Different figures were given by Mr. Eda, witness for the Congress, who said that in only 907 of the 3,875 cases had decisions been handed down and that disciplinary measures had been annulled in only 266 cases.[10] He alleged that the authorities were

[1] *Record of Hearings*, XI/6.
[2] Ibid., XI/20.
[3] Ibid., XI/21.
[4] Doc. No. 105, pp. 102-103.
[5] Ibid., p. 103.
[6] Ibid., pp. 103-104.
[7] Doc. No. 87, p. 17.
[8] Doc. No. 95, p. 104.
[9] Ibid., p. 111.
[10] *Record of Hearings*, XI/6-7.

taking advantage of the dilatory procedure and imposing increasingly harsh disciplinary sanctions.[1]

1428. Mr. Fujii, the second witness for the Congress, cited two specific cases. In March 1956 Mr. Ishika, Vice-President of the National Tax Administration Agency Workers' Union, was dismissed and filed an appeal for review; the Authority reviewed the case for three years and then, he alleged, although the Authority stated in 1959 that it had completed its review, it failed to hand down its decision until December 1961, when its ruling upheld the dismissal and stated that the case was not a " proper object of review ".[2]

1429. Another case involved the cancellation of paid leave and a 150 yen pay-cut imposed on an employee of Shigehara Tax Office because he took his leave to take part in union activities.[3] Witness said that the case was examined from May 1956 to July 1959 but that the Authority did not hand down its decision in favour of the employee until November 1963, thus taking nearly eight years to make a 150 yen back-pay order.[4]

II. Statements and Evidence of the Government

A. Supreme Court and Diet Personnel

1430. In its comments on the further statement of the Congress of Government Employees' Unions the Government admitted that as regards applications for review by court personnel the person having taken the action also gave judgment on the matter, so that " one might say that there is somewhat lacking in the guarantee of the staffs ", but this was the inevitable consequence of the provisions of the Constitution ensuring the independence of the judicial power.[5]

1431. The Government admitted that the persons composing the equity commissions had also occupied the offices stated by the complainant.[5] In order, however, to ensure as much equitableness as possible measures were taken to ensure that commission members were persons who knew well the internal conditions of courts of justice, persons who could be neutral and fair judges, persons able to criticise a disposal made by the Supreme Court or other court, and " persons who must not be the staffs of the department in charge of personnel affairs of the Supreme Court ", while important cases were to be handled by an equity commission of five members.[6] The procedure took a far longer time than Personnel Authority procedure, but the fact that verdicts in favour of appellants were few was because the original disposals had generally been made by judges who made their disposals prudently and fairly.[7]

1432. Appeals against findings given by the Supreme Court through the above procedure were first submitted to a lower court, but in the end the final judgment was again given by the Supreme Court, but this was " constitutionally quite inevitable ".[7]

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[1] *Record of Hearings*, XI/7.
[2] Ibid., XI/20.
[3] Ibid., XI/20-21.
[4] Ibid., XI/21.
[5] Doc. No. 105, p. 142.
[6] Ibid., p. 143.
[7] Ibid., p. 144.

1433. The Government said that since 1959 there had been 987 requests for review and not 1,027, as alleged, but that many of them appeared to " have been made as an activity for the association of personnel and ... not by the applicants' own will ". Most of the cases which had not been accepted or on which findings had yet been given had, said the Government, already " attained their purpose " through administrative action, and so should be withdrawn, but the applicants neglected to do this.[1]

B. The National Personnel Authority and Working Conditions of National Public Servants in the Regular Service

1434. The Government said that the National Personnel Authority consisted of three commissioners who were politically neutral and appointed with the approval of the Diet and that the Authority was independent and neutral and, in the execution of its business, received no instructions from the Cabinet or any other organ.[2]

1435. With regard to the Authority's recommendation in the nurses' case [3] the Government said that the recommendation was one for the reduction of weekly hours from 48 to 44 and for making provision for recess; it was true that some institutes had not given particulars concerning the recess to the Ministry of Public Welfare as instructed.[4] In these instances the Authority had drawn the attention of the institutes to the matter but was obliged to study the question further in view of some of the administrative difficulties which the Ministry had brought to its notice; hence, the allegation that the Authority had given no further attention to the matter was based on a misunderstanding.[5]

1436. The Chief of the Public Service System Planning Room in the Prime Minister's Office said in his opening statement that recommendations on salary scales and other so-called compensatory protection were provided by the Authority in a fair and objective manner.[6]

1437. The witness was asked to comment on the allegation that since 1960 the Government had adopted the practice of delaying for five months the implementation of the Authority's recommendations for wage increases.[7] He explained that the Government gave due regard to these recommendations but that, when the wages of general service employees were to be raised, it had been the normal practice to raise at the same time the wages of special service employees and of local public service employees, and that this cost a large amount of money.[7]

C. Appeals of Regular Service Employees for Review of Adverse Action

1438. In its comments on the further statement of the Congress of Government Employees' Unions the Government explained that the Equity Committee was to be appointed by the National Personnel Authority; its function was to investigate cases, and final decision on cases of disadvantageous disposal rested with the Authority.[2] In appointing the Committee, parties in the cases and others whose interest

[1] Doc. No. 105, p. 145.
[2] Ibid., p. 150.
[3] See para. 1417 above.
[4] Doc. No. 105, p. 148.
[5] Ibid., pp. 148-149.
[6] *Record of Hearings*, XXVI/25.
[7] Ibid., XXVII/6.

might cause partiality were not appointed, and, further, both parties had the right to challenge any member whose interests might be considered to endanger the fairness of the trial, while the members were to perform their business without receiving instructions from any person, and thus the fairness of the investigation was ensured.[1] The Authority respected the opinions of the Equity Committee and made its decisions in deference to such opinions.[2]

1439. The Chief of the Public Service System Planning Room in the Prime Minister's Office, replying to questions by the Commission, said that the apparent allegation that the " personnel officers " appointed the members of the Equity Committee was probably based on a mistranslation of " commissioner of the Authority " as " personnel officer ".[3]

1440. In its comments the Government maintained that the object of the review system was to relieve employees who had been disadvantageously treated, so that the union was not included.[4] Claimants could only be employees in their private capacity and the selection by claimants of union representatives as their agents was a matter of " private entrustment ", the expense of which it was natural for claimants to bear.[4] But the competent authority concerned had to represent the nation and the attendance of its representatives at reviews was considered to be a public service duty and the expense thereof was borne by the Government.[5]

1441. In comparison with other cases, said the Government, cases connected with union activities took much time; they involved a large number of persons; the fact that in principle a trial took place " at the claimant's residence " caused difficulty in many cases through conflict between union schedules and those of the competent authority; the trial was lengthy because it was the policy to allow the parties to express themselves and adduce proof freely; often the trial of such cases had to be postponed or suspended for reasons mainly attributable to the claimant's side.[6] But the Government denied that cases had ever been put off for a long time, as alleged.[7]

1442. The Commission asked the Chief of the Employee Association Section of the Bureau of Employee Relations of the National Personnel Authority to comment on the allegation that Mr. Ishika, Vice-President of the National Tax Administration Agency Workers' Union, filed a request for review of his unfair dismissal on 24 March 1956 and that it was not until December 1961 that the Authority ruled that the case was not a proper one for review.[8] The witness said that according to his information the ruling was given in 1959, three years after the submission of the case on 23 April 1956; in the meantime the Authority had investigated the question whether there had been an act of dispute contrary to section 98 of the N.P.S. Law; it found that there had been such an act of dispute and therefore rejected the application on the ground that it did not deserve a remedy.[9]

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[1] Doc. No. 105, pp. 150-151.
[2] Ibid., p. 151.
[3] *Record of Hearings*, XXVII/6-7.
[4] Doc. No. 105, p. 152.
[5] Ibid., pp. 152-153.
[6] Ibid., pp. 153-154.
[7] Ibid., p. 154.
[8] *Record of Hearings*, XXVI/17.
[9] Ibid., XXVI/18.

1443. The Commission then questioned the witness concerning the allegation that in May 1956 the Authority began its examination of an appeal for review of adverse action in the form of a 150 yen pay cut on the ground of trade union activity filed by an employee of Shigehara Tax Office, that the verdict in his favour was not given until November 1963 and that only 150 yen were awarded to the employee as compensation for all that he had lost.[1] The witness said that the amount was not 150 yen and that " in order to give proper judgment the National Personnel Authority made an examination in a very careful and objective manner ".[1] Asked whether an appeal should take seven years for an answer, the witness replied that he did not think so, but that this was an example of a case which took an unusually long time, and that generally the length of time between the date of application for a remedy and the date of decision was less than two years in about 80 per cent. of the cases submitted to the Authority.[1]

1444. The witness was asked to comment on the allegation that decisions had been handed down in only 907 of 3,875 requests for review submitted to the Authority between 1949 and 1962.[2] He replied that 4,134 applications were made between October 1949 and July 1964, but 2,290 were withdrawn; in 963 of the remaining 1,844 cases judgment had been given.[2] The witness said that judgment had still not been given in about 100 of the cases submitted between 1949 and 1955.[3]

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[1] *Record of Hearings*, XXVI/18.

[2] Ibid., XXVII/23.

[3] Ibid. When the Commission was in Japan, in January 1965, the Government asked the Chairman, in writing, to correct this statement because, in fact, by September 1964 all the cases submitted between 1949 and 1955 had been settled.

CHAPTER 36

PROPOSED AMENDMENTS TO THE LOCAL PUBLIC SERVICE LAW

I. Statements and Evidence of the Complainants

A. Registration of Organisations

1445. In his opening statement the witness for the All-Japan Prefectural and Municipal Workers' Union contended that even if, as envisaged in the proposed Bill to amend the Local Public Service Law, the function of registering trade unions were to be transferred from the head of the local public body to the equity commission, the appointment of the members of these bodies would probably be made without regard for the will of the labour unions, and, he said, in many localities not even the secretariats of such commissions had been established.[1]

B. Conditions Attaching to Registration

1446. At present, said the same witness, the Government was demanding that local public employees' organisations should meet the requirement of obtaining an absolute majority vote of all the members of the union in deciding matters relating to the daily functioning of the union and in electing union officers; he said that the proposed Bill would not correct this situation and that, consequently, if unions drew up their rules in a manner inconsistent with the repressive provisions of the law, the Government would be able to deny or cancel registration on this ground.[1]

C. Registration in relation to the Right to Negotiate

1447. The General Council of Trade Unions of Japan contended, in its comments on the draft analysis of the legislation, that the Bill failed to provide for the right of an employees' organisation to negotiate with the authorities irrespective of its registration status; although the Government had stated that under the Bill no discrimination would be made between registered and non-registered unions in respect of their ability to negotiate, the authorities of the local public bodies would still be able to decide at their own discretion with which unregistered organisation they would negotiate.[2] Section 55-1 of the Bill provided that " a registered employee organisation may negotiate with the authority ", so that no provision of the Bill could be construed to mean that an unregistered organisation would have the right to negotiate.[2] Hence the present situation, in which unregistered organisations could be refused negotiation rights, would continue and, bearing in mind that even now these rights were often denied to registered organisations themselves, the com-

[1] *Record of Hearings*, VIII/5.

[2] Doc. No. 87, p. 33.

plainant maintained that, despite the Government's statement, the Bill would still leave room in this connection for the authorities of local public bodies to interpret the law arbitrarily to their advantage and infringe the trade union rights of local public service employees.[1] Similar opinions were expressed in his opening statement by the witness for the All-Japan Prefectural and Municipal Workers' Union.[2]

D. Scope of Basic or Unit Employee Organisations

1448. In its comments on the draft analysis of the legislation the General Council of Trade Unions of Japan stated that under the Bill personnel employed for simple labour and personnel of prefectural governments covered by the definition in section 9 of the Supplementary Provisions of the Local Autonomy Law would be permitted to join employee organisations of regular service employees of local public bodies, but that this would be permitted only within the framework of one local public body and employees of a local public body would not be legally authorised to form and join the same employee organisation as that of regular service employees of other public bodies.[3]

1449. The All-Japan Prefectural and Municipal Workers' Union said in its further statement that the Bill to amend the Local Public Service Law, read with the Bill to amend the Local Public Enterprise Labour Relations Law, would not permit employees of the local public service and local public enterprises to participate in the same union.[4]

E. Scope of Federations

1450. The General Council of Trade Unions of Japan stated in its comments on the draft analysis of the legislation that, even if the legislative amendments made it possible for a union formed under the L.P.S. Law to federate within the same local public body with a union formed under the L.P.E.L.R. Law, the federation would not be protected as an employee organisation or as a labour union under either law. The position of the All-Japan Prefectural and Municipal Workers' Union and its prefectural federations would thus remain unchanged [3]; the same contention was made in the further statement submitted by the latter organisation.[4]

F. Right of Union Membership

1451. In its comments on the draft analysis of the legislation the General Council of Trade Unions of Japan stated that the Bill to amend the Local Public Service Law provided that dismissed employees would be eligible for union membership for a period of 12 months following their dismissal; the complainants considered that dismissed employees should be allowed to remain in their unions as long as the latter were prepared to retain them and that the proposed provision would run counter to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).[5]

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[1] Doc. No. 87, p. 33.
[2] *Record of Hearings*, VIII/4.
[3] Doc. No. 87, p. 31.
[4] Doc. No. 94, p. 9.
[5] Doc. No. 87, p. 29.

G. Organising Rights of Supervisory Personnel

1452. The General Council of Trade Unions of Japan stated in its comments on the draft analysis of the legislation that the Bill to amend the Local Public Service Law would prohibit supervisory and managerial personnel from joining the same employees' unions as other regular service employees and that those who were already organised would be obliged to withdraw from their unions, whose strength would thus be weakened; the complainants considered that it should be left to the employees' organisations concerned to decide autonomously the scope of their membership.[1] Further, while the Bill would not let supervisory personnel and the like join the employee organisation of regular service employees, the latter would be allowed to join the organisation formed by supervisory employees.[1] This would mean, in the complainants' view, that municipal authorities could break up and destroy a union of regular service employees by encouraging regular service employees to join the organisation of supervisory personnel.[2] These contentions were repeated by the witness for the All-Japan Prefectural and Municipal Workers' Union, who said also that the Government, with the proposed amendments in mind, had recently been giving nominal wage increases to section chiefs and their assistants to make them fall into the categories of managerial staff, and had been effecting organisational changes to increase the number of lower-level " supervisors ".[3]

1453. The General Council of Trade Unions of Japan said that the scope of the supervisory and managerial personnel in question would be defined by rules of personnel commissions or equity commissions, but that, despite this, the authorities of local public bodies would be able to break up unions through expansion of the scope of such personnel by arbitrary interpretation of the provision in the Bill.[4]

1454. It was further alleged that the Government intended to take legal measures to drive school principals and head teachers out of the Japan Teachers' Union by defining them as managerial personnel, although under existing law and practice they were not personnel in managerial positions whose interests would not be served by remaining on the same rank as other teaching personnel.[5] The witness for the Japan Teachers' Union, in his opening statement, said that the Ministry of Education was already deciding arbitrarily that certain categories of teachers had managerial and supervisory functions, in order to force them to leave the union, and was trying to create another union to cater for them.[6]

1455. In its further statement the All-Japan Prefectural and Municipal Workers' Union, after repeating in substance the above arguments of the General Council of Trade Unions of Japan and stating that " officers in charge " whom (with section chiefs) municipal authorities had recently been trying to convert into " supervisory and managerial staff " were persons with from two to five persons working under them and without authority to hire, fire, promote, etc., alleged that these moves and changes in organisation to increase the numbers of " officers in charge ", were being undertaken in preparation for the amendment of the law[7], and proceeded to cite certain alleged specific examples.

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[1] Doc. No. 87, p. 27.
[2] Ibid., pp. 27-28.
[3] *Record of Hearings*, VIII/6.
[4] Doc. No. 87, p. 28.
[5] Ibid., pp. 28-29.
[6] *Record of Hearings*, IX/20.
[7] Doc. No. 94, p. 11.

1456. The Sakai city authorities, it was alleged, had reorganised their tax section, the result being to increase the total number of employees by one but to increase the numbers of " officers in charge " by six, who might, under the Bill, lose their right to remain in the Sakai Municipal Employees' Union.[1]

1457. On 19 March 1964, said the complainants, the Mitaka Municipal Employees' Union was notified by the municipal authorities that they would like to discuss amendments to the by-law concerning compensation in conjunction with supervisory and managerial allowances but, on 25 March, the authorities refused to meet the union, and later the same day the by-law was revised without the union ever having been consulted.[1] The result of the by-law was to pay " supervisory allowances " to persons with no authority to manage or to represent the interests of the employers, for the alleged purpose of removing from the union 10 per cent. of its membership; the complainants said, further, that " officers in charge " or their equivalents were not included in " supervisory or managerial personnel " as defined in section 41 of the Labour Standards Law.[2] Following this, seven chief clerks left the union.[2]

H. Applications to Personnel Commissions and Equity Commissions

1458. In its further statement the All-Japan Prefectural and Municipal Workers' Union alleged that the Bill would make no change in the present situation in which only employees as individuals could file appeals against adverse treatment with personnel and equity commissions and unions had no protection against unfair labour practices by municipal authorities.[3]

II. Statements and Evidence of the Government

A. Registration of Organisations

1459. The Director of the Administrative Bureau of the Ministry of Home Affairs said in his opening statement that the present registration system was maintained in the Bill, except that, in the case of cities, towns and villages not having a personnel commission, the equity commission would effect registration.[4] Equity commissions would be set up in municipalities not having personnel commissions and the registration functions of the heads of municipalities transferred to them; there would be a right of appeal to the courts against decisions of the equity commissions.[5]

B. Conditions Attaching to Registration

1460. The same witness said that consideration was being given to measures to enable an employee organisation to elect officers by a majority of those present and voting at the election meeting instead of by a majority vote of the membership.[5]

C. Registration in relation to the Right to Negotiate

1461. The Director of the Administrative Bureau of the Ministry of Home Affairs explained that the essential purpose of the existing registration system was to

[1] Doc. No. 94, p. 12.
[2] Ibid., p. 13.
[3] Ibid., p. 24.
[4] *Record of Hearings*, XXII/8.
[5] Ibid., XXII/17.

ensure normal labour-management relations but that it was not intended at all to grant any privilege to the registered organisations; it adopted the principle, he said, " that the authorities of a local public body will respond positively to a request for negotiation with the employees' organisations "[1], and this system was maintained in the Bill to amend the Local Public Service Law.[2]

1462. The Deputy Director-General of the Cabinet Legislation Bureau in his opening statement said that the present legislation provided for negotiation by registered organisations but that this implied that the authority " will be placed in a position to respond positively " to the organisation's request for discussion, and such requests might place the authority " in the position of not avoiding discussions with the employees' organisations "; both registered and non-registered organisations, he said, might " with full competence " hold discussions, and " the difference is simply whether or not the authority may be placed in a special position as mentioned ".[3] Although he had made these observations in the context of the N.P.S. Law the witness referred the Commission to them as being applicable to the existing situation under the existing L.P.S. Law[4], stating that " even according to existing law, non-registered employees' organisations may have the competence to negotiate and discuss with the authorities about certain procedures. The difference is whether such non-registered employees' organisations may negotiate in the sense that I explained in my opening statement ".[5]

1463. The witness was asked by the Commission to indicate which provisions of the Bill to amend the Local Public Service Law would provide that " non-registered organisations may negotiate with the authorities ", as the Government had stated would be the case in its communication dated 16 May 1962.[6]

1464. The witness stated that the fact that employees' organisations, whether registered or not, could negotiate with the authorities was quite clear from section 52 of the L.P.S. Law and the related provisions of the amending Bill; thus section 55-2 was to be amended " so as to provide for a procedure of negotiation between the employees' organisations and the authorities, irrespective of whether those organisations are registered or not registered ".[6] The Commission asked the witness which section and paragraph in the Bill ensured the right to negotiate of non-registered organisations; he replied that " there is not any explicit or direct provision giving non-registered employees' organisations competence to negotiate, but... it is quite clear that the employees' organisations, whether registered or not, may negotiate with the authorities. This is clear from the interpretation of the provisions of this section as a whole." [7] The Commission pointed out to the witness that section 55 of the Bill began with the words " the registered employees' organisation may... negotiate with the authorities of the local public body concerned with regard to... " but that it could not find any subsequent paragraph in that section which stated that non-registered organisations had the same rights as registered organisations.[7] The witness said that the position was that section 55-1 of the Bill gave special facilities to registered organisations but that section 55-2 and subsequent paragraphs were applicable

[1] *Record of Hearings*, XXII/7.
[2] Ibid., XXII/8.
[3] Ibid., XV/7.
[4] Ibid., XVI/5.
[5] Ibid., XVI/4.
[6] Ibid., XVI/1.
[7] Ibid., XVI/2.

to non-registered organisations as well as to registered organisations.[1] To the question whether section 55-2 and subsequent paragraphs were to be understood as giving non-registered organisations the right to negotiate as well, witness replied: " Yes—as a conclusion." [1]

1465. The Commission repeated the opening words of section 55 as cited above and said that there was nothing to be seen in the following paragraphs referring to the right to negotiate of non-registered organisations.[2] The witness said that he thought that the Commission " might well have such a doubt " about these provisions, and that he wished to give the following explanation:

The reason why section 55, paragraph 1, provides that the registered employees' organisation may negotiate is that the constitution and organisation of the registered employees' organisations must fulfil the requirements which are provided for by law, and this is certificated by personnel commissions, etc. Therefore, as regards these registered employees' organisations, the authorities are not in a " position to shun " the request for negotiation on the part of the employees' organisations and are in " a position to respond positively " to such a request for negotiation from the employees' organisations. The fact that generally employees' organisations may negotiate with the authorities concerned is not dependent upon paragraph 1 of section 55. However, there is no need for explicit provision in the Local Public Service Law to recognise the competence of the employees' organisations to negotiate. As a result of this, there are provisions concerning negotiations by employees' organisations in the second and subsequent paragraphs of section 55 . . . these provisions are not confined only to registered employees' organisations but are applicable to the non-registered employees' organisations.[2]

1466. The Commission, still having regard to the Government's statement in its communication dated 16 May 1962 that under the Bill non-registered organisations could negotiate, pointed out that the opening words of section 55 in the Bill were the same as those in the existing law (" the registered employees' organisation may... negotiate ...") and that, in the absence of anything further, the words " employees' organisation" in the subsequent paragraphs would normally be understood to refer to the registered organisations mentioned in the first paragraph.[3] The witness gave a different interpretation, stating:

If the employees' organisations mentioned in the second and subsequent paragraphs of the same section were meant to refer to the " employees' organisations " mentioned in paragraph 1, we should have an additional phrase in the first paragraph of section 55 after the words " registered employees' organisations " indicating that these were the employees' organisations which were thereafter referred to. Therefore, the employees' organisations in paragraph 2 and subsequent paragraphs of section 55 include non-registered organisations as well as registered organisations. Also it is a legal practice to interpret it in that way in Japan.[3]

D. Scope of Basic or Unit Employee Organisations

1467. In its comments on the draft analysis of the legislation, the Government stated that under the Bill the unit organisation formed by local public service employees beyond the local public body to which they belonged was not entitled to be registered but was recognised as an employees' organisation under the L.P.S. Law.[4]

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[1] *Record of Hearings*, XVI/2.

[2] Ibid., XVI/3.

[3] Ibid., XVI/4.

[4] Doc. No. 88, p. 14.

1468. The Deputy Director-General of the Cabinet Legislation Bureau said that the Bill would repeal the existing provision which prevented general administrative employees from forming an organisation extending beyond one local public body.[1]

E. Scope of Federations

1469. The Government stated in its comments on the draft analysis of the legislation that a federation of local public employees' organisations extending beyond one local public body could not be registered under the Bill but would be recognised as an employees' organisation under the L.P.S. Law.[2]

1470. The Commission asked the Deputy Director-General of the Cabinet Legislation Bureau which provisions in the amending legislation would make it possible, as the Government had said would be the case, for an employees' organisation formed by general administrative employees of one local public body, at present governed by the L.P.S. Law, to unite in one federation with a trade union formed by " employees of local public enterprises " and " persons employed for simple labour " of the local public body concerned which would be a federation which was entitled to negotiate; the witness replied that this would be possible because no provisions would place any restrictions to prevent this eventuality, as the provision which prevented it at present would be repealed.[1]

1471. The witness was reminded by the Commission that the Government had also stated that the said employees would all be able to combine in one organisation covering a whole prefecture and competent to negotiate; the witness explained that this would be possible because the Bill to amend the L.P.S. Law would amend the existing provision to the effect that general administrative employees could form their own organisations only within one particular local public body.[1] When the Commission mentioned that the complainants contended that the Bill would not make this possible because of the provisions of section 39 of the Local Public Enterprise Law and of section 4 of the Supplementary Provisions of the L.P.E.L.R. Law, the witness said that he could not find any basis for this contention and that he did not think that the two provisions referred to prevented the employees concerned from forming such a combination.[3]

1472. The witness was asked subsequently by the Commission whether the present position, according to which employees of the local public body other than teachers could federate only within a municipality, would be changed by the Bill to amend the L.P.S. Law, and he replied that the effect of the Bill would be not to limit the federation to the particular local public body [4], and that, indeed, the federation could cover the whole country.[5]

1473. The representative of the General Council of Trade Unions of Japan, reminding the witness that he had said that the Bill would enable local public employees to form one union extending over different local public bodies [6] and these unions could form a national federation of all local public employees throughout

[1] *Record of Hearings*, XVI/10.
[2] Doc. No. 88, p. 14.
[3] *Record of Hearings*, XVI/11.
[4] Ibid., XVII/3.
[5] Ibid., XVII/4.
[6] See para. 1471 above.

the country [1], asked him with what authority a federation at prefectural level and the said national federation respectively could register [2]; the witness replied that the Bill contained " separate provisions relating to registration of employees' organisations ".[3]

F. Right of Union Membership

1474. In its comments on the draft analysis of the legislation the Government confirmed that the Bill would enable dismissed employees to retain their union membership for a period of one year after their dismissal.[4]

G. Organising Rights of Supervisory Personnel

1475. In its comments on the further statement of the All-Japan Prefectural and Municipal Workers' Union the Government referred to the cases of the Sakai Municipal Employees' Union and the Mitaka Municipal Employees' Union cited by the complainants.[5]

1476. On 19 July 1963, said the Government, the Sakai Municipality reorganised its office to strengthen tax administration; two new sections were created and two section chiefs and two assistants were appointed, leaving 15 chief clerks as before.[6] This measure was to ensure efficient administration and not to weaken the union and not in anticipation of the law being amended.[7]

1477. On 1 April 1964 the Mitaka Municipality put into force a new by-law extending to second-class section chief assistants and chief clerks the management allowances previously paid only to first-class chiefs of departments and chiefs of sections; the intention was to increase efficiency by strengthening the authority of chief clerks, and the seven of them who left the union did so by their own decision.[7]

H. Application to Personnel Commissions and Equity Commissions

1478. The Deputy Director-General of the Cabinet Legislation Bureau said that the Bill would not change the law so as to permit temporary employees to appeal against adverse actions to personnel or equity commissions.[8]

I. Check-off of Union Dues

1479. The same witness was asked by the Commission whether the Bill to amend the Local Public Service Law would leave a local public body free to enter into an agreement with the organisation of its employees providing for the voluntary check-off of union dues.[9] The witness replied that, despite the proposed amendment to section 25 of the Law, the local public body would not be denied the discretion to enact by-laws permitting this to be done.[10] The Commission reminded the witness

[1] See para. 1472 above.
[2] *Record of Hearings*, XVII/10-11.
[3] Ibid., XVII/11.
[4] Doc. No. 88, p. 13.
[5] See paras. 1456 and 1457 above.
[6] Doc. No. 104, p. 8.
[7] Ibid., p. 9.
[8] *Record of Hearings*, XVII/5.
[9] Ibid., XV/18.
[10] Ibid., XV/19.

that the Government, in its communication dated 22 January 1962, had said that under the Bill the local authority would be free " to issue a by-law in which it decides as an employer, or entrusts freedom to its agents to decide, whether to enter into agreements with employees' organisations under the Local Public Service Law containing provision for the operation of a voluntary check-off "—a statement which the complainants disputed.[1] The witness explained that the position would be as cited by the Government by virtue of the provision which the amending Bill would add to section 25 of the Law in the following terms: " The compensation awarded to employees shall be paid in currency directly and in full to the employees, except where otherwise specially provided for by law or by-laws. " [1]

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[1] *Record of Hearings*, XV/19.

CHAPTER 37

PROPOSED AMENDMENTS TO THE NATIONAL PUBLIC SERVICE LAW

I. Statements and Evidence of the Complainants

A. Functions of the National Personnel Authority

1480. In its comments on the draft analysis of the legislation the General Council of Trade Unions of Japan stated that the Bill to amend the National Public Service Law would transfer to the Prime Minister many of the present important powers of the National Personnel Authority, including most of its powers of execution.[1] Mr. Fujii, witness for the Congress of Government Employees' Unions, said that the Bill would deprive the Authority of most of the functions which it was now supposed to exercise as a compensation for the denial of the right to strike—*inter alia*, its powers regarding appointment and dismissal, disciplinary actions, leave, rest, working hours, wage system and other working conditions—and that these would be placed completely in the hands of the proposed Personnel Bureau of the Prime Minister's Office.[2] The major functions to be retained by the Authority would be "its right to recommend" concerning compensation and the review of adverse actions against employees.[2]

B. Registration of Organisations

1481. Mr. Fujii, witness for the Congress of Government Employees' Unions, stated that the Bill would "increase further" interference in the autonomy of union administration by tightening the registration system.[3] He contended that the Bill would require the union to define in its constitution procedures for the election of officers and the scope of membership among the conditions for registration and that the National Personnel Authority was given power to require a union to file with the Authority documents necessary for the review of the eligibility of the union for registration; he said that it would be possible for a union's application for registration to be turned down if, among other things, the union should continue to retain dismissed employees as members after the lapse of a prescribed period.[4] In its comments on the draft analysis of the legislation the General Council of Trade Unions of Japan said that the Bill limited this period to one year.[5]

C. The Rights of Registered Organisations

1482. In its comments on the draft analysis of the legislation the General Council of Trade Unions of Japan contended that the stipulation in section 108-4 of the Bill

[1] Doc. No. 87, p. 18.
[2] *Record of Hearings*, XI/20.
[3] Ibid., XI/22.
[4] Ibid., XI/23.
[5] Doc. No. 87, p. 20.

that " an employee organisation may become a juridical person upon registration " and the stipulation in section 108-5 that " a registered organisation may conduct negotiations..." distinguished between registered and non-registered organisations in respect of acquisition of legal personality and negotiating capacity.[1] The complainants said that the Bill opened the right of negotiation again only to the registered organisations and that it contained no provision expressly stipulating the negotiating capacity of non-registered organisations; if the Government sincerely intended to give effect to its earlier statement to the Governing Body Committee on Freedom of Association that under the Bill non-registered organisations could negotiate with the authorities, said the complainants, it should be expressly stipulated in the Bill that employees' organisations could conduct negotiations with proper authorities irrespective of whether they were registered or not.[2] The failure to do so, the complainants alleged, meant that the Government still intended to leave room for the exercise to discriminate against non-registered organisations.[2] The same arguments were put forward by Mr. Fujii, witness for the Congress of Government Employees' Unions.[3]

D. Eligibility for Union Office

1483. Mr. Eda, witness for the Congress of Government Employees' Unions, stated that the Bill would not permit former employees to serve as union officers on a full-time basis.[4] Asked by the representative of the Government of Japan which section of the Bill provided for this, the witness replied that, as he understood the position, under the Bill civil service employees who had been dismissed during the past year, or those against whom a case had been brought in the courts on which a decision had not been given, were ineligible for office.[4]

1484. Mr. Fujii, the second witness for the Congress of Government Employees' Unions, was asked by the representative of the International Confederation of Free Trade Unions whether the provision in section 108 (6) of the Bill, according to which " personnel shall not, while receiving pay from the National Government, engage in the business or carry on activities for or on behalf of employees' organisations except where this is provided for by cabinet order ", meant that anyone still in the service would be debarred from any trade union activity.[5] The witness replied that it did, unless he were given permission by cabinet order.[5]

E. Scope and Procedure of Negotiation

1485. In its comments on the draft analysis of the legislation the General Council of Trade Unions of Japan said that the Government had stated that Rule No. 14-0 of the National Personnel Authority, section 2 of which provided that " negotiation shall not include disciplinary matters ", would be rescinded when the Bill was enacted, and that " no such restrictive provisions will exist thereafter "; however, said the complainant, the Bill introduced a new provision to the effect that " matters affecting the management and operation of government business " were to be excluded

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[1] Doc. No. 87, p. 20.
[2] Ibid., p. 22.
[3] *Record of Hearings*, XI/23.
[4] Ibid., XI/11.
[5] Ibid., XII/5.

from the scope of negotiation.[1] The complainants considered that this provision would exclude disciplinary measures, including dismissal, from negotiation.[1]

1486. Mr. Fujii, witness for the Congress of Government Employees' Unions, said that a question as to the meaning of this new provision was put to the Government during the 43rd Regular Session of the Diet in 1963, but that the government representatives were unable to give an accurate answer.[2]

1487. The General Council of Trade Unions of Japan stated, in its comments on the draft analysis of the legislation, that the Bill would introduce more strict provisions regarding the methods and procedures of negotiation which would restrict the negotiating capacity of organisations.[1] The witness, Mr. Fujii, said that the Bill stipulated in great detail that negotiations must be conducted peacefully and that the government authorities could discontinue a negotiation session if they judged, unilaterally, that it was not being conducted peacefully.[3]

1488. A further amendment, said the witness, limited the government authorities who could negotiate to " only those to whom are delegated by law the power to manage and make decisions "; already, he said, the Government had adopted this as a policy to such an extent that heads of field offices had been deprived of their ability to negotiate on local issues and problems arising out of particular conditions in the workshops with branches or local national public service employees' unions.[4]

1489. The General Council of Trade Unions of Japan complained also, that, while the existing N.P.S. Law contained no particular provisions concerning the objects of employees' organisations, section 108-2 of the Bill provided strictly that the purpose of organisations was " maintaining and improving the working conditions of personnel ", interpretation and judgment as to the purpose being entrusted to the National Personnel Authority, whereas the Trade Union Law defined this only as the " main " purpose of trade unions.[5]

F. Review of Adverse Treatment

1490. The same complainant referred to the provision in section 108-7 of the Bill that " under no circumstances . . . shall an act of an employee which is contrary to his obligations as prescribed by law and order be deemed to be a lawful action in an employee organisation " as meaning that lawful trade union activities might be excluded from the procedure to remedy adverse treatments.[6]

G. Organising Rights of Supervisory Employees

1491. This complainant said that section 108-2 of the Bill would replace the existing sections 98-2 and 98-4 of the N.P.S. Law by a provision prohibiting those

[1] Doc. No. 87, p. 22.
[2] *Record of Hearings*, XI/23-24.
[3] Ibid., XI/24-25.
[4] Ibid., XI/24.
[5] Doc. No. 87, p. 21.
[6] Ibid., pp. 23-24.

employees holding managerial or supervisory positions and those handling confidential matters from joining an employee organisation formed by the other personnel, although they could form their own organisations.[1] On the contrary, the Bill would permit general employees to join organisations formed by supervisory employees.[1] The complainant alleged that this was intended to promote division among the general categories and to foster " company unions in favour of the authorities ".[1]

1492. The categories of managerial staff and the like were to be designated by " rules of the National Personnel Authority ".[2] According to the policy announced by the Office of Investigation of Public Service Employees' System, among the supervisory employees those handling confidential matters were to include " personnel engaged in personnel affairs, labour administration and guarding of government buildings, and the assistant section chiefs responsible for documents and accounting or those above that level or those in positions equivalent to them ", and thus, said the complainants, it was intended to increase the men " in the hands of employers ", and plenty of room was left for the authorities to expand the scope of managerial staff as they pleased.[2]

1493. Mr. Fujii, witness for the Congress of Government Employees' Unions, said that if persons were to be designated supervisory staff according to the official definition cited in the preceding paragraph it would mean, in the case for example of the Finance Ministry, that between one-third and one-half of the members of the union catering for employees of that Ministry would no longer be eligible for membership of that union; the witness himself, who had occupied the position of " officer in charge ", might be made ineligible for membership of his own union.[3] In the case of the National Tax Administration Agency alone, said the witness, the number of employees whom the Agency had always referred to as " action officers in a managerial capacity " amounted, if " quasi-action officers " were included, to about 55 per cent. of the total 47,000 employees of the Agency.[4]

1494. The witness said that the official view had been expressed that general employees would be allowed to join an organisation formed by managerial and supervisory staff so long as their members did not exceed the number of the latter staff in the organisation and so, he contended, this measure could be used to destroy a union.[3]

1495. The witness was asked by the representative of the International Confederation of Free Trade Unions whether the organisations of supervisory staff would be able to federate with the organisations formed by other employees; the witness said that the Bill did not apparently contain any provision prohibiting this, but that, having regard to the general intent of the law and the Bill, the Government would probably interpret the legislation as preventing such a federation because, in his view, the purpose was that the supervisors' unions would co-operate with the Government to weaken the other organisations and create splinter unions.[5]

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[1] Doc. No. 87, p. 19.
[2] Ibid., p. 20.
[3] *Record of Hearings*, XII/2.
[4] Ibid., XI/22.
[5] Ibid., XII/4.

II. Statements and Evidence of the Government

A. Functions of the National Personnel Authority

1496. The Chief of the Public Service System Planning Room in the Prime Minister's Office stated that the Bill to amend the National Public Service Law would leave the National Personnel Authority in charge of " neutral and objective matters " such as recommendations concerning wages and other conditions of employment, examination of adverse treatment, examination for recruitment and matters concerning registration.[1] According to the existing system, functions concerning personnel administration of national public service employees were divided among the National Personnel Authority, the Prime Minister's Office and the Finance Ministry, and the division of responsibility was not necessarily clear; to clarify the situation, it was proposed to unify those functions in order to normalise labour-management relations between the authorities and employees' organisations.[1]

B. Registration of Organisations

1497. The Chief of the Public Service System Planning Room in the Prime Minister's Office said in his opening statement that the Bill would make it a condition of registration that the national public service employees' organisation should consist of those employees alone, and registration would be refused if an organisation organised by employees other than " managerial staff and the like " included persons of the latter category in its membership.[2]

1498. The Chief of the Employee Association Section of the Bureau of Employee Relations of the National Personnel Authority was asked [3] by the Commission whether, if the Bill were adopted, Rules Nos. 14-0, 14-2 and 14-3 of the National Personnel Authority [4] would be rescinded. He replied that they would.[3] Asked whether they would be replaced by similar rules in some other form or under another statute, the witness said that, as far as he knew, these matters were provided for by law under the amendment proposal.[3]

C. The Rights of Registered Organisations

1499. The Deputy Director-General of the Cabinet Legislation Bureau stated that, while the provision in section 108-5 (1) of the Bill provided that " the registered employees' organisation " could negotiate, the subsequent paragraphs of the section referred only to " employees' organisations ", a term which covered both registered and non-registered organisations; if the contrary were intended the words " registered employees' organisations " in paragraph 1 would have been followed by the words " hereinafter referred to simply as 'employees' organisations' ".[5] He said that the word " registered " in section 108-5 (1) was inserted in order " to place the authority in a position to respond positively to the requests for negotiation made by employees'

[1] *Record of Hearings*, XXVII/6.

[2] Ibid., XXVI/23.

[3] Ibid., XXVI/16.

[4] In particular, Rule No. 14-2 makes it a condition for obtaining and maintaining registration that an organisation shall make and effectively apply a provision for the election of officers by a *majority vote of all the members*. Rule No. 14-3 requires the registered organisation to register all changes of officers, certifying that the elections were made in the same way.

[5] *Record of Hearings*, XVII/13.

organisations since such employees' organisations have been certificated as being in compliance with the statutory provisions in respect of its composition, etc.".[1] The witness stated that " the position is fundamentally the same under the existing law and the amending Bill ".[2]

1500. The Chief of the Public Service System Planning Room in the Prime Minister's Office declared that, under the revised registration system, " there would be no discrimination whatsoever between registered and non-registered organisations, regarding not only the organisations' competence to negotiate but, also, the conditions under which the employees' organisations negotiate with the authorities ".[3] The witness continued: " As to the registered organisations, the Government makes it a rule to respond positively to their request for negotiation. By doing so, we only intend to build up normal labour-management relations between the employees and the authorities. Registration itself, however, has nothing to do with restrictions to be imposed on their proper functions and activities as the employees' organisations. The unions' statement to the effect that the application of the registration system will infringe on trade union rights is, therefore, not sustainable." [3]

1501. The Chief of the Employee Association Section of the Bureau of Employee Relations of the National Personnel Authority confirmed that, if the Bill were adopted, Rule No. 14-0 of the National Personnel Authority—section 3 of which provides that " negotiations shall be conducted only by employee organisations registered with the National Personnel Authority "—and Rules Nos. 14-2 and 14-3 of the Authority would be rescinded.[4] Asked by the Commission whether these rules would be replaced by similar rules in some other form or under another statute, the witness replied that, as far as he knew, these matters were provided for by law under the amendment proposal.[4]

D. Eligibility for Union Office

1502. The Deputy Director-General of the Cabinet Legislation Bureau stated that no provision in the Bill restricted the scope of the officers of employees' organisations and that nothing prevented employees who had been dismissed in the previous year or whose cases were pending in the courts from serving as union officers.[5]

1503. The Chief of the Public Service System Planning Room in the Prime Minister's Office said that the Bill would guarantee the free election of representatives who might be non-employees, or persons other than the office employees.[6]

E. Scope and Procedure of Negotiation

1504. The Deputy Director-General of the Cabinet Legislation Bureau stated that, when the Bill was adopted, Rule No. 14-0 of the National Personnel Authority, which excluded matters relating to discipline from negotiation, would be rescinded.[7]

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[1] *Record of Hearings*, XVII/13.
[2] Ibid., XVII/14.
[3] Ibid., XXVI/22.
[4] Ibid., XXVI/16.
[5] Ibid., XVII/6.
[6] Ibid., XXVI/23.
[7] Ibid., XV/5.

1505. The Commission asked the Chief of the Public Service System Planning Room in the Prime Minister's Office whether it could assume that disciplinary matters would not fall within section 108-5 of the Bill which would exclude from negotiation " matters affecting the operation and management of government business "; the witness replied that disciplinary matters could be the object of negotiation in so far as they affected conditions of employment.[1]

1506. The Commission asked the witness why, in view of the Government's statement that the provisions of section 108-5 would not change the situation from what it already was, the Government had considered it necessary to make this amendment.[2] The witness explained that even under existing law matters affecting management and operation were excluded from the scope of negotiation but, as there had been some misunderstanding about this, the Bill contained an explicit provision.[2] Asked whether it was right to assume that this explicit provision would not further restrict the scope of negotiation, the witness said "We have never considered such a possibility ".[2]

F. Review of Adverse Treatment

1507. The Deputy Director-General of the Cabinet Legislation Bureau informed the Commission that the Bill would not change the present situation, in which temporary employees cannot have recourse to the procedure for review of adverse treatment.[3]

G. Organising Rights of Supervisory Employees

1508. The Chief of the Public Service System Planning Room in the Prime Minister's Office said that the reason why, after the Bill was adopted, registration would be refused to a general employees' organisation if it admitted supervisory staff to membership was that it was feared that participation of managerial staff and the like, who were in a position to protect the interests of the employer, would result in depriving the organisation of the independence essential for the realisation of its objectives.[4]

1509. The Counsellor of the Director's Secretariat of the National Tax Administration Agency was asked by the Commission whether it was envisaged that the " action officers " and " quasi-action officers ", said by the complainants to constitute 55 per cent. of the 47,000 employees of the Agency, would be designated supervisory and managerial personnel whom the adoption of the Bill would oblige to form a separate union.[5] The witness said that it was not expected that the " quasi-action officers " referred to would be so designated and that some of those already classified as " action officers " might not be joining the supervisory employees' organisation.[6]

1510. The Commission asked the Deputy Director-General of the Cabinet Legislation Bureau whether the organisations to be formed separately by supervisory

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[1] *Record of Hearings*, XXVII/5.
[2] Ibid., XXVII/8.
[3] Ibid., XVII/5.
[4] Ibid., XXVI/23.
[5] Ibid., XXVII/20.
[6] Ibid., XXVII/21.

employees and other employees would be able to federate together.[1] The witness replied first by referring to the provisions which would allow general employees to take part in a " joint organisation " by constituting not more than 50 per cent. of the membership of the organisation formed by supervisory personnel, and said that it was not desirable and not to the intent of the law to allow joint organisations to be dominated by the supervisory personnel.[1] As to the separate organisations to be formed by the different categories, said the witness, " there was no real provision which prohibited the federation ", but " in the case of a united organisation or a federation which is dominated by the organisation of the supervisory and managerial staff, such a united organisation or federation may not be registered in view of the purpose of the law concerned ".[1] He went on to say: " As a matter of law, supervisory and managerial staff and other categories of employees are entirely free to make a federation, but as a matter of fact, in view of the achievement of the purposes of the autonomous organisations of employees, there will not be many cases where the united organisations are dominated by the organisations of supervisory and managerial employees. If it happens it is not welcome by the law." [2]

1511. The Commission asked the witness whether, if the two respective unions formed a federation in a case in which there was no risk of its being dominated by supervisory and managerial staff, such federation could negotiate for each category.[2] The witness said that such a federation could negotiate and discuss with the authorities on behalf of the united organisations representing the two categories; " however ", he said, " as a matter of fact, the organisation of supervisory and managerial employees may negotiate with the authorities concerning their own problems and on the other hand an organisation of employees other than supervisory or managerial staff may also negotiate with the authorities as regards their own problems. So, in my opinion, there is no necessity in fact for forming a federation of both categories of employees. If supervisory and managerial staffs can form their own organisations and if employees other than those can also form their own organisations this procedure is considered to be quite sufficient." [2] The Commission asked again whether, in law, the two unions could federate and then choose, each of them, whether the federation should negotiate for them or whether the separate unions should negotiate.[2] The witness replied that, legally speaking, it was possible for such a joint organisation to negotiate, on condition that the organisation was not dominated by supervisory and managerial staff.[2]

1512. The witness was asked whether the federation could be registered in a case where it was dominated by the supervisory and managerial staff.[2] He replied that such an organisation could not be registered " by reason of legal interpretation of the law as a whole ", but it might in fact " be united and discuss with the authorities representing its component organisation—even if such a federation was not registered it had the competence to negotiate ".[3] The Commission pointed out that it did not follow from the provisions of the law that a federation dominated by the supervisory and managerial staff could not be registered, and asked the witness whether his interpretation was just one that he would find it reasonable to use; the witness replied: " If I interpret the law in a reasonable manner, such interpretation is relevant." [3]

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[1] *Record of Hearings*, XVII/7.
[2] Ibid., XVII/8.
[3] Ibid., XVII/9.

1513. The representative of the General Council of Trade Unions of Japan asked the witness, having regard to what he had said, who would determine whether or not the federation was dominated by the supervisory staff.[1] The witness said that the supervisory employees' union and the general employees' union could freely unite and that their federation had competence to negotiate, but he added: " As regards registration of such a federation, I think that if such a federation is dominated by the supervisory category this registration should be rejected. In this case, one of the criteria for judgment as to whether such a federation is dominated by the supervisory category or not is the number of members, and I do not think it is very difficult to pass judgment on the basis of this criterion." [1] He said that it would be the registering authority that did the determining.[1]

1514. The Chief of the Public Service System Planning Room in the Prime Minister's Office said in his opening statement that " the formation of a federation by the employees' organisations is left entirely free under the existing National Public Service Law or the proposed amendment thereof ".[2] The Commission asked the witness whether the separate unions which the Bill would require supervisory employees and other employees to form could form a federation together and, if so, whether such a federation could negotiate on behalf of each category; to each question the witness replied: " Yes, it is possible." [3]

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[1] *Record of Hearings*, XVII/11.
[2] Ibid., XXVI/23.
[3] Ibid., XXVII/5.

CHAPTER 38

ACTS OF INTERFERENCE WITH THE RAILWAY WORKERS' UNIONS

I. Statements and Evidence of the Complainants

1515. In its further statement the National Railway Workers' Union undertook to expand its previous allegations concerning acts of interference by the authority with its union's operations. The complainant listed 16 alleged cases of unfair labour practices in the Kanazawa Railway Operating Division [1] and 12 alleged cases of similar nature in the Niigata Railway Operating Division[2], all of which the complainant had submitted to the P.C.N.E.L.R. Commission on 6 and 22 September 1960. In connection with the first group of cases the complainant stated that, in its order for relief dated 7 July 1962, the Commission " acknowledged the evidences of the managements' interference with the workers' rights " in five cases; rejected the allegations for lack of evidence in six cases; and found no intervention in five cases.[3] In the second group of cases the complainant stated that on the same date as the previously mentioned order the Commission found that management interference had existed in three cases.[4]

1516. With reference to the failure of the P.C.N.E.L.R. Commission to find that more of the alleged cases were actual instances of indifference by the authority the complainant questioned the degree of respect the Commission had for the workers' right to organise, and could not " help admitting that the Commission does not fulfil its function to protect the right to organise, and, in fact, the violations by the the authority of the right to organise were continuing ".[5]

1517. The complainant followed these general allegations by submitting examples of unfair labour practices which it alleged had been committed by the Railway Authority, describing instances in which, the complainant contended, supervisory personnel of the National Railways had urged union members to withdraw from the Union and to join a splinter union.[6]

1518. In one of these alleged cases the complainant stated that an assistant station master, Mr. Takano at Umimaizuri station, himself a non-union member, attempted, in February and March 1964, to persuade subordinates, who were members of the complainant's organisation, " to secede from the N.R.W. Union ".[7]

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[1] Doc. No. 91, pp. 26-29.
[2] Ibid., pp. 29-31.
[3] Ibid., p. 29.
[4] Ibid., pp. 31-32.
[5] Ibid., p. 33.
[6] Ibid., p. 35.
[7] Ibid., pp. 35-36.

1519. Similar cases of interference by assistant station masters were alleged by the complainant, involving stations in the Fukuchiyama Railway Operating Division.[1] In one such case the complainant alleged that assistant station master Koyama urged several of the complainant's members to secede and join a second union; the complainant reported Mr. Koyama as saying, " I would like you to join the second union as soon as possible. The station master also hopes that you will join the second union. I know that what I am doing now can be considered as an unfair labour practice. But I don't care." [2] The complainant stated that shortly after this alleged incident, 31 members of its organisation seceded from it and joined the second union.[2]

1520. The complainant also contended that its members were subject to discriminatory treatment by the Railway Authority in the Niigata Operating Division, which was giving more favourable treatment in terms of " promotion on the job and wage scale " to members of the splinter unions to the detriment of the complainant's members.[3]

1521. The complainant included in the text of its further statement a series of three charts purporting to show the loss of membership suffered by the complainant since 1960 in Niigata and Hokuriku Districts and in its organisation as a whole, as a result of the alleged unfair labour practices committed by the authorities and the official favour shown to the splinter unions. The figures given by the complainant revealed a loss of over-all membership from 340,176 in 1960 to 293,594 in 1964.[4]

1522. In his evidence before the Commission the witness for the National Railway Workers' Union repeated the complainant's allegations concerning the authority's attempts to persuade the complainant's members to leave the complainant and join the splinter unions "[5], and he further stated that one of the corrective measures indispensable to remedy labour relations in Japan was the banning of interference into union operations by railway police personnel.[6]

1523. A preponderance of the questions which the Commission asked the witness concerned the effects on its membership, which the complainant had alleged were precipitated by acts of official interference. The witness stated that, in response to the complainant's " active pressure " on behalf of the principle of prompt and complete implementation of arbitration awards, the authorities in 1956-57 " adopted a policy calculated to emasculate or weaken our organisation and to foster the second union " and that some of the complainant's own union officers " allied themselves with the authorities in this scheme ".[7]

1524. The witness stated that in 1950 the complainant had approximately 400,000 members, in 1960 about 340,000 and in 1964 about 290,000. He explained that the losses suffered between 1950 and 1960 were primarily due to the separation from the complainant of the motive-power workers (engine drivers) to form a new union.[6] Aside from the 60,000 members who were involved in that split, the witness stated

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[1] Doc. No. 91, pp. 36-38.

[2] Ibid., p. 39.

[3] Ibid.; the complainant attached to this document two lists purporting to illustrate its allegations concerning discrimination in promotions in Niigata and Kanazawa Operating Divisions. Doc. No. 91, Appendices 4 and 5.

[4] Ibid., pp. 34 and 35.

[5] *Record of Hearings*, I/15.

[6] Ibid., V/17.

[7] Ibid., V/19.

that an additional 10,000 were lost from 1957 to the present date owing to the secession of members who later had joined the alleged government-supported splinter union.[1] The witness estimated that 95 per cent., or between 8,000 and 8,500, of the new employees each year joined the complainant's organisation.[2]

1525. The witness further explained that prior to the formation of these splinter unions the complainant had enjoyed the benefit of an " exclusive bargaining system "; his union, which had a majority of worker representation, had bargained for all the employees on the National Railways.[3] Since 1957 and the formation of the splinter unions the witness alleged that " the national railway authorities try to concentrate their negotiations on the second union—first to reach a compromise with the second union ". As a result " there is some confusion within our organisation which hinders our fight ".[3] It was alleged that there were also instances where the complainant had been the sole negotiator for a certain benefit to its employees and when the agreement was signed the authorities had gratuitously granted the same benefit to the members of the second union.[4] In reply to questions of the representative of the General Council of Trade Unions of Japan the witness stated that as to the adherence to the complainant of young workers there were differences in the figures according to regions; for example, fewer joined in the Hokuriku and Niigata Districts, in which cases of interference were more frequent.[5] The witness thought that in those areas the authorities made it a precondition to employment that new workers joined the second union.[6]

1526. In his evidence before the Commission the witness for the Nihon National Railway Motive-Power Union repeated his union's complaint of improper interference in union affairs by the railway police, who allegedly had forced engine drivers " to finish their service against their will or forced drivers to run trains to which they were not scheduled, ignoring the safety of running ".[7] The witness referred the Commission to the complainant's further statement for a more detailed allegation in this respect.[8]

II. Statements and Evidence of the Government

1527. In its comments on the further statement of the National Railway Workers' Union the Government repeatedly denied having had anything to do with the secession of the complainants' members, the initiation of competing splinter unions, or any instances of interference or discrimination.[9]

1528. The Government prefaced its remarks in answer to the specific allegations concerning unfair labour practices with the statement that in no case had the complainant taken the steps provided by law to claim relief against unfair labour practices.[10] With reference to the allegations concerning the actions of Mr. Takano at Umimaizuru station[11] the Government denied the facts alleged by the complainant,

[1] *Record of Hearings*, V/18.
[2] Ibid., V/19.
[3] Ibid., VI/3.
[4] Ibid., VI/4-5.
[5] Ibid., VI/6.
[6] Ibid., VI/14-15.
[7] Ibid., VII/11.
[8] Ibid., VII/12.
[9] Doc. No. 101, pp. 16-18.
[10] Ibid., p. 16.
[11] See para. 1518 above.

even to the extent of denying that Mr. Takano was on duty on the day in question.[1] In his evidence before the Commission the Director of the Staff Administration Department of the Japanese National Railways stated that the individual in question actually began to work at the station on the day following the date to which the allegations had referred.[2] The comments on the complainant's further statement denied each of the specific alleged instances of supervisory personnel interference [3], and the aforementioned government witness repeated these denials in his replies to questions by the Commission.[4]

1529. With reference to the complainant's allegations concerning acts of discrimination against its members by the railway authorities, the Government's comments on the complainant's further statement denied that there was any truth in the allegations with reference to the Niigata Operating Division [5] and stated that the matters concerning the three other sites had been " amicably settled ".[6]

1530. The witness for the Japanese National Railways stated that it was not interference by the management that caused the union to split and weaken but that " in all probability some members of the union became so allergic to the radical policy of the union that they came to form a union of their own ". The witness further stated that the authorities had no concern what union an employee had chosen to join " before or after his recruitment ".[7]

1531. In reply to a series of questions from the Commission concerning the findings by the P.C.N.E.L.R. Commission that, in certain instances, station masters or assistant station masters, by word or by act, had committed unfair labour practices in their capacities as representatives of their employer, the witness stated that no disciplinary action had been taken by the National Railway Authority as a result of these decisions and that the authorities had filed an administrative suit with the Tokyo District Court seeking to revoke the order of relief issued by the P.C.N.E.L.R. Commission.[8] While the administrative suit had been withdrawn subsequently as a result of a compromise, the authorities had not by that action acknowledged or accepted the findings of the Commission.[9] The compromise agreement had included a paragraph " that the national authority would endeavour to prevent the occurrence of unfair labour practices " and as a result of the agreement 50 workers had been reinstated to their positions of employment.[10]

1532. With reference to the loss of membership by the complainant the witness alleged that the main reason for the secessions from 1957 onward, particularly in the Niigata area, was the opposition of many rank-and-file members to the policy of the central union, which had precipitated the formation of splinter local unions. The witness thought that these splinter unions had been able to negotiate with the authorities at least on the local level.[11] In 1961 the small unions had joined together

[1] Doc. No. 101, p. 17.
[2] *Record of Hearings*, XX/8-9.
[3] Doc. No. 101, pp. 17-18.
[4] *Record of Hearings*, XX/9-11.
[5] Doc. No. 101, p. 18.
[6] Ibid., p. 19.
[7] *Record of Hearings*, XIX/16; see also same witness, ibid., XX/12.
[8] Ibid., XX/2.
[9] Ibid., XX/3 and XX/14 *(a)*.
[10] Ibid., XX/14 *(a)*.
[11] Ibid., XX/4.

to form a new national union called Shinkokuro, which was now recognised to negotiate on the national level. Statistics compiled by the Labour Ministry showed that until 1957 the complainant's membership had consistently stood at about 370,000. From that year forward it had declined to 296,313 in 1963. The witness attributed the loss primarily to the secessions of workers to form the new union, whose membership presently stood at approximately 60,000.[1]

1533. With reference to the allegations made by the Nihon National Railway Motive-Power Union of interference by railway police [2], the witness, in reply to a question asked by the representative of the General Council of Trade Unions of Japan, stated that " in fairness to the police " their duty was to protect both passengers and public when " confusion is anticipated from a rush of people and to prevent acts of violence from occurring ". The witness denied that the management had ever " chosen to send railway police officers to the scene with the object of clamping down on union activity ".[3]

III. Evidence on behalf of the Public Corporation and National Enterprise Labour Relations Commission

1534. In his evidence before the Commission the witness representing the five public members of the P.C.N.E.L.R. Commission confirmed the truth of the allegations contained in the further statement of the National Railway Workers' Union [4] with respect to the number of cases in which his Commission had found that unfair labour practices had been committed.[5] The witness further explained the legal basis on which the Commission had either found insufficient evidence of or ruled against the existence of unfair labour practices in the remaining cases with which it had been presented.[6]

1535. The witness stated, with respect to the average length of time which was necessary for full consideration of an alleged case of an unfair labour practice, that it would be extremely difficult to give a single figure, but that the shortest time would be about five months, and for more complicated cases, such as the Niigata and Kanazawa cases had been, 20 months would not be extraordinary.[7]

1536. In reply to a question asked by the Commission the witness stated that in the cases concerning Niigata and Kanazawa Operating Divisions the railways administration had complied with the orders issued by the Commission.[8] In reply to a question from the representative of the International Confederation of Free Trade Unions, concerning whether these orders with which the administration had complied had been fully implemented as required in their terms, the witness stated that he had in his possession the copy of a letter addressed by the complainant and the administration to the Commission, dated 7 October 1963, in which it was stated that " both the union and the administration are sufficiently satisfied with the order of the Commission ".[9]

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[1] *Record of Hearings*, XX/6.
[2] See para. 1526 above.
[3] *Record of Hearings*, XIX/15.
[4] Doc. No. 91, pp. 26-29; see also para. 1515 above.
[5] *Record of Hearings*, XXI/6-7.
[6] Ibid., XXI/8.
[7] Ibid., XXI/9.
[8] Ibid., XXI/12.
[9] Ibid., XXI/13.

CHAPTER 39

ACTS OF ANTI-UNION DISCRIMINATION AND INTERFERENCE (AFFILIATES OF THE JAPAN TEACHERS' UNION)

I. Statements and Evidence of the Complainants

A. Alleged Discrimination against the Japan Teachers' Union and Its Affiliates in General

1537. In his statement before the Commission the representative of the International Federation of Free Teachers' Unions alleged that there was active propaganda by local authorities, inspired by the Ministry of Education, to force teachers to leave the Japan Teachers' Union (Nikkyoso).[1] The witness for the Japan Teachers' Union declared in his opening statement that the Local Affairs Section of the Lower Secondary Education Bureau of the Ministry of Education was generally known as the " Nikkyoso Fighting Section " and was concentrating its efforts on destroying the union by sending its staff members to localities to give lectures to prefectural, municipal, town and village education authorities, slandering the union and instructing them on ways and means of destroying it [2]; he expressed an earnest desire that the Government should be urged " to discontinue as early as possible the splitting and destructive activities against the union and discriminatory treatment of trade union members ".[2]

1538. The witness for the Japan Teachers' Union was asked by the Commission whether he could furnish statistics showing the percentage of new teachers who joined the union.[3] He said that he did not have accurate figures with him but that, speaking generally, he could say that many young teachers were hired on the condition that they undertook not to become union members; the usual practice was for young teachers to get their first appointments in April, after which they were on trial for six months before becoming regular and permanent teachers.[3] Very few of them joined the union before the completion of their trial period in October because, he alleged, they feared that if they joined during their trial period they would not get permanent appointments; there were many cases in which they did join in October.[4] The witness said that new prospective teachers were told not to join the union when they were interviewed by members of the education boards of prefectures, cities, towns and villages, and that he believed that this was happening under instructions from the Ministry of Education.[4] The Commission asked the witness whether he had any real reason for thinking this.[4] The witness said that he had and declared that, at the end of January 1964, at a conference of personnel officers of all the education

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[1] *Record of Hearings*, I/18.
[2] Ibid., IX/18.
[3] Ibid., X/5.
[4] Ibid., X/6.

boards in Japan, officials from the Ministry made remarks attacking teachers' unions and gave instructions that their members should be treated adversely when transfers and new appointments were made, as usual, at the end of March; such a conference was held every year and, the witness said, it was the usual practice on these occasions for such remarks to be made.[1] At the 1964 conference, he alleged, an official document was distributed among the participants by the Ministry stating that when the education boards effected their reshuffles or transfers they should take action against teachers with " smear and colour "—" smear " being a reference to union members and " colour " a reference to those who believed in socialism.[1] The witness added that this document had been submitted to Parliament in Japan [1]; on this point, in reply to a question by the representative of the Government of Japan, who suggested that the document was presented to Parliament as a means of criticising the Government, the witness explained that his organisation had obtained the document and that a member of the Socialist party submitted it, for information, to the Diet.[2]

1539. The witness accused the Government of sponsoring rival unions, citing as an example the National Federation of Teachers, which had about 12,000 members and was, he alleged, organised under the sponsorship of the Ministry of Education and the Liberal Democratic party.[3] He said also that the Ministry had established an organisation called the Japan Teachers' Association and co-operated with it in trying to destroy the Japan Teachers' Union; every year, he said, the Ministry concentrated its efforts on a different prefecture.[4]

1540. He also accused the Government of trying to organise a separate union for teachers in the supervisory category. The witness said that the Ministry of Education decided arbitrarily that certain categories of teachers had managerial and supervisory functions and tried to disrupt the Japan Teachers' Union by forcing these categories to withdraw from it.[5]

1541. In reply to a question by the representative of the General Council of Trade Unions of Japan the witness said that 98 per cent. of teachers were organised after the formation of the Japan Teachers' Union in 1947; since then there had been an increase of 400,000 teachers altogether but membership had risen by only 100,000, which meant that only 70 per cent. of the teachers were now members of the union, owing in part, he said, to the destructive measures of the Ministry of Education.[6]

1542. In some prefectures, such as Gifu, Ehime, Tochigi and Kagawa, where these destructive measures of the authorities were very strongly pursued, he alleged that the directives of education committees told teachers that, if they did not leave the union, they would not be kept on in the schools, so that in these prefectures the union no longer existed.[7] The Commission, having observed that the Japan Teachers' Union had a little over 600,000 members on 30 June 1962, but that the Director of the Elementary and Secondary Education Bureau of the Ministry of Education put the figure for 1964 at 550,329, asked the witness for the Japan Teachers' Union if he accepted that figure; the witness stated that decrease in membership had been espe-

[1] *Record of Hearings*, X/6.
[2] Ibid., X/12.
[3] Ibid., X/7.
[4] Ibid., X/10.
[5] Ibid., IX/20.
[6] Ibid., X/13.
[7] Ibid., IX/21.

cially conspicuous in Gifu, Kagawa and Toyama Prefectures in that period, but that if a survey were made after 1 October, when new teachers generally joined, the membership would be found to be between 590,000 and 600,000.[1]

B. The Case of Ehime Prefecture

1543. In its further statement the Japan Teachers' Union said that, since its last documents of complaint had been submitted to the Governing Body Committee on Freedom of Association, members had continued to withdraw from the Ehime Prefectural Teachers' Union.[2] In March 1962 the union had 1,729 members; in April 1962 there were 165 withdrawals, reducing this figure to 1,564; by March 1963 the membership had dropped to only 1,526, but another big withdrawal in April 1963 reduced this to 1,224; again the decline halted, so that in December 1963 there were still 1,192 members, but 52 withdrawals in January 1964, 47 in February, 4 in March and 149 in April reduced the membership to 940.[3] Thus, the heavy withdrawals when annual reshuffles of personnel took place in March-April had persisted, as a result, it was alleged, of the discriminatory treatment of unionists by the authorities.[4]

1544. The witness for the Japan Teachers' Union confirmed the above points and said also that when teachers notified the union of their withdrawal they gave such reasons as: " I am leaving the union, yielding to pressure " or " I am leaving the union in consideration of my personal interests "; that, he said, showed how the destructive activities of the authorities against the union had reduced its membership from 9,664 in 1957 to only 940 in April 1964.[5]

1545. The witness was asked by the Commission what organisations now represented teachers in Ehime Prefecture in negotiations with the competent authorities for the purpose of making representations on wages, hours and other conditions of employment. He said that, apart from the Ehime Educational Research Conference (E.E.R.C.), there was only the Ehime Prefectural Teachers' Union, and with that the authorities refused to negotiate; hence, 9,600 teachers of the prefecture had no organisation representing them in negotiations.[6] As an illustration of the results of this situation, he said that in June 1964 45 of the 46 prefectures gave teachers a summer bonus which was higher than that fixed at the national level; only in Ehime they got less, through lack of a negotiating body.[6]

1546. The Commission asked the witness whether there was anything in the manner in which it conducted industrial relations which distinguished the activities of the Ehime Prefectural Teachers' Union from those of other affiliates of the Japan Teachers' Union.[7] The witness said that there was no difference but that the Ehime Education Board faithfully followed the instructions of the Ministry of Education, which, at the material time, had concentrated its efforts on that prefecture.[8]

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[1] *Record of Hearings*, XXVI/7.
[2] Doc. No. 93, p. 17.
[3] Ibid., p. 18.
[4] Ibid., p. 19.
[5] *Record of Hearings*, IX/17.
[6] Ibid., X/9.
[7] Ibid., X/10.
[8] Ibid., X/11.

1547. With reference to the Government's contention that many teachers had left the union because they disagreed with its attitude towards the efficiency-rating system the complainant alleged in the further statement that the system had been instituted in Ehime Prefecture in order to economise the prefectural budget by preventing the promotion and consequential increase in salaries of teachers and that the Ministry itself had been obliged to admit that the system as applied in Ehime ran counter to its aims; hence, the complainant alleged, it was " very natural that the local teachers opposed this vicious system ".[1]

1548. In its comments on the further statement of the Government the Japan Teachers' Union said that article 5 of the Constitution of the Ehime Educational Research Conference (E.E.R.C.) provided that " the participation in the present organisation shall be through an introduction of a member and a severance from it shall be effected by a notification ", and that this showed that it was not an open organisation; the " introduction " meant that no one should be admitted unless it was proved that he had left or promised to leave the union, this being an unwritten by-law of the Conference.[2] The complainants said that when the Ehime Education Promotion Assembly was held on 30 July 1964 under the sponsorship of the prefectural branch of the Liberal Democratic party a note was distributed containing the words " teachers should . . . under the organisation of the E.E.R.C. . . . upon having severed from the Teachers' Union . . .".[2] The prefectural education commission, alleged the complainants, after having used headmasters and assistant headmasters to press teachers to leave the union, realised that such acts might be attacked as unfair labour practices, and so set up E.E.R.C. as a puppet organisation designed as a research body and tried to disintegrate the union by getting its members to join it.[2] The complainants maintained that it was not the teachers but the staff of the prefectural commission who were the chief figures in organising E.E.R.C. and that this was demonstrated by the fact that in the official organ of its own Niihama branch E.E.R.C. was referred to as " the first-born of the prefectural education commissions ".[2]

1549. The witness for the Japan Teachers' Union said that the prefectural education board organised E.E.R.C. with the aid of the local boards, school principals and heads of towns and villages and worked on teachers to leave the union and join E.E.R.C. by telling them that if they stayed in the union they would lose the chance of promotion.[3]

1550. He stated further that originally the rules of E.E.R.C. had provided that members of the Japan Teachers' Union could not join, but that, as it had been made clear that this provision infringed the Constitution and the laws, it had been abrogated, and then the " introduction by a member procedure " adopted, the teacher applying to join having to be introduced by an E.E.R.C. member who had already withdrawn from the union and the recommendation being required to state that the applicant had already left the union.[4] In reply to a question by the Commission, the witness said that there had been cases of union members trying to join E.E.R.C. but that their application had been rejected unless a copy of the notice of withdrawal from the union was submitted.[5]

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[1] Doc. No. 93, p. 28.
[2] Doc. No. 98, p. 1.
[3] *Record of Hearings*, IX/16.
[4] Ibid., X/8-9.
[5] Ibid., X/9.

1551. The witness alleged that the rules of E.E.R.C. provided that it was aimed at " promoting the benefits and welfare of its members, improving educational facilities, and securing sufficient educational budgets ".[1] He claimed that Mr. Ohnishi, former chief of the education department of the prefectural government, had said in the Diet that E.E.R.C. " is an organisation to which article 28 of the Constitution, providing for the fundamental rights of labour, is applied "; thus it was not a purely research body but a " kept union " formed with the assistance of the authorities.[2]

1552. The complainants alleged that there was discrimination in regard to salary between E.E.R.C. members and union members, increments payable under the prefecture's special increment scheme never having been paid to a union member but only to E.E.R.C. members; in one case, it was said, in which a headmaster had requested a special increment for a teacher who was a union member, the prefectural authority and local education committee refused it on the excuse of his being a union member.[3]

1553. Union members, it was alleged, were placed at the bottom of the list with respect to the payment of " diligence allowance ".[3]

1554. The complainant stated that newly appointed teachers were not made second-class established teachers unless they showed their loyalty to the authorities by joining E.E.R.C.; otherwise they were put in the third class and, if they joined the union, stayed there a long time.[3] Ehime was the only prefecture in which this had happened and, said the complainants, strong pressure by the Japan Teachers' Union had caused its abandonment in April 1964.[3]

1555. The complainants alleged that no union member had ever been promoted to headmaster or assistant headmaster unless he left the union and joined E.E.R.C., however superb his career, experience, character and ability might be [3]; promise of such promotion, it was said, had been used to persuade members to leave the union.[4] In regard to transfer, it was alleged, E.E.R.C. members were favoured and union members discriminated against, and headmasters told union members that, unless they left the union, " the prefectural education commission will not approve if we want to gratify your wish in regard to transfer ".[5] The percentage of union members transferred to isolated districts was two or three times as high as that of E.E.R.C. members, and the only way of getting transferred back again was to leave the union and join E.E.R.C.[5] The witness for the Japan Teachers' Union said that teachers who did not join E.E.R.C. were delayed in promotion and transferred to remote places, man and wife teachers being separated, and that those who made statements used in the complaints of the Japan Teachers' Union were victimised.[2]

1556. Any study meeting staged by E.E.R.C. was sponsored jointly by an education commission and travelling expenses to take part in it were paid out of the public

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[1] *Record of Hearings*, IX/16-17.

[2] Ibid., IX/17.

[3] Doc. No. 98, p. 3.

[4] Ibid., pp. 3-4.

[5] Ibid., p. 4.

treasury, but this was not so, said the complainant in the further statement, where the union staged a study meeting; in this case participants had to take holiday with pay and the use of school buildings was not allowed.[1] For the last three years, it was alleged, study records of each teacher had been kept by order of the prefectural education commission and attendance at study meetings sponsored by E.E.R.C. or the commission were entered in them to the merit of the persons concerned, but there was no such entry in the case of study meetings of the union; this study record formed part of the merit rating, so union members were penalised in respect of advancement.[1]

1557. The complainants said that, since the prefectural physics centre had been set up in 1963, long-term study courses in physics were held for teachers, permission to attend being readily granted to E.E.R.C. members but refused by the prefectural authorities to union members by reason of their union membership even where they were recommended by their headmaster or local education commissions.[2]

C. The Case of Gifu Prefecture

1558. In its further statement the Japan Teachers' Union said that the Gifu Prefectural Education Board was discriminating against the Gifu Teachers' Union in respect of personnel transfers and, through its local offices, urging or threatening teachers to make them leave the union for " normalisation of educational affairs ", and that municipal boards were doing the same thing through headmasters and assistant headmasters.[3]

1559. At Minami and Yomato villages, it was alleged, school principals summoned union members to a meeting, where the village heads and the chairmen of the local education boards demanded that they leave their union, on the ground that the prefectural government might not be willing to grant subsidies to the villages if there were union members in the villages, while board members interviewed union members singly and urged them to leave the union and the chairmen of the boards gave an ultimatum that teachers who wanted to stay in the union could not remain in the villages.[3] They were also said to have convened meetings of teachers at schools and to have forced them to withdraw from the union, or called individual teachers to their offices and insinuated that they would be transferred to their disadvantage if they did not withdraw; the local authorities also threatened to influence the Parents' and Teachers' Association to boycott classes if the teachers remained in the union.[4] Mr. Imai, Consultant of the Prefectural Education Board, was alleged to have approached union members and given them " forcible advice " to leave the union.[4]

1560. On 11 October 1963, it was alleged, the Kagamigahara City Board of Education caused the principals of the local schools to call a meeting of all teachers, at which they were urged to leave the union " for the sake of normalising educational affairs," and, on 12 November 1963, Consultant Nagata of the Prefectural Education Board told a union member that the policy was " to simply destroy the union " and persuaded him to withdraw from it.[4]

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[1] Doc. No. 98, p. 4.
[2] Ibid., pp. 4-5.
[3] Doc. No. 93, p. 20.
[4] Ibid., p. 21.

1561. Similar events took place, said the complainants, in Kani, Mugi and Ena counties and Mino city.[1]

1562. The complainants stated that the 25 January 1964 edition of the Gifu daily newspaper reported a meeting of the Prefectural Council for Upper Secondary Teachers, convened by the Prefectural Education Board, at which it was said that teachers leaving the union would have specially favourable treatment in the spring reshuffle.[2]

1563. In support of all the above statements the Japan Teachers' Union adduced affidavits of purported parliamentary minutes containing testimonies of teachers said to have been victimised.[3] According to the purported affidavit of Mr. S. Fujii, a teacher at a Mino city school, leaders of each Parents' and Teachers' Association (P.T.A.) visited all unionist teachers individually in August 1963 and distributed a circular letter from the P.T.A. Federation in favour of withdrawal from the union; principals and head teachers in the same month visited teachers' homes and urged them to leave the Japan Teachers' Union and said that it would be in their interests to join the splinter union which was to be formed; on 7 February 1964 a school principal and the P.T.A. chairman visited a woman teacher, when her husband was away on night duty, and spent 40 minutes trying to persuade her to leave the union; various other matters were alleged in this affidavit.

1564. The witness for the Japan Teachers' Union said that in 1961 its Gifu affiliate had 9,000 members but that now it had only 2,000, this being due to the actions of the Governor of the Prefecture and of the Director of the Prefectural Education Board.[4] The latter, a former inspector of the Ministry of Education, after being appointed in 1962, was alleged to have appealed to the head of the prefecture and the Parents' and Teachers' Association " to co-operate with him in the destruction of the Teachers' Union ", as a result of which the head of each school called all the teachers before him separately, in private, and asked them one by one, in front of the Director, to sign an application to withdraw from the union; if any teacher refused to sign, the principal said that he would no longer keep him at his school.[4]

D. The Case of Tochigi Prefecture

1565. The Japan Teachers' Union alleged in its further statement that the Tochigi Prefectural Education Board and Boards of Utsunomiya, Ashikaga, Yaita, Tanuma, Nasu and other towns and villages interfered with the Tochigi Prefectural Teachers' Union, from 1960 to 1963, through education superintendents, school principals, etc.[5] The latter were stated to have forced teachers, by administrative order, to attend interviews or meetings, where they were told that the leaders of the union were using its funds for their private ends and that the union could not get conditions improved[5]; school principals called union members before them to threaten them with a low job rating, disadvantageous transfer and denial of higher-grade certificates, or to tell them that the school credits would be lost if they remained

[1] Doc. No. 93, p. 21.
[2] Ibid., pp. 21-22.
[3] Ibid., Appendix, pp. 5-22.
[4] *Record of Hearings*, X/11.
[5] Doc. No. 93, p. 22.

in the union.[1] Further, it was alleged, teachers were told not only to leave their union but to join the Tochigi Prefectural Teachers' Council, which was backed by the Prefectural Education Board and the Local Association of Principals.[1] Some teachers who refused to leave the union were denied transfers, said the complainants, and a large number of teachers withdrew from the union.[1]

1566. The complainants stated that, instructed by superintendents of education boards, principals urged members to withdraw the lawsuit which they had filed in 1960 for payment of balance of day and night duty allowances.[1]

1567. In support of the above statements the complainants adduced purported copies of six affidavits by teachers alleged to have been victimised.[2] One of these, signed by Mr. S. Tezuka, a teacher in a Yaita city school, stated, among several other things, that he had been summoned to a study meeting on regulations by the school principal and found that it was a preparatory meeting, under the auspices of the Prefectural Education Board which paid the travel expenses of those attending, for the purpose of forming a splinter union.[3] Another affidavit, by Mrs. C. Yoshida, teacher at a school in Utsunomiya city, stated that her principal told her: "Although you do very well in your work, Mrs. Yoshida, we couldn't give you a good mark in the efficiency rating because you belong to the union." [4] An affidavit by Mr. T. Fujimoto, teacher at an Ashikaga city school, describes the alleged persistent acts of the school principal, which resulted in eight of his teachers leaving the union, and that his principal also urged the teachers to join a splinter union which was being formed with the support of the principals' meeting and the Education Board.[5] An affidavit by Mr. Shinohara, former teacher at a school in Sano city, stated that on 2 February 1963 his principal told him to leave the union, reminding him that the by-law concerning retirement allowances would be applied only to non-members.[6] All the affidavits contained allegations of numerous acts and forms of anti-union discrimination.

1568. In his opening statement the witness for the Japan Teachers' Union stated that in 1961 the Tochigi Prefectural Teachers' Union had 8,500 members and, in 1964, only 800; this meant, he said, that 90 per cent. of the members had been obliged to leave the union under pressure by the authorities.[7]

E. The Case of Kagawa Perfecture

1569. The Kagawa Prefectural Teachers' Union was one which, according to the witness for the Japan Teachers' Union, had been the subject of strong disruptive measures by the authorities, with the result that it no longer existed[8]; the same high rate of withdrawals had occurred each April, he said, as in the case of the Ehime Prefectural Teachers' Union.[8]

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[1] Doc. No. 93, p. 23.
[2] Ibid., Appendix, pp. 23-33.
[3] Ibid., p. 25.
[4] Ibid., p. 27.
[5] Ibid., p. 30.
[6] Ibid., p. 33.
[7] *Record of Hearings*, X/11.
[8] Ibid., XXIII/18.

F. The Case of Toyama Prefecture

1570. The witness alleged that in 1964 the Ministry of Education chose as its target the Toyama Prefectural Teachers' Union, but that this time the Japan Teachers' Union knew what was planned and took action in Toyama which resulted in no more than 500 members withdrawing from the union.[1]

II. Statements and Evidence of the Government

A. Alleged Discrimination against the Japan Teachers' Union and Its Affiliates in General

1571. The Director of the Elementary and Secondary Education Bureau of the Ministry of Education said in his opening statement that the activities of the Japan Teachers' Union had been criticised by both parents and the general public and that the press had referred to its " excessive political inclination . . . which reveals itself in the union's policy totally against the policy of the Ministry of Education "; this, he said, was why 15,000 to 20,000 members had seceded from the union in each of the past three years, adding that in 1964 only 70 per cent. of newly employed teachers joined the union, compared with 96.5 per cent. in 1958.[1]

1572. He said that the cases of Ehime, Gifu and Tochigi Prefectures were already dealt with in the Government's further communications, but that, following investigations by the Ministry of Education, " we are convinced that the alleged unfair labour practices do not exist ".[1] In all cases, he maintained, including a certain number of withdrawals, in the other 43 prefectures, the loss of membership was due to members becoming " critical of the policy and activities of the prefectural teachers' unions ".[1] With regard to the allegation that acts of interference and abuse of the union by boards of education and the Minister of Education were still continuing, he said that " the authorities have been executing educational administration strictly in accordance with the laws and regulations of the State and the local public bodies, as well as the stipulations of international commitments ".[2]

1573. Witness rejected entirely the complainants' allegations [3] as to the use and meaning of the words " smear and colour ". He said that the words were " colour and stain " and had been used figuratively by a judge of the Osaka District Court to denote " disciplinary dismissal and dismissal due to one's incapability of discharging one's duties ".[2]

B. The Case of Ehime Prefecture

1574. In its comments on the further statement of the Japan Teachers' Union the Government said that the Ehime Prefectural Teachers' Union had violently opposed the merit-rating system and interfered physically with the Course on the Revised School Curriculum organised by the Ministry of Education. This had given rise to public criticism and distrust of teachers; " considerate teachers, being aware of their primary mission, seceded from the Union " and, in 1960, formed the Ehime

[1] *Record of Hearings*, XXIII/18.
[2] Ibid., XXIII/21.
[3] See para. 1538 above.

Educational Research Conference (E.E.R.C.) as an organisation for educational research [1]; the membership of the prefectural union had been decreasing annually ever since then.[1]

1575. The Head of the Ehime Prefectural Education Board said in his opening statement that the efficiency-rating system had been in force in Ehime since 1956 and that the Ehime Prefectural Teachers' Union had forcibly opposed it by such acts as trying to make Board members negotiate all night, picketing their homes, deserting workplaces, etc.[2] Union members also obstructed physically teachers' summer training courses held in 1958 under the auspices of the Board.[3] As a result, he said, many headmasters and vice-masters left the union and formed, in 1958, the Schoolmasters' Association of Primary and Secondary Schools, which was " different in its character from a trade union ".[3]

1576. The witness was told by the Commission that it had been alleged that, in 1957, 9,664 of the 10,000 teachers in the prefecture had been members of the Ehime Prefectural Teachers' Union, but that by August 1960 this figure had fallen by over 55 per cent. to 4,259, whereas in about the same period the membership of the Japan Teachers' Union as a whole fell only 2¼ per cent., from 606,589 to 592,614, and the Commission asked him why the Ehime union should have suffered such a relatively high loss of membership.[4] The witness said that there had been a higher rate of withdrawals from the Ehime Prefectural Teachers' Union than elsewhere through dissatisfaction with its attitude to the efficiency-rating system and training courses.[4]

1577. He said that there was no truth in the allegation that since August 1960 the Ehime Prefectural Education Board had caused headmasters to persuade teachers to join E.E.R.C. and to threaten them with discriminatory treatment in respect of promotion if they did not resign from the Japan Teachers' Union.[5] The Commission asked him whether it was true that most of the headmasters in the prefecture, in or about September 1960, were urging teachers to join the Conference, and the witness replied that he did " not know the fact ".[6]

1578. In its further statement the Government stated that the Ehime Prefectural Education Board gave no discriminatory treatment according to whether teachers were or were not members of E.E.R.C., which was " a private body formed for the purpose of conducting educational research activities ".[7] In 1963 the activities of E.E.R.C. had included 20 research meetings and three meetings on curriculum; investigation into actual conditions concerning facilities and equipment of schools, school libraries, school excursions and course guidance for pupils; publication and distribution of the results of the above meetings and investigation.[7] In view of the good results of these activities, both the prefectural and central governmental authorities had given a grant-in-aid of 2,058,000 yen in 1963; each prefecture was giving financial assistance to educational research bodies.[7]

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[1] Doc. No. 103, p. 2.
[2] *Record of Hearings*, XXV/11.
[3] Ibid., XXV/12.
[4] Ibid., XXV/16.
[5] Ibid., XXV/14.
[6] Ibid., XXV/15.
[7] Doc. No. 97, p. 2.

1579. The Commission asked the Head of the Ehime Prefectural Education Board whether it was correct that E.E.R.C. did not represent teachers at all in negotiation with the education authorities or in the making of representations on pay, hours and other working conditions, and the witness replied: " Since the Conference is not an organisation aiming at negotiation there is no such negotiation. There may be cases of petition." [1] The witness was then asked by the Commission whether or not Mr. Ohnishi, former Ehime Superintendent of Education, had referred to E.E.R.C., on 16 May 1961 at the Education Commission Session of the House of Councillors, as an organisation within the terms of article 28 of the national Constitution.[2] The witness replied: " I know he said that, but by mistake. It was just a slip of the tongue." [3] In reply to a question by the representative of the General Council of Trade Unions of Japan the witness said that the Prefectural Education Board received a request from E.E.R.C. on the increase in the number of clerical officers or school nurses, and added: " That is all I want to answer." [4] The witness agreed with the Commission that the membership of the Ehime Prefectural Teachers' Union had declined from 9,664 in 1957 to 940 in April 1964 [3], and said that there was no organisation to represent the 8,724 teachers who had left the union in collective negotiation; the Ehime Prefectural Teachers' Union was still recognised for negotiation purposes.[5]

1580. The Commission, having noted that the Government had mentioned earlier that the Ministry of Education had made grants of financial aid to E.E.R.C. in 1960 and 1961, asked the Director of the Elementary and Secondary Education Bureau of the Ministry of Education whether the Ministry, in making these grants, attached any importance to the fact that members of the Japan Teachers' Union were excluded from E.E.R.C.[6] The witness stated that the decision regarding members of the union had been taken by the Conference itself [6]; when the Minister gave it assistance in 1961, he said, " the fact that members of the Japan Teachers' Union were not included was brought to the notice of the Ministry of Education ", but the Ministry attached no importance to this fact and extended assistance because of its educational research activities; it had also been assisting other educational organisations conducting such activities, whether they included members of the Japan Teachers' Union or not.[7] The witness was asked whether any research body established by the Japan Teachers' Union would similarly qualify for financial aid, to which he replied that the union could not receive grants because the union had its own activities.[8] To the question whether, " if the union established a really neutral research body on educational matters ", it could get grants, the witness answered that the Ministry considered it inappropriate to extend financial assistance to unions.[8] The Commission asked him what would be the position if members of the union established a research body quite apart from the union itself, and the witness said that it was " considered possible for the Ministry of Education to extend financial assistance to such a group, separately from the union ".[8]

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[1] *Record of Hearings*, XXV/17.
[2] Ibid., XXVI/1-2.
[3] Ibid., XXVI/2.
[4] Ibid., XXVI/5.
[5] Ibid., XXVI/3.
[6] Ibid., XXIV/16.
[7] Ibid., XXIV/16-17.
[8] Ibid., XXIV/17.

1581. The witness was asked by the Commission whether any of the Japanese educational research bodies to which the Government gave financial assistance, apart from E.E.R.C., excluded members of the Japan Teachers' Union from participation, and if so, how many of them.[1] He replied that about 600 research bodies at local level and 50 at national level were being aided; not all of them were always composed of union members, as, for example, the organisation formed by superintendents of prefectural education boards.[1] " It is not ", he said, " a question for the Ministry of Education whether or not local educational research organisations have union members among their members, so I consider the E.E.R.C. is the only organisation excluding union members—members of the Japan Teachers' Union." [1] He added that exclusion of the union's members had never been made a condition for the grant of governmental assistance to conferences.[1]

1582. The Head of the Ehime Education Board said in his opening statement that recently there had been " an opinion among the Conference members that the union members might as well be allowed to join the Conference ".[2]

1583. He denied that the Prefectural Education Board had organised E.E.R.C. and caused it to exclude members of the Japan Teachers' Union.[2] In reply to a question by the Commission as to whether a teacher who was a member of the Japan Teachers' Union could participate in the Conference without first having to resign from the union, the witness replied: " Yes, he can." [2] The Commission said that it could not understand this reply in view of the witness's earlier statement cited in the preceding paragraph. The witness said that a person joined the Conference after being introduced by one of its members and that " in view of the nature of the E.E.R.C., the members of the Conference do not feel that they can accept or admit the members of prefectural teachers' unions as members of the Conference; therefore," he continued, " it is not because of the membership of the prefectural teachers' union but because of the feeling of the E.E.R.C. members that the union members are not accepted to membership of the Conference. Recently the members of the E.E.R.C. have been of the opinion that they may have union members as their own Conference members." [3] The witness was asked whether members of any other teachers' unions found difficulty in getting sponsors for admission to the Conference. He said that the only union of primary and secondary school teachers in the prefecture, apart from the Japan Teachers' Union, was the Teachers' Association, which had only 70 members, who did not wish to join the Conference at present; 1,800 high school teachers belonged to the Ehime High School Teachers' Union, some of whose members had joined the Conference.[3]

1584. The Commission reminded the witness that, in its communication dated 3 October 1961, the Government had stated that " the members of the Japan Teachers' Union were not allowed to take part in the Conference ", and asked him how he reconciled this statement with the answers which he had given to the Commission.[4] The witness said that there was no provision in the constitution of the Conference to the effect that members of the union could not join it.[4]

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[1] *Record of Hearings*, XXV/1.

[2] Ibid., XXV/13.

[3] Ibid., XXV/14.

[4] Ibid., XXV/15.

1585. Asked whether he knew of the existence of any educational research conferences in other prefectures where members of the Japan Teachers' Union were not proposed for admission, the witness said that he did not.[1]

1586. The Commission, having regard to the fact that it had been alleged at an earlier stage in the case that six executive members of the Niihama-Shi Teachers' Union had visited Mr. Ozaki, Guidance Chief of the Saiijo Education Office, on 25 August 1960 and been told that the Niihama municipality would not let any of its share of the education research grant be used for members of the Japan Teachers' Union but only for persons abiding by the ideas of the Ministry of Education—asked the witness why this visit took place.[1] The witness replied that on the occasion in question Mr. Ozaki explained that the Ministry granted aid to organisations aiming at educational research; the witness added: " It does not matter whether the educational research organisation is an employees' organisation or not. The Ministry of Education does not extend its assistance for the reasons of the union, for the reason of being a union." [1]

1587. In its comments on the further statement of the Japan Teachers' Union the Government dismissed as groundless the allegation that the fact that large-scale recessions from the Ehime union took place near the time of annual personnel transfers was because of discriminatory treatment accorded to union members in respect of transfer.[2] Applications for review of adverse treatment in this connection, said the Government, had in many cases " been made rather under the direction of the union than by the will of the persons in question " and, of 112 applications filed with the Ehime Personnel Commission in 1958, 46 had been withdrawn, while the Personnel Commission had ruled against the applicants in 14 other cases.[2]

1588. With regard to the question of personnel transfers the Head of the Ehime Prefectural Education Board stated that the geographical characteristics of the prefecture made it necessary for 20 per cent. of its teachers to work in bad conditions in isolated districts, but transfer to such areas was not discriminatory, being based on the needs of educational administration.[3] He said that withdrawals from the union around April took place because teachers had been transferred and severed their previous contacts and that, if fear of discrimination had influenced them, they would have left the union earlier in the year, before the reshuffle took place.[3] The Commission told the witness that it understood that, on 1 April 1958, 16 teachers in all were transferred outside the Shuso district, these including all the executive members of the Shuso Teachers' Union, and asked him to explain why they were all transferred at the same time.[1] The witness replied that the Ehime Prefectural Education Board transferred educational personnel " on their promotion " to other districts and said: " Therefore, whether or not those teachers concerned were members or officers of the union was not taken into consideration on this occasion, so I think it just happened that the union members or officers of the union were transferred "; he could not remember what was the total number of teachers in the Shuso District at that time.[4] Asked to comment on the allegation that nearly half the members of the Onsen Teachers' Union were forced to resign from it in order to avoid adverse treatment in respect of transfer, the witness said that he did not know there was such a case.[4]

[1] *Record of Hearings*, XXV/15.
[2] Doc. No. 103, p. 3.
[3] *Record of Hearings*, XXV/12.
[4] Ibid., XXV/16.

1589. The witness was asked by the Commission to comment on the allegation that, since the establishment of E.E.R.C., no union member had been promoted to the position of headmaster or assistant headmaster, however good his qualifications, unless he left the union and joined E.E.R.C., and replied that this was not correct.[1] The Commission asked him to give the names of any persons who had been promoted to such posts in that period without having to resign from the union and join E.E.R.C.[1] The witness said he could remember only the name of a Mr. Inoue, but believed that there had been five or six such cases; he said that he believed these persons were still members of the union.[2] The witness was asked by the representative of the General Council of Trade Unions of Japan in what year these promotions were made and replied that he did not remember.[3] Asked whether they were not already in those positions before E.E.R.C. was formed, the witness said that he did not remember.[3]

1590. The Commission asked the witness whether, as alleged, no special increment had ever been paid to a teacher who was not a member of E.E.R.C.[4] The witness said that each year about 10 per cent. of the teachers received special increments, but that " I do not know whether or not the members of the Teachers' Union are included in the teachers who receive the special increment ".[5] He denied that any privilege was given to E.E.R.C. members in this matter.[1]

1591. The witness stated that if, as alleged, members of the Teachers' Union were placed at the bottom of the list in respect of payment of diligence allowances, it was not because they were members of the union.[1]

1592. With regard to the allegation that newly engaged teachers were placed in established class II if they joined E.E.R.C., but in class III if they did not, the witness said no discrimination was made.[1]

1593. The witness said that the allegation that members of E.E.R.C., but not members of the union, were admitted to the long-term physics course at the Prefectural Physics Centre was not correct.[2]

1594. Questioned concerning the allegation that teachers, when applying for their statutory vacation with pay, were required to reveal any intention they might have of taking part in any union activity during their leave, the witness said that he was not aware that members were required to give their reasons.[6]

1595. The Director of the Elementary and Secondary Education Bureau of the Ministry of Education was asked by the Commission whether the two officials sent to Ehime Prefecture in August 1961 by the Ministry, in order to investigate the complaints, had themselves interviewed the different persons alleged to have been victims of acts of anti-union discrimination; the witness replied that the investigation was conducted " with the co-operation of the Prefectural Board of Education and Municipal Boards of Education, so the two officials might have met the victims, but

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[1] *Record of Hearings*, XXVI/4.
[2] Ibid., XXVI/5.
[3] Ibid., XXVI/6.
[4] Ibid., XXVI/3.
[5] Ibid., XXVI/3-4.
[6] Ibid., XXV/16.

I am not sure. In most cases I believe the two officials did not meet the victims in person." [1] He said that, so far as he knew, the two officials reported to the Ministry to the effect that there were no facts as alleged by the union.[1] To a further question by the Commission the witness replied that " in most cases the two officials met the persons from one party but when necessary I think they must have met the persons of the other party " [1] and that " in some cases, depending on the matters concerned, I believe that the two officials met the victims ".[2] The Commission suggested that if the witness had read their report to the Ministry it must tell him whether they met or did not meet the victims, to which the witness replied: " This fact is not indicated in the papers or documents which I have with me here, but I think it is indicated in the reports possessed by the Minister of Education." [2] The Commission then suggested that when the Minister took the extraordinary step of sending two officials to a certain prefecture to investigate what was going on there he would not be satisfied if they contacted only the education board in the prefecture, and the witness stated: " This fact must be decided on the contents of the matters because when these two officials met the victims I believe in most cases the victims would just insist on what they had been given. A more reasonable move I think is to have these two officials meet with persons of the third party to obtain more objective information." [2] The witness explained that by " third party " he meant, for example, the principals or head teachers of the schools concerned.[2] The Commission asked whether this investigation might leave the impression that it was a little one-sided, and the witness replied: " I do not think the reports made by the two officials are of a one-sided nature. I would say that information supplied by the unions is of a one-sided nature." [2]

1596. The Head of the Ehime Prefectural Education Board was questioned by the Commission as to the inquiry by his own Board which led to the conclusion that there was no truth in the allegations that pressure was brought on the various persons named by the complainants. He said that this was an inquiry into " all the alleged facts ".[3] He was asked whether, in view of the allegations as to interference by the Board, consideration was ever given to arranging for the inquiry to be conducted by some other impartial person or persons having no personal interest in the matter, to which he replied that no particular appointment of impartial persons had been made but that they " heard from the parents or members of the Parents' and Teachers' Association "; in fact, the inquiry was conducted by the Secretariat of the Prefectural Education Board.[3] In reply to a question by the representative of the International Confederation of Free Trade Unions, the witness said that he could not remember all the findings of this inquiry.[4]

1597. The witness said, in reply to a question by the Commission, that he was unable to say whom the two officials sent by the Ministry of Education might have seen on the complainants' side.[3]

C. The Case of Gifu Prefecture

1598. In its comments on the further statement of the Japan Teachers' Union, the Government said that, prior to 1962, the Japan Teachers' Union and its Gifu

[1] *Record of Hearings*, XXIV/15.
[2] Ibid., XXIV/16.
[3] Ibid., XXVI/2.
[4] Ibid., XXVI/6.

affiliate had prevented the development of education in its proper direction and, as a result, teachers became critical and began to secede from the Gifu Prefectural Teachers' Union; the Government denied that this secession was due to pressure by the prefectural and municipal boards of education and school principals.[1] At the Education Commission's session of the Diet which took place on 11 March 1964 to hear from witnesses concerning the situation in Gifu, said the Government, " no decisive evidence was given as to the extortion of secession from the union " or unfair labour practices by the boards of education.[2]

1599. The Government stated that the events alleged [3] in the case of Minami and Yamato villages never took place [4] and that, in the conversation he had [3], Mr. Imai, a teachers' consultant, did refer to the normalisation of education in the prefecture but did not mention secession from the union.[4]

1600. With regard to the allegations [5] relating to a teachers' meeting in Kagamigahara city and to remarks by Consultant Nagata, the Government said that the facts alleged never existed [4], while the report alleged [6] to have appeared in the Gifu daily newspaper was a report for which there was no foundation.[4]

1601. The Government stated [7] that none of the events alleged in the affidavit of Mr. S. Fujii [8] ever took place.

1602. In his opening statement to the Commission the Director of the Elementary and Secondary Education Bureau of the Ministry of Education said that the Ministry had made an investigation and was convinced that there had been no unfair labour practices in Gifu Prefecture.[9] In reply to a question by the Commission the witness said[10] that, having made this investigation, the Ministry was sure that there was no truth in the allegation[11] that, on instructions from the Gifu education authorities, the head of each school summoned each of his teachers privately and asked him to sign a notice of withdrawal from the union, failing which he would not be kept on at the school.

1603. The witness was asked by the Commission if he could explain why 7,000 teachers had left the Gifu Prefectural Teachers' Union in the last three years.[10] He replied that the union's opposition to the education policy of the Prefectural Education Board had given rise to criticism and secession by members.[12] Asked whether that was the only reason and whether the secessions had nothing to do with alleged activities by the Gifu education authorities against the union, the witness said that he believed the reason to have been the fact that union action had run to extremes.[12] The witness said that, as far as he knew, the 7,000 teachers who left the union " form either unions or research organisations, but they do not always form another union "

[1] Doc. No. 103, p. 3.
[2] Ibid., pp. 3-4.
[3] See para. 1559 above.
[4] Doc. No. 103, p. 4.
[5] See para. 1560 above.
[6] See para. 1562 above.
[7] Doc. No. 103, p. 5.
[8] See para. 1563 above.
[9] *Record of Hearings*, XXIII/18.
[10] Ibid., XXV/1.
[11] See para. 1564 above.
[12] *Record of Hearings*, XXV/2.

and that he had " not noticed that any such unions had been registered yet "; he confirmed that the Gifu Prefectural Teachers' Union still negotiated with the prefectural authorities.[1]

D. The Case of Tochigi Prefecture

1604. In its comments on the further statement of the Japan Teachers' Union the Government stated that in April 1959 certain of the teachers, being critical of the policy and political tendencies of the Japan Teachers' Union, " tried to form a suitable body as a teachers' organisation ".[2] Later, said the Government, the executive of the Tochigi Prefectural Teachers' Union applied to the Personnel Commission, contrary to the wishes of the members, for review concerning the request for the balance of night and holiday watch allowances.[3] When candidates were nominated for the union executive election in March 1962 there was bitter rivalry between two factions and, declared the Government, " about 7,000 members who withdrew from the union in November 1963 became aware of their position as teachers and organised the Tochigi Teachers' Union Council "; the Government denied that this development was due to interference by the Prefectural Education Board [2] and, in support of this argument, furnished purported copies of 17 statements [4] by school principals and officials of the education authorities denying the specific matters alleged.[5]

1605. The Director of the Elementary and Secondary Education Bureau of the Ministry of Education said in his opening statement that the Ministry had made an investigation and was convinced that there had been no unfair labour practices in Tochigi Prefecture.[6]

1606. The Commission reminded the witness that, in its communication dated 19 October 1962, the Government agreed that Mr. Koizuma, chief of a local office of the Tochigi Prefectural Education Board, had said at a schoolmasters' meeting about the beginning of December 1961 that schoolmasters and vice-schoolmasters should not join the Tochigi Prefectural Teachers' Union, but that this had not been with the intention of " forcing common members to secede from the union", and asked him if he cared to comment on this matter.[7] The witness said that many union members had forced Mr. Koizuma to sign a statement admitting certain matters by blackmail and by confining him to a room for over four hours and coercing him.[8]

1607. The witness was asked to inform the Commission as to the nature of the Tochigi Prefectural Teachers' Council, which was alleged to be sponsored by the Prefectural Education Board; the witness said that this was a personnel organisation, so that it was inconceivable that the prefectural authorities would extend assistance to it [1]; by " personnel organisation " he meant " union ", like the Japan Teachers' Union.[9] He said that the Council was registered and had negotiated with the pre-

[1] *Record of Hearings*, XXV/2.

[2] Doc. No. 103, p. 5.

[3] Ibid. This statement was repeated in evidence by the Director of the Elementary and Secondary Education Bureau of the Ministry of Education, in *Record of Hearings*, XXV/3.

[4] Doc. No. 103, Appendix IV.

[5] See para. 1567 above.

[6] *Record of Hearings*, XXIII/18.

[7] Ibid., XXIV/19.

[8] Ibid., XXIV/19-20.

[9] Ibid., XXV/3.

fectural authorities and that members of the Tochigi Prefectural Teachers' Union were excluded from it, although a member who wished to leave the Teachers' Union and join the Council could do so.[1] The witness said that the 7,000 teachers who had seceded from the Teachers' Union were now represented by the Council and that only 335 members remained in the Teachers' Union, but that the latter was still recognised for purposes of collective negotiation; this meant that there were three unions; the old union, the Council and a union of teachers in upper secondary schools.[2] He said that those of the Teachers' Union who joined the Council included some of its officers.[2]

1608. The witness agreed that paid leave had been refused to teachers who had wished to attend a national assembly for the study of education sponsored by the Japan Teachers' Union and said that the prefectural authorities had regarded such assembly as a union activity.[2] The Commission asked the witness why, if teachers wished to use their leave for such a union activity, they should not be permitted to do so[2], to which the witness replied that it was inconvenient for the prefectural authorities to grant teachers paid leave to enable them to attend.[3] The witness could not say how many teachers in the prefecture had asked for paid leave on this occasion.[3] He agreed that the leave for which they asked was part of their normal vacation, but said that the national assembly in question had intended to refuse the curricula organised by the Ministry of Education and to organise its own.[3] The Commission suggested that, even if the assembly might discuss changes in existing curricula, it was quite impossible for it to organise its own curricula, and the witness agreed that this was correct.[3] The witness said that in other prefectures also applications for leave to attend the aforesaid assembly had been turned down.[4]

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[1] *Record of Hearings*, XXV/3.
[2] Ibid., XXV/4.
[3] Ibid., XXV/5.
[4] Ibid., XXV/6.

CHAPTER 40

ACTS OF ANTI-UNION DISCRIMINATION AND INTERFERENCE WITH AFFILIATES OF THE CONGRESS OF GOVERNMENT EMPLOYEES' UNIONS

I. Statements and Evidence of the Complainants

1609. Mr. Fujii, the second of the two witnessses for the Congress of Government Employees' Unions to be heard by the Commission, alleged that governmental authorities were " continuing to engage " in unfair union-breaking practices, in the form of interference in and obstruction and suppression of trade union activities or discrimination in working conditions against union members, with a view to encouraging them to secede from their unions [1], and, on the ground that members were taking part in union activities, were taking disciplinary action against them, discriminating against them in treatment and engaging in other forms of unfair labour practices.[2] The first witness for the complainants, Mr. Eda, alleged in his opening statement that the authorities were trying to foster splinter unions and giving every convenience to such unions, including the use of government buildings for their activities, which they denied on various pretexts to the affiliates of the complainants.[3]

A. The Case of the All Taxation Offices Employees' Union (Zenkokuzei)

1610. In its further statement the Congress of Government Employees' Unions alleged that the Tax Administration Agency, among all the government offices, practised " the most vicious labour management policy " and would not admit even the existence of the All Taxation Offices Employees' Union (Zenkokuzei) and that, particularly since 1962, the Government had openly interfered with union activities, persuading employees to secede from the union, with the definite aim of destroying it prior to ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).[4]

1611. On 29 August 1962, alleged the complainants, Mr. H. Kimura, Director of the Tax Administration Agency, said in the Social Labour Committee of the Lower House of the Diet that he " would give a notice to his Agency not to carry out practices that are likely to be considered or suspected by outsiders as unfair labour practices ", which, in the complainants' view, illustrated the existence of infringements of the rights of the workers and their union.[5]

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[1] *Record of Hearings*, XI/17.

[2] Ibid., XI/19.

[3] Ibid., XI/4.

[4] Doc. No. 95, p. 1.

[5] Ibid. Mr. Eda, witness for the complainants, gave the same evidence on this point. *Record of Hearings*, XI/3-4.

1612. The complainants alleged that Mr. O. Tohyama, Deliberation Officer of the Agency, was directly responsible for activities against the union, leading " workshop bosses " under his control to interfere with union activities and the right to organise.[1] A Deliberation Officer, said the complainants, was, in the words of the Director of the Agency, a person appointed to perform duties concerning the treatment of employees, but, in the complainants' view, he was responsible for " emasculating the union according to the orders of the Director of the Agency ".[1] In support of this argument it was alleged that, on 9 May 1962, Unit Chief Kodama of Takamatsu Tax Administration Bureau said, at a meeting of his unit, that he had been informed by Mr. Tohyama that " one-third of the trade union dues is used as wages of those who have been discharged and work as full-time union officials " and that the union was inclined towards political struggles, and that Mr. Tohyama had " emphasised the importance of forming another union ".[1]

1613. The complainants said that, as a result of unfair labour practices against the union, its membership had declined from 14,878 in June 1962 to 5,788 in December 1963.[2]

1. *Attacks on the Union in Publications and Official Documents.*

1614. The complainants alleged that *The Review*, published by the General Affairs Department of the Head Office and distributed to the employees of all tax collection offices in the country, contained open slander and abuse of the union, as did the *News of the General Affairs Department*, distributed to the Chiefs of General Affairs Departments of all taxation offices with orders to burn it after perusal.[3]

1615. The complainants adduced a purported copy of a document stated to have been issued on 12 March 1956 by the General Affairs Section of the Tax Administration Agency under the heading of " Document of Complete Secrecy: Basic Principle of Countermeasure towards Trade Unions and Their Activities ".[4] According to this text, measures were to be taken " to give guidance to the employees in order to let them have correct ideas about the trade union movement ", " to cultivate wholesome views on trade union activities among the employees through criticism against Zenkokuzei and its activities ", " to pay attention to day-to-day activities of union members ", etc.

2. *Pressure on Members to Leave the Union.*

1616. Apart from the contention referred to in the preceding paragraph, the complainants mentioned certain alleged specific cases of the authorities having persuaded or tried to persuade members to leave the union.

1617. From April to May 1964, Mr. Nakano, Head of the General Affairs Department of Niigata Tax Collection Office, was alleged to have pressed a Mrs. Otaka and a Mrs. Taira to secede from Zenkokuzei.[5]

1618. It was alleged that Mr. Nakamura, Head of the Direct Tax Department of Nakanojo Tax Collection Office, ordered a member, Mr. Utsue, to secede from

[1] Doc. No. 95, p. 2.
[2] Ibid., p. 5.
[3] Ibid., p. 6-7.
[4] Ibid., p. 35-36.
[5] Ibid., p. 8.

the union local, on or about 1 November 1963, and in all forced six of its 13 members to resign from the union.[1]

1619. Miss T. Igarashi, an employee at Fukushima Tax Collection Office, applied for transfer to another office to be nearer to that of her fiancé, also a tax employee; both were members of the union.[2] On 26 March 1964, it was alleged, Mr. Otomo, the Head of the Fukushima Office, told her that he could make no efforts on behalf of union members because a union member " is undesirable from the standpoint of tax administration ".[3] On 1 May 1964, Mr. Komatsu, Deputy Head of the Fukushima Office, was alleged to have said to Miss Igarashi that she " had better secede from Zenkokuzei because it would collapse in the near future " and " join his union ".[3] When Miss Igarashi called on Mr. Saito, Head of the Wakamatsu Tax Office to which she wanted to move after getting married, he was alleged to have told her that " everything would turn out splendidly if they were not members of Zenkokuzei ".[3]

1620. The complainants alleged that in May 1963, Mr. Hayashi, Head of Otsu Tax Collection Office, told his departmental heads and chiefs of sections that " the workshop bosses or administrative officials who were members of Zenkokuzei would secede from it during May " and that in fact such secessions *en masse* took place under pressure from the heads of tax collection offices.[4] In June 1963, it was alleged, Mr. Ohnishi, a departmental head in the Otsu Office, repeatedly tried to persuade Mr. Yasuda, General Secretary of the union local, to secede from the union.[5]

1621. It was alleged that in December 1963, Mr. Murata, Head of the General Affairs Department of Kusatsu Tax Office, visited the father of an employee, Miss Fujisawa, and instigated him to urge his daughter " to leave Zenkokuzei for the good of her future ".[5]

1622. On 5 June 1963, Mr. K. Sakai, Head of the Direct Tax Department of Minakuchi Tax Office, was alleged to have urged the employees of the Department to withdraw from the union.[5]

1623. Mr. Nosawa, Head of the General Affairs Department of Omihachiman Office, was alleged to have put pressure on Mr. Ikeno, chairman of the union local, to leave the union, telling him that he himself had been ordered to cause Mr. Ikeno to leave it; under pressure, the latter resigned from the union.[6]

1624. In February 1964, it was alleged, the Head of the Muroran Office urged an employee to leave the union and then told the father of the employee to persuade him to leave because " Zenkokuzei is a singular union ideologically ".[6]

1625. In March 1964, said the complainants, Mr. Izawa, general secretary of Kawagoe chapter of the union, was threatened with reprisals from head office on

[1] Doc. No. 95, p. 9.
[2] Ibid., p. 10-11.
[3] Ibid., p. 11.
[4] Ibid., p. 12-13.
[5] Ibid., p. 13.
[6] Ibid., p. 14.

account of his union activities, notes on which had been taken by the heads of the tax collection departments of the Kawagoe and Urawa Tax Offices.[1]

3. *Transfers of Union Officers.*

1626. Mr. Ohsone, a member of the executive of the union's Kanto-Shinetsu District Federation, was transferred from Mito Office to Tsuchuira Office, involving for him six hours' travel per day, for the alleged purpose of harming the union.[2] He requested a retransfer but this was not forthcoming although, it was alleged, 98 other persons who had grievances were retransferred.[3] On 10 December 1963, said the complainant, the Head of the Tsuchuira Office told Mr. Ohsone: " If you were not an executive of Zenkokuzei, you might be easily reinstated." [4] The complainants listed the several occasions on which the union had fruitless conversations on this matter with the head of Kanto-Shinetsu Tax Administration Bureau, the bearer of the right of appointment.[5]

1627. The complainants alleged that many other union leaders had been unjustifiably transferred to weaken the union leadership, citing the following cases within the jurisdiction of the Kanto-Shinetsu Tax Administration Bureau: Mr. S. Tsutsui, General Secretary of Saitama local, transferred from Urawa to Hugashi-Matsuyama, two hours distant from his home; Mr. T. Kubota, General Secretary of Gumma local, transferred from Maebashi to Tomioka, one-and-a-half hours distant from his home; Mr. R. Nakamura, Vice-Chairman of Nagano local, transferred from Nagano to Veda, two hours distant from his home, Mr. K. Bo, Chairman of Niigata local, transferred from Snajo to Kashiwazaki, two-and-a-half hours by train from his home.[6] All these persons, said the complainants, were removed from central offices to outlying offices so that the long hours of travelling imposed upon them would interfere with union activity.[7]

4. *Discrimination in Employment against Union Members.*

1628. It was alleged that when regular promotions were made at Adachi Tax Office in October 1963 three persons were omitted (Mr. Amano and two others) because they were officials of the Adachi chapter of the union and for the purpose of making employees afraid to take part in union activities.[7]

1629. In October 1963, said the complainants, Mr. Enami and another person, because they were officers of the South Osaka local of the union, were refused the regular annual wage increases accorded to all other employees of the National Tax Administration Agency.[7]

5. *Miscellaneous Alleged Unfair Labour Practices.*

1630. The complainants alleged that, with a view to weakening the interest of members in their union, the Tax Administration Agency took various measures to interfere with social and welfare activities organised by the union.[8]

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[1] Doc. No. 95, p. 10.
[2] Ibid., pp. 14-15.
[3] Ibid., p. 15.
[4] Ibid., p. 16.
[5] Ibid., pp. 16-17.
[6] Ibid., pp. 17-18.
[7] Ibid., p. 18.
[8] Ibid., p. 8.

1631. In February 1964, said the complainants, the Agency issued a circular notice containing its own instructions as to the recreational activities of employees. Among other things, the requirements laid down in this notice, according to the purported copy furnished by the complainants, included the selection of leaders who were " ideologically wholesome ", the setting-up of special circles for different kinds of recreation with constitutions approved by the authorities, guidance in activities, notification to the tax offices of all recreation circles founded, etc.[1]

1632. On 5 September 1963, it was alleged, the General Affairs Department of the Osaka Tax Administration Bureau issued a document headed " absolute secrecy " to heads of tax collection offices. The purported copy of the document referred to the institution of a ski-skating training course by the authorities as a recreational project for employees and, after mentioning that the fundamental reason was the fact that the union had organised courses which were attractive to young members, stated: " To meet with these circumstances, it is urgent for the Tax Administration Bureau and tax collection offices to jointly work out a comprehensive programme " [2] and " Reports on the effects of the proposed programmes upon the participants and the attitude of the union towards them are not required, but we suggest you study them, as we might ask about them when officials of the Bureau visit your offices on inspection trips ".[2]

1633. The complainants stated that on 9 and 10 May 1964 the union held gatherings of young people as part of its normal trade union activities, but that the authorities of the Osaka Bureau took measures to prevent young persons attending, such as the organising of compulsory sight-seeing trips for employees and of a training course; in addition, it was alleged, " the authorities issued special orders to the employees to join sightseeing trips to Kyoto and Nara, saying that those who rejected the order must submit written explanations to the authorities and that those who violated the order would be punished ".[3]

1634. The complainants declared that for several years some union chapters, by agreement with the authorities, had operated small shops for the benefit of employees, as part of their welfare activities, but that since March 1964 these vested rights were being frequently infringed or disregarded.[3]

1635. In March 1963, it was alleged, Messrs. Kawamura and Fujiwara, two union officers, asked for annual leave for " performing union business " as approved by law, but that the head of Kamigyo Tax Office refused although there was no ground for refusal [4]; similarly, contrary to established practice, leave was refused to two union members, on 23 October 1963, by the head of Fukigawa Tax Office.[5]

1636. On 30 October 1963, it was alleged, the General Affairs Department of the Osaka Tax Administration Bureau issued " a top secret material to be circulated to the heads of general affairs sections and burnt up after reading " under the reference " On fund campaign organised by Zenkokuzei ".[6] The purported copy of the document, after referring to the organisation of a fund campaign by the union, contained the words: " . . . some 3,000 men and women have donated their pocket money

[1] Doc. No. 95, pp. 39-40.
[2] Ibid., p. 38.
[3] Ibid., p. 12.
[4] Ibid., pp. 18-19.
[5] Ibid., p. 19.
[6] Ibid., p. 39.

daily and the District Federation is reportedly considering the number of daily donors as potential union members or workers who can be organised into unions in future. It is regrettable that the authorities concerned have not yet grasped the significance of the situation. More than that, in some cases, heads of sections or chief clerks who are administrators take the lead in contributing their pocket money to the union's fund campaign, assisting the union's activities from outside. We hope that the heads of the tax collection offices fully understand the intent of the union so that the administrators under your guidance take actions of sound judgment." [1]

6. *Promotion of Rival Unions by the Authorities.*

1637. The complainants adduced a purported summary of the views expressed with reference to the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), at the meeting on finance of the Political Affairs Research Committee of the Liberal Democratic Party on 14 March 1960, containing the following passage: "... there is an employees' organisation which was formed as a force opposing Zenkokuzei. This union is developing lively activities at present. If the system in which the employees perform union activities as full-time union officials is entirely abolished, the leaders of this wholesome organisation have to go back to their places of work also, causing difficulties in developing wholesome trade union activities." [2]

1638. The complainants alleged a number of cases of sponsorship or support of splinter unions by the taxation authorities.

1639. It was alleged that on 7 May 1962, Mr. Kodama, Unit Chief of Takamatsu Tax Collection Office, stated that Mr. Tohyama, Deliberation Officer of the Tax Administration Agency, had emphasised to him " the importance of forming another union ".[3]

1640. The complainants referred to a number of alleged incidents within the jurisdiction of the Sapporo Tax Administration Bureau. On 19 January 1963, it was alleged, Mr. Sugiyama, head of the Sapporo General Affairs Department, and Mr. Otake, head of its General Affairs Section, invited heads of various tax collection offices to a restaurant and gave them instructions concerning the formation of a splinter union in Kushiro Tax Collection Office.[4] The complainants said that in January and February 1963 the Director of the Tax Administration Agency sent certain named high officials to press the employees of several offices to secede from Zenkokuzei and form a new union and that, at a banquet on 20 February 1963, the chief and other senior officials of Kushiro Tax Collection Office coerced employees to leave Zenkokuzei and join a splinter union, which was established on 25 February.[5] Mr. Kawara, Deputy Head of the General Affairs Section of the Sapporo Bureau, was alleged to have coerced chief clerks of tax collection sections to leave Zenkokuzei; two named high officials of the Bureau were said to have pressed the chief clerks of Takikawa Tax Office, on 8 January, to leave the union, three of them having done so the following day.[5] Mr. Hayaski, head of the Material Section of the Sapporo Bureau, was alleged to have visited Muroran Tax Office on 9 January and forced

[1] Doc. No. 95, p. 39.
[2] Ibid., p. 28.
[3] Ibid., p. 2.
[4] Ibid., pp. 36-37.
[5] Ibid., p. 37.

the employees to leave Zenkokuzei.[1] The complainants alleged that the said Mr. Hayaski and Mr. Toide, head of Sapporo General Affairs Section, were going round the Sapporo Bureau compelling employees to sign their names on a list of supporters of the formation of a splinter union, and that a Mr. Sugimura was forcing employees to join it.[1] Finally, the Sapporo Tax Administration Bureau was alleged to have invited Mr. Y. Nakazawa, an employee of Tokyo Bureau and vice-chairman of the People's Movement Department of the Democratic party, to carry out activities to split the union in the office.[1] With regard to all the above matters, said the complainants, Mr. Shimamoto, a member of the Social Labour Committee of the Lower House of the Diet, addressed written inquiries to the Director of the Tax Administration Agency on 29 March 1963, but no reply by the authorities was ever made.[2]

1641. In February and March 1964, Mr. M. Nakano, head of the General Affairs Department of Niigata Tax Collection Office, was alleged to have urged three telephone girls to join the splinter union there.[3]

1642. The complainants alleged that the Director of the Tax Administration Agency told the Diet that Zenkokuzei " will not be provided with new facilities although the old ones will not be forfeited "; however, on 13 February 1964, the head of the General Affairs Department of Sendai Tax Administration Bureau was alleged to have called upon Zenkokuzei to give up its Tohoku union office, although on 3 November 1963, he had granted the use of an office to a new splinter union, the Tohoku Tax Bureau Workers' Union, alleged to have been formed with the backing of the authorities.[4]

1643. Mr. S. Hayashi, head of Otsu Tax Office, was alleged to have introduced to the head of the General Affairs Department of the Osaka Bureau a Mr. T. Eriguchi, as " a leader who would act as a key man of a government-formed union in Shiga Prefecture ".[5]

1644. Mr. S. Kitamura, head of the Corporation Tax Section of Mimakuchi Tax Collection Office, was alleged to have said, at a meeting of his section on 28 May 1963, that " there were many Communist members among the union leadership " and that a new union should be formed.[5]

1645. On 26 April 1964, said the complainants, the head of Fukui Tax Collection Office held a special conference of his " workshop bosses " and administrative officials and, in the evening, the authorities formed a new union with 25 employees organised in it, nine of 15 officials of which were section or department chiefs.[6]

7. *Creation of Supervisory Posts to Weaken the Union.*

1646. The Congress of Government Employees' Unions alleged in its further statement that the number of administrative officers or " workshop bosses " was being increased, to weaken the union, to such an extent that the Government's Annual Budget for Government Regular Employees showed that in 1964 there were 46,754 of such officers as against only 21,049 general employees, whose numbers were still decreasing.[7]

[1] Doc. No. 95, p. 37.
[2] Ibid., p. 7.
[3] Ibid., p. 8.
[4] Ibid., p. 10.
[5] Ibid., p. 13.
[6] Ibid., p. 14.
[7] Ibid., p. 6.

8. *Collective Negotiation with the Union.*

1647. Mr. Fujii, witness for the Congress of Government Employees' Unions, said in evidence that the registration of the All Taxation Offices Employees' Union was refused by the National Personnel Authority because it included dismissed employees among its officers [1] and, because it was not registered, the authorities did not negotiate with it from December 1958 to August 1959; during that period the organisation was changed from a federation to a union and the membership dropped from 34,000 to 20,000, partly because the Government refused negotiation.[2]

1648. The Congress of Government Employees' Unions said in its further statement that negotiation was denied if an officer who was a dismissed employee was present.[3] Thus, the head of the Kanto-Shinetsu Office was alleged to have refused to sit at the bargaining table if a dismissed employee, Mr. Kaneko, made any speech there.[4]

1649. The complainants adduced a purported summary of a document headed " Complete secrecy " stated to have been sent on 18 February 1956 by the Director of the Tax Administration Agency to the head of the Osaka Tax Administration Bureau and bearing the reference " On Agency's Measures towards Employees' Movement " and purporting to put into operation instructions given by the meeting of Vice-Ministers on 1 December 1955.[5] The text adduced contained directives relating to collective negotiation, including the following: " *(d)* negotiation is a petition in nature; *(e)* the union shall be represented at negotiations only by its representatives (executive members); *(f)* participation of outsiders shall be rejected; *(g)* participation of upper organisation representatives in negotiations shall not be allowed ".[6]

1650. The complainants made a number of allegations relating to limitations placed on matters as subjects for collective negotiation.

1651. In July every year the Tax Administration Agency transferred between 12,000 and 13,000 persons to new jobs but, said the union, although these reshuffles greatly affected the life and working conditions of the employees, the authorities had unilaterally exercised their power for years, without previous notice to the union, even at negotiation tables, with regard to the scale, date or standards of such transfers; the complainants alleged that the Agency made use of this system to weaken the union.[7] On 5 September 1963, the union requested negotiation on several matters, including the making of an agreement on personnel administration in respect of transfers, to which the Director of the Tax Administration Agency was said to have replied on 19 September 1963: " The Agency is responsible for placement in order to have tax administration exercised smoothly. The Agency has no idea to have a special agreement concluded with the union in this connection." [8] The Head of the Employees' Bureau of the General Affairs Department of the National Personnel Authority was alleged to have said in a letter dated 2 November 1963 to

[1] *Record of Hearings*, XI/28.
[2] Ibid., XI/29.
[3] Doc. No. 95, p. 19.
[4] Ibid., p. 9.
[5] Ibid., pp. 32-33.
[6] Ibid., p. 33.
[7] Ibid., p. 14.
[8] Ibid., p. 46.

the Chairman of the Executive Committee of Zenkokuzei's Tokyo District Federation: " The question concerning the individuals who have been transferred is not an issue prescribed in item 2 of section 98 of the National Public Service Law, and therefore the Bureau is at liberty to decide whether or not to discuss the matter with the employees' organisation (the union)." [1]

1652. It was also alleged that the tax authorities would not negotiate concerning matters affecting individual members, and that the Tokyo Tax Administration Bureau in the autumn of 1963 had given the following reasons for refusing: " In the past all the employees were affiliated with the union, but now there are many non-union members at the places of work. If the union negotiates with the authorities over the questions of the union members, non-union members can no longer enjoy equal advantage, and therefore are improperly discriminated against. Therefore, the Agency has decided to consider matters from the standpoint of non-union members, and questions, complaints and dissatisfactions of the individuals shall be heard through superintendents at the places of work. The Agency will lend no ears to individual problems through the union. Therefore these subjects will not be placed on the agenda. We have confirmed that this is a view taken by the National Personnel Authority." [2]

1653. The complainants alleged that in October 1963 the Head of Tomioka Tax Collection Office refused to negotiate with the Tomioka chapter of Zenkokuzei so long as it insisted on wage and transfer questions being included in the negotiation agenda.[3]

1654. Mr. Fujii, one of the witnesses for the Congress of Government Employees' Unions, summarised in his evidence a number of points which had already been dealt with in the further statement of the said organisation.[4] The witness said that, following its 1963 Convention, the All Taxation Offices Employees' Union submitted the following demands to the National Tax Administration Agency: (1) wage increases; (2) improvement of social benefits; (3) more and better housing; (4) hours of work and other working conditions; (5) consultation system on the problems of transfer of personnel; (6) grant of the qualification of tax accountant to employees who had served more than 20 years; (7) respect of trade union rights, etc.[5] In reply the Agency had informed the union that it had no powers to deal with wage increases or hours of work, that the question of social benefits " is not a matter of negotiation between our administration and the employees' union " and that it had no intention of discussing transfer questions with the union.[6] Every year, the witness said, 30 per cent. of the employees of the Tax Administration Agency were transferred to distant places with no regard to the wishes of those concerned, in most cases houses were not guaranteed, and because of this and children's education needs families had to split up and experienced a lower standard of living; yet the Agency refused all consultation on the matter on the ground that this would be " an interference with administrative business ".[7]

[1] Doc. No. 95, p. 49.
[2] Ibid., p. 48.
[3] Ibid., p. 9.
[4] Ibid., pp. 41-48.
[5] *Record of Hearings*, XI/25.
[6] Ibid., XI/25-26.
[7] Ibid XI/26.

1655. In March 1964, the busiest period of the year, said the witness, employees who were seriously ill and needing hospital treatment were forced to work and when they did go to hospital it was too late and at least ten died; yet, he alleged, negotiation on such matters was refused as constituting " interference in policy and administration ".[1]

1656. The Congress of Government Employees' Unions also alleged in its further statement that the periods of negotiation accorded to the All Taxation Offices Employees' Union were severely limited. Negotiations with the Director or Assistant Director of the Agency were said to have taken place only on eight occasions between 6 February 1963 and 26 March 1964.[2] Mr. Fujii, witness for the Congress of Government Employees' Unions, said that negotiations took place only once or twice in three months, for about an hour at a time, making six or seven hours of negotiation in the year.[3] The Kanto-Shinetsu Tax Administration Bureau was said, according to the further statement of the complainants, to have negotiated with the Zenkokuzei Kanto-Shinetsu District Federation on 15 occasions between 1 February 1963 and 7 April 1964, the head of the Bureau, the only person with real authority, being available only on six of such occasions.[4] The complainants stated that the head of Tokyo Tax Administration Bureau negotiated with the Zenkokuzei Tokyo District Federation only three times in 1964, on 18 February, 10 April and 4 June.[5] With regard to refusals by the authorities to negotiate with Zenkokuzei Hokweiku District Federation, the complainants said that that they had made formal application for administrative action to the National Personnel Authority[6]; in the application it was alleged that the head of the Kanazawa Tax Administration Bureau had met the Hokweiku Federation on 13 August 1962 and from then up to July 1963 there had been only two hours of negotiations, all requests for negotiation being turned down on the plea that the competent authorities were too busy with other matters.[7]

9. *Disciplinary Sanctions against Union Members.*

1657. The Congress of Government Employees' Unions alleged that, despite the recommendations made in the 64th Report of the Governing Body Committee on Freedom of Association, many Zenkokuzei members had been punished or arrested.[8]

1658. Mr. Y. Nunami, a full-time officer of the Zenkokuzei Tokyo District Federation, was alleged to have been dismissed on 4 April 1962 for refusing orders to leave Shinagawa Tax Office, where he had been demanding collective negotiations, and Kojimachi Tax Office, where he had been posting notices.[8]

1659. Messrs. S. Iwasaki, T. Hasegawa, M. Fujisawa and M. Kitagaki were subjected to disciplinary sanctions because, according to the complainants, they were accused of leading resistance of tax employees against intensified labour on 27 October 1962.[9] Disciplinary sanctions were also said to have been imposed on Messrs. T. Tega, T. Morimura and Y. Yamada.[10]

[1] *Record of Hearings*, XI/26.
[2] Doc. No. 95, pp. 19-20.
[3] *Record of Hearings*, XI/27.
[4] Doc. No. 95, pp. 22-24.
[5] Ibid., p. 24.
[6] Ibid., pp. 24-25.
[7] Ibid., p. 41.
[8] Ibid., p. 3.
[9] Ibid., pp. 3-4.
[10] Ibid., p. 4.

1660. Mr. T. Furuyama, an official of Zenkokuzei, was indicted on 11 September 1962 for having urged Deliberation Officer Tohyama of the Tax Administration Agency to meet union members in front of the Finance Ministry Building and having resorted to force to press his demand.[1]

1661. On 18 November 1963, Mr. Y. Tanaka, head of Hikone Tax Office, was alleged to have ordered Mr. K. Yamakawa, chairman of the local chapter of Zenkokuzei, to " appear at Hikone police station " as they wanted to know something about the *News of the Local*—a trade union organ which, as part of the activities of Zenkokuzei, had expressed support for certain candidates in the election of the Lower House of the Diet.[2]

B. The Case of the Council of National Public Servicemen's Unions of the Finance Ministry

1662. The Congress of Government Employees' Unions alleged in its further statement that the Council of National Public Servicemen's Unions of the Finance Ministry, with 18,000 members, was registered as an employees' organisation by the National Personnel Authority, on 24 December 1963, but that in spite of registration the Finance Minister had refused negotiation with the union.[3]

C. The Case of the All-Japan Finance Bureau Labour Union (Zenzaimu)

1663. The Congress of Government Employees' Unions alleged that on 10 November 1962 the head of the Shikoku Regional Finance Adjustment Bureau imposed disciplinary sanctions—dismissal, suspension, wage cut or warning—on 17 officials of the Shikoku Headquarters of the All-Japan Finance Bureau Labour Union (Zenzaimu) because of the struggle organised by the union when the Shikoku Bureau conducted efficiency valuation without prior notification to the union, although, according to the complainants, it had been customary practice for the Bureau to negotiate collectively with the union prior to implementation of efficiency valuations. Mr. T. Tomatsuri, chairman of the Shikoku Headquarters of the Union, was one of those dismissed.[4]

D. The Case of the All-Japan Customs Employees' Union (Zenzeikan)

1. *Police Interference with a Union Officer.*

1664. The Congress of Government Employees' Unions alleged that in November 1963 Mr. Yamamoto, administrative inspector of Kawasaki Custom House, repeatedly forced Mr. W. Jeki, an official of the Kawasaki chapter of the Yokohama local of Zenzeikan, to meet with a policeman, saying " you were 'red' once and your name is blacklisted by Suijo police station ".[2]

2. *Transfer of a Union Officer.*

1665. The complainants stated that large-scale personnel changes were made on 1 April 1964 among the 400 employees of Nagasaki Customs Office. An agreement was in operation, said the complainants, according to which no major changes would

[1] Doc. No. 95, p. 4.
[2] Ibid., p. 51.
[3] Ibid., p. 25.
[4] Ibid., pp. 50-51.

be made in the posts of union executive committee members during their term of office, but the authorities made a completely unnecessary transfer of a union official, Mr. Jinnai, to another branch four hours away by train from the Nagasaki office.[1]

3. *Pressure on Members to Leave the Union.*

1666. The complainants alleged that after Mr. Muto became Director of Yokohama Customs House in June 1963 he frequently called meetings of section chiefs and unit heads and told them that officials who were trade union members were not qualified to be supervisors [2]; on 3 August 1963 he was alleged to have called a meeting of 100 fathers and brothers of new employees and to have urged them " to tell your brothers and children not to be misled by the trade union which is counted among the most notorious of labour organisations ".[3]

1667. At the inauguration of a customs staff training course on 26 September 1963 the head of the General Affairs Department was alleged to have said that, when he had worked at Kobe, the president of the union chapter there had been " lording it over ", so the authorities had " fixed " three top-ranking union officials.[4]

1668. At a meeting on 1 October 1963 in the room of the head of the Business Affairs Department of Yokohama Customs House, it was alleged, senior section chiefs decided, on the proposal of Inspector Tomita, to leave the union [5]; 27 withdrew on 12 October; on 15 October deputy inspectors seceded and then went to report the fact to the head of the department.[6] One of these was alleged to have told the union: " Placed between the authorities and the trade union, I have for long been finding my position very awkward. Collective withdrawal this time, however, can be said to have been prompted by the assumption of the post of superintendent by Muto." [7]

1669. From November 1963, said the complainants, section chiefs were made to put pressure on subordinates to leave the union; thus, section chief Ozawa took two subordinates, Messrs. Inoue and Suematsu, to a restaurant, showed them a list of those who had left the union and urged them to do the same, while unit chief Hashimoto was alleged to have said that his superior sent him a present and recommended him to quit the union.[8] On 28 December 1963, it was alleged, the chief of the Foreign Exchange Section told union committeeman Cheba: " There is a plan to raise your salary specially. But the fact that you are a union official is standing in the way. How about resigning the post of union official? ", while union committeeman Sunji was told by his chief that it was disadvantageous to engage in union activities, and a Mr. S. Yamada was urged to leave the union by his unit chief.[9]

1670. In December 1963 and February 1964 various section chiefs, unit chiefs and inspectors, whose names were cited by the complainants, were alleged to have distributed among the employees leaflets entitled *Prospectus on the Secession from*

[1] Doc. No. 95, p. 64.
[2] Ibid., p. 56.
[3] Ibid., pp. 56-57.
[4] Ibid., p. 57.
[5] Ibid., pp. 57-58.
[6] Ibid., p. 58.
[7] Ibid., pp. 58-59.
[8] Ibid., p. 59.
[9] Ibid., p. 60.

the Union: Appeal to All Staffs of Yokohama Customs House; some of them were said to have stated that they were ordered to distribute the leaflets by their superiors, and another said that he distributed them in his " capacity of managing official ".[1] Superintendents of branch offices were alleged to have transported the leaflets in official cars.[2]

1671. At the meeting of the First Sectional Committee of the House of Representatives Budgetary Committee (46th Session of the Diet), a member of the Committee, calling upon State Minister Tanaka to make investigations, was reported to have said: " The fact that an existing union is displeasing cannot justify unfair labour practices. Unfair labour practices are especially rampant at offices concerned with customs business. Directors are taking the lead and are encouraging their subordinates to do so. They are making frantic efforts to destroy the trade union .... It is now just the time when the ratification of the I.L.O. Convention No. 87 is just going to be deliberated on at this Diet session. If things are not rectified, I plan first of all to inform the I.L.O.'s fact-finding team of the issue when it visits this country."[3]

4. *Refusal to Negotiate with the Union.*

1672. When the Yokohama branch of Zenzeikan asked the head of the Yokohama Customs Office to negotiate, in 1962, it was said that negotiation was refused because the headquarters of Zenzeikan had not yet obtained approval of the change in its registration by the National Personnel Authority.[4]

1673. In 1963, said the complainants, the head of Yokohama Customs House unreasonably restricted negotiation with the union to about once in two months, regardless of the urgency and importance of the matters to be negotiated, and the only dates on which there had been any negotiation since 13 October 1963 were 27 December 1963 and 11 February and 13 April 1964.[4] For a part of the time prior to 13 October 1963 the negotiations had been refused because the union wished two members of Zenzeikan's central executive committee to be present.[4]

E. The Case of the Prime Minister's Office Statistics Bureau Employees' Union (Tokei Shokuso)

1. *Interference in Union Elections.*

1674. The Congress of Government Employees' Unions alleged in its further statement that, when Mr. T. Yajima planned to be a candidate in the election of officers of the Prime Minister's Office Statistics Bureau Employees' Union, he was called to the office of Mr. Iwakura, Head of the Research Department, on 15 January 1961, and given to understand that he would be transferred in order to prevent him being a candidate.[5] On 4 March 1961, it was alleged, a Liberal Democratic member of the Diet, Mr. T. Fukuda, sent his secretary to Mr. Yajima's house to persuade him not to stand for election.[5]

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[1] Doc. No. 95, pp. 60-62.
[2] Ibid., p. 61.
[3] Ibid., p. 78.
[4] Ibid., p. 94.
[5] Ibid., p. 65.

2. *Pressure on Members to Leave the Union and Promotion of a Rival Union.*

1675. On 10 September 1963, it was alleged, unit head Masuda of the Economic Tabulation Section coerced a member, Mr. Shibukawa, to leave the union[1], and on 7 December 1963 deputy section chief Tokunaga similarly coerced another member, Mr. Shisido [2]; on 10 December 1963, unit heads Hanazumi and Tamaka urged an employee, Mr. Chiba, to persuade his brother to take no part in union activity.[3]

1676. It was alleged that a pamphlet abusing and slandering the union and intended to make members secede from it was prepared in December 1961, in the name of the Population Tabulation Section Chief of the Statistics Bureau, and distributed to all the members of the union.[4]

1677. As a result of coercion by the authorities, said the complainants, the membership of the union declined from 2,026 in November 1961, to 411 in May 1964, and a " company union " was set up on 21 May 1962.[5]

3. *Refusal to Negotiate with the Union.*

1678. On 9 December 1961, Mr. T. Yajima, chairman of the union, was dismissed from his employment and since then, said the complainants, the authorities had refused to negotiate with the union because it retained him in his office.[6] On 29 October and again on 4 November 1963, it was alleged, the union asked for negotiation on grievances among the workers, but this was refused.[7]

F. The Case of the Federation of Prime Minister's Office Workers' Unions

1679. The Congress of Government Employees' Unions said that on 28 February 1962 the Federation of Prime Minister's Office Workers' Unions was set up by the Statistics Bureau Employees' Union, the Fair Trade Commission Clerical Workers' Union, the Science Council of Japan Clerical Workers' Union and the Pension Bureau Workers' Union, and Mr. T. Yajima, a dismissed employee, was elected chairman of its central executive committee; it applied for registration by the National Personnel Authority on 5 March 1962, but this was refused because its officers included a dismissed employee.[7]

1680. On 12 October 1962, 6 March 1963 and 5 October 1963, it was alleged, the General Affairs Chief of the Prime Minister's Office refused negotiation proposals by the Federation on the ground that it was not registered [7]; and, on 24 March 1964, the Chief of the Secretariat of the Science Council of Japan refused to negotiate for the same reason.[8] The complainants furnished a purported copy of the letter dated 24 March 1964 from the Chief of the Secretariat of the Science Council of Japan to the deputy chairman of the union, containing the words: " We find it difficult to respond to your request (for negotiation) since your organisation is not registered

[1] Doc. No. 95, p. 65.
[2] Ibid., pp. 65-66.
[3] Ibid., p. 66.
[4] Ibid., pp. 80-81.
[5] Ibid., pp. 66-67.
[6] Ibid., p. 91.
[7] Ibid., p. 92.
[8] Ibid., p. 93.

on the National Personnel Authority's list of employees' organisations."[1] These alleged facts were confirmed in evidence by Mr. Fujii, witness for the Congress of Government Employees' Unions.[2]

G. The Case of the All-Japan Justice Workers' Union (Zenshiho)

1681. The Congress of Government Employees' Unions complained that, after an agreement had operated for ten years regarding the posting of union notices by the Gunma local of the All-Japan Justice Workers' Union, the court authorities withdrew various facilities and made the matter subject to many unreasonable restrictions.[3]

H. The Case of the All-Japan State Hospital Employees' Union (Zeniro)

1. *Pressure on Members to Leave the Union and Promotion of a Rival Union.*

1682. The Congress of Government Employees' Unions alleged that on 23 January 1959 Vice-Chief Ohta of the Kan-Shin Medical Bureau tried to force a member of Niigata branch of Zeniro, Y. Nishimaki, to leave the union and join a new splinter organisation which was opposing the union.[4] From April 1963 onwards, said the complainants, the management of Tottori Sanatorium consistently told new staff not to join the union and urged their parents to prevent them doing so.[5]

2. *Interference with a Union Officer.*

1683. In February 1963 the Business Manager of Tottori Sanatorium was alleged to have said that, as long as Mr. Y. Adachi remained the branch union president, he would not help to solve the union's problems, and to have tried to get the office of president transferred to somebody more favourable to the management.[6]

3. *Refusal of Facilities to the Union.*

1684. The complainants alleged that facilities for posting union notices were refused (and some notices torn down), in February and April 1964, to the union's branches at Matsuyama, Asahigawa and Kajiki.[5]

4. *Refusal to Negotiate with the Union.*

1685. Mr. Ohno, head of Fukushima Sanatorium, was alleged to have refused negotiation with the union branch on 9 May 1964, stating that he would not " have anything to do with the union's officers ", while the authorities concerned refused negotiation with the Niigata and Kanto-Shinetsu union branches because of the presence of officers who were dismissed employees.[7] On 18 September 1959 the authorities were alleged to have cancelled unilaterally an agreement providing for negotiation on unjust personnel transfers.[8]

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[1] Doc. No. 95, p. 100.
[2] *Record of Hearings*, XI/23 and 28.
[3] Doc. No. 95, pp. 71, 72, 82 and 83.
[4] Ibid., p. 69.
[5] Ibid., p. 70.
[6] Ibid., pp. 69-70.
[7] Ibid., p. 95.
[8] Ibid., pp. 94-95.

I. The Case of the Education Ministry Field Workers' Union

1686. On 1 April 1964, it was alleged, on the completion of certain repair works, the vice-president, general secretary and vice-secretary of the union were dismissed but all other employees transferred, because they were trade union officials and in breach of an agreement concluded in December 1962.[1]

J. The Case of the All Construction Ministry Workers' Union (Zenkenro)

1. *Interference with Union Meetings.*

1687. When the Shiga local of Zenkenro held a meeting on a construction site on 28 March 1964, the Shiga office of the Construction Ministry was alleged to have caused the police to interfere with the meeting.[2] On 5 September 1963 General Affairs Section Chief Shimizu was alleged to have prevented a meeting of the Yamaguchi branch of the union, because outsiders were present; senior officials prevented officers of the union's regional headquarters and of Nagano state road branch of the union from attending a branch meeting on 8 January 1964 outside working hours.[3]

2. *Pressure on Members to Secede from the Union.*

1688. Chief Sabaki of the Ministry's Tokushima office was alleged to have told members of the union's Awa chapter that " those who want to be transferred to the office should secede from Zenkenro ".[3]

3. *Interference with Trade Union Officers and Members.*

1689. When President Takikaza of Shikoku regional headquarters of Zenkenro visited Kochi branch on an organising mission on 19 and 20 November 1963, he was alleged to have been prevented from entering the office building, as was Mr. Honjo, chairman of the central executive of Zenkenro, when he visited the Chugoku branch on 11 March 1962.[4] At Shiga branch, on 16 June and 1 July 1963, Mr. Taira, member of the union's regional executive committee, was ordered out of the building when he came on an organising mission, although according to the complainants, he was talking with full-time union officers and not interfering with official business; on 1 April 1964, Mr. Tanaka, the regional general secretary, was also ordered out of the premises.[5]

1690. From 15 June to 5 July 1963 and from 30 March to 6 April 1964, three chief officials of the Ministry's Kinki bureau were alleged to have used the services of 300 " specialists in oppressing trade union activities " to watch and beset trade union officials and to picket the building and prevent trade union members from leaving it.[6]

1691. The complainants adduced a purported extract of a Construction Ministry instruction which, in their view, amounted to organised espionage against Zenkento.[1] According to this document the authorities set up a body of " reinforcements " to be sent to any office which called upon them; sketches of office premises were to be

[1] Doc. No. 95, p. 77.
[2] Ibid., p. 52.
[3] Ibid., p. 73.
[4] Ibid., p. 74.
[5] Ibid., p. 76.
[6] Ibid., pp. 76-77.

prepared and every day the movements of persons connected with the headquarters, regional headquarters and branch concerned of Zenkenro and unions friendly to it were to be recorded; a register was to be prepared " to make it possible for those sent for reinforcement to recognise those marked on it and facilitate keeping watch on their movements "; cameras, microphones, tape recorders, telescopes, etc., were to be in readiness; gates were to be barricaded; under the heading of " Matters to be reported without fail to the Construction Bureau " was the item " Movement of leading trade union officials and members (they shall be kept constant watch on) "; the document was accompanied by various forms showing how registers should be kept and watch on union officers and members maintained.[1]

4. *Transfer of Union Officials.*

1692. The complainants alleged that the authorities were transferring union officials to other posts in order to weaken Zenkenro; they gave the names and dates of transfers of eight chairmen or general secretaries of union branches operating under the Kinki regional headquarters of the union [2], and of seven officials of the Shiga branch, including the general secretary, transferred between 1 April 1963 and 1 April 1964.[3] Between 7 June and 31 July 1963, it was alleged, two members of the executive of Kusatsu chapter of the Shiga branch were repeatedly threatened with transfer if they did not resign their union offices and that one of them, Mr. Kise, was in fact transferred.[3]

5. *Refusal to Negotiate with the Union.*

1693. The Congress of Government Employees' Unions state that the Tokushima and Awa branches, and since 26 December 1963 the Kochi branch, of Zenkenro's Shikoku district headquarters had been refused all negotiation because their officials included dismissed employees.[4]

1694. On 31 January 1964 the head of Kakegawa Construction Office was said to have refused to negotiate with the Kakegawa branch of Zenkenro because of the presence of Messrs. Suzuki and Senzawa, members of the executive of the superior union organ, the Tokai district headquarters.[4]

1695. From 1 April 1964 onwards Mr. Nagao, head of Kuwawa Construction Office, was alleged to have refused to permit officers of the union branch to attend negotiations.[4]

1696. The complainants alleged that Zenkenro's Shiga branch had been denied all negotiation since 1 April 1963 because the authorities insisted that such matters as transfer, performance rating, raising of status and salary, guarantee of status, disciplinary measures, etc., fell within the scope of management and that the Construction Ministry made it a rule not to allow any of these items to be subjects of negotiation with the union [5]; thus, negotiation was refused on 24 and 28 March 1964 concerning the transfer of a union secretary and the right to organise and housing and commutation problems and, on 8 May, concerning the dismissal of Mr. Takeda,

[1] Doc. No. 95, pp. 83-90.
[2] Ibid., p. 74.
[3] Ibid., p. 75.
[4] Ibid., p. 96.
[5] Ibid., p. 95.

General Secretary of the Prefectural Trade Union Council.[1] Proposals by the Shikoku district headquarters of the union for negotiation concerning the posting of union notices, the pay of full-time union officers, the use of telephones by the union and the year-end bonus were refused between August and November 1963.[2] On 8 June 1964, Mr. Nagata, assistant personnel chief of the Construction Ministry, was said to have refused to negotiate with Zenkenro concerning the retirement allowance system, wages, bonuses and transfers.[3] On 22 April 1964, it was alleged, Mr. Kobori, chief of the Welfare Section of the Ministry's Kinko Office, refused to negotiate concerning travelling expenses, overtime payment and transfer proposals.[4]

K. The Case of the All Labour Ministry Workers' Union (Zenrodo)

1. *Transfers of Union Officials.*

1697. On 16 July 1963, it was alleged, Administration Section Chief Yoshimoto of Osaka Prefecture Labour Department arranged large-scale transfers of union officials in order to dislocate the Osaka local of Zenrodo.[5]

2. *Interference with Union Meetings.*

1698. It was alleged that members of the Nishi-Nida chapter of the union were ordered to work overtime on a Saturday afternoon, normally a holiday, for the specific purpose of preventing their attending a union rally.[6] Late in the evening of 30 April 1964, said the complainants, the superintendent of the Ministry's Nishi-Osaka Office cancelled permission previously given for employees to take annual leave to attend the union's May Day rally.[7]

3. *Interference with a Union Election.*

1699. The Administration Section Chief of Osaka Prefecture Labour Department was alleged to have interfered with the election of trade union officers by sending to general affairs section chiefs of employment security offices in the Prefecture a notice saying " Let those who are critical of the policy of the present Osaka Employment Security Office branch [of the union] and also those who are planning to run for the election of executive committee members report to superintendents through unit heads and section chiefs ".[8] In the election, said the complainants, only those candidates who were supported by management enjoyed freedom of activity in the election campaign within office premises during working hours, the other candidates having to take leave for their campaign and being obliged to ask permission to use premises for canvassing purposes during rest hours.[9]

4. *Refusal to Negotiate with the Union.*

1700. The complainants alleged that Mr. Yoshimoto, head of the Business Management Section of Osaka Prefecture Labour Office refused to negotiate with the Osaka branch of Zenrodo, on several occasions between 4 March and 10 April 1964,

[1] Doc. No. 95, pp. 95-96.
[2] Ibid., pp. 96-97.
[3] Ibid., p. 97.
[4] Ibid., pp. 97-98.
[5] Ibid., p. 67.
[6] Ibid., p. 68.
[7] Ibid., p. 69.
[8] Ibid., pp. 68-69.

on such problems as overtime work and pay, correction of salary anomalies, treatment of cases of workers who died in office compounds, dismissals without reason, etc.[1] On 12 February 1964 Mr. Yoshimoto was said to have refused to negotiate on a raise in mutual aid premiums, arbitrary dismissals and the need to increase the number of workers, and to have stated " your asking for that kind of demand is the reason why you are accused of being engaged in political struggles ".[1]

II. Statements and Evidence of the Government

1701. In its comments on the further statement of the Congress of Government Employees' Unions the Government said that all disciplinary measures against members of unions affiliated to the Congress had been occasioned by their own unlawful acts[2], a statement which was confirmed in evidence by the Chief of the Public Service System Planning Room in the Prime Minister's Office. This witness denied that supervisors had engaged in unfair labour practice or coerced members to leave their unions and that, while some of the affiliates of the complainants had suffered substantial losses of membership, the Government considered this to be due only to reflection on the part of union members and to their independent judgment of the unions' " radical platform and illegal activities ".[2]

A. The Case of the All Taxation Offices Employees' Union (Zenkokuzei)

1702. The Government prefaced its replies to the different allegations made by a number of general observations concerning the All Taxation Offices Employees' Union (Zenkokuzei).

1703. The National Tax Administration Agency was an external organ of the Finance Ministry and had 50,000 employees; it had 11 tax administration bureaux and 506 tax offices throughout the country.[3] Zenkokuzei had its headquarters in Tokyo and local federations and sub-branches corresponding to the Agency's bureaux and tax offices; in April 1964 it had only 4,500 members—there were other and larger organisations of tax employees, the main one being the National Tax Office Labour Union's National Conference (Kokuzei-Kaigi), with 15,000 members.[4]

1704. Zenkokuzei had been a radical organisation, said the Government, ever since its formation in 1954, and based its policy on class struggles and opposition to tax administration; its " general principles ", issued in 1958, accused the Government and the capitalists of imposing low wages and heavy labour and proclaimed: " Fight against the taxation policy based on mass looting and join the nation-wide struggle and fight against heavy taxation." [5] Since then, said the Government, Zenkokuzei regarded every supervisory employee as an enemy and followed the policy of " on-the-spot non-obedience struggle ", featured by disclosure of confidential matters, interference with official duty, rallies during working hours, resisting overtime, and the like; when disciplinary measures were imposed the union resorted to violence.[6]

[1] Doc. No. 95, p. 93.
[2] Doc. No. 105, p. 45.
[3] Ibid., pp. 1-2.
[4] Ibid., p. 2.
[5] Ibid., p. 3.
[6] Ibid., p. 4.

The Government accused the union of being linked with outside bodies which opposed tax administration, such as the Democratic Commerce-Industry Association, the Musicians' and Actors' Conferences and the Taxation System Study Movement.[1] The Government contended that the authorities had tried to maintain normal relations with Zenkokuzei, but that its unlawful activities and false propaganda reached such a point that they could not passively overlook them and took action in accordance with the laws and regulations.[2]

1705. In support of its foregoing observations the Government adduced purported extracts from Zenkokuzei's " Planned Activities for 1958 " (12th Regular Convention, 25-29 July 1958). This document lays down the principle of " organisation of work-post struggle " as being " the class struggle against the monopoly at the work-post " and, with regard to the formulation of demands, called for them to be presented in such a way as to show that the members were to fight at the work-posts against the " occupational hierarchy ".[3] Among the tactics to be followed in support of unified demands were " non-obedience action " and " mute tactics " and " demonstration tactics against the occupational hierarchy ", to show that the members were firmly united to fight collectively.[4] The document stated that union action must be concentrated and strengthened, and that local actions must be co-ordinated under the union's central command, and contained detailed definitions of the ways in which action should be co-ordinated and of the responsibilities of the different regional and local organisations and cells.[5]

1706. A purported excerpt from a document entitled " 16th Regular Conference Bills of Zenkokuzei " (10-13 August 1960) set forth the " Lessons from the Security Treaty Struggle ", described as the major struggle of the union in 1959 and pushed by " Sohyo, the Socialist party and the Communist party ".[6] Under the heading of " Future Prospect for Our Struggle " the document criticised " American imperialism and its allies, Japan's capitalists and Government ", proclaimed the uselessness of resisting progress to peaceful coexistence and called for national unity against the Government's pro-American policy and in favour of independence, peace, neutralism, democracy and advancement in the people's daily life.[7]

1707. The above general comments were referred to more briefly in the evidence of the Counsellor of the Directors' Secretariat of the National Tax Administration Agency.[8]

1708. With regard to the alleged admission [9] by the Director of the Agency that infringements of trade union rights had occurred, the Government stated that, far from making such admission, he had made it clear that there had been no unfair labour practices.[10] The Counsellor of the Directors' Secretariat of the National Tax Administration Agency denied in evidence that the Director had ever made the statement attributed to him.[11]

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[1] Doc. No. 105, pp. 5-6.
[2] Ibid., pp. 9-10.
[3] Ibid., pp. 159-160.
[4] Ibid., p. 163.
[5] Ibid., pp. 164-167.
[6] Ibid., p. 168.
[7] Ibid., pp. 169-170.
[8] *Record of Hearings*, XXVII/13-14.
[9] See para. 1611 above.
[10] Doc. No. 105, p. 17.
[11] *Record of Hearings*, XXVII/21.

1709. The Government also denied that Deliberation Officer Tohyama [1] had acted against the union or that he had stressed the importance of forming a second union to Mr. Kodama of the Takamatsu Tax Office; the latter had referred to the employees' organisation at a time when it had circulated a groundless rumour that 15,000 persons were to be discharged.[2]

1710. The Government maintained that Zenkokuzei's loss of membership was due to its " struggle policy "; when it changed from a federation to a union in 1958 its membership dropped at once from 30,000 to 19,000; some new unions were formed and some existing ones disaffiliated, and Zenkokuzei's continued " struggle against occupational hierarchy " and " non-obedience struggle " caused senior employees to leave it.[3] In its " General Principles for 1963 ", said the Government, Zenkokuzei gave prominence to " abrogation of the Japanese-American Security Pact, anti-reactionary legislation, democratisation of education, anti-Japan-Korean negotiation, anti-visit of nuclear submarine ", etc., and its general policy resulted in members withdrawing on a nation-wide scale and forming new unions, developments which were in no way due to any acts on the part of the authorities.[4] Kokuzei-Kaigi, formed in 1962 and now having 15,000 members, said the Government, was interested in the economic interests of its members, kept out of politics and was expanding.[5] The same reasons for the decline in the membership of Zenkokuzei were given in evidence by the Counsellor of the Director's Secretariat of the National Tax Administration Agency [6]; he said that in the spring of 1962 the union still had 18,000 members, but that this had dropped to 11,000 by the spring of 1963 and to about 5,000 by the spring of 1964.[7]

1. *Attacks on the Union in Publications and Official Documents.*

1711. The Government denied that any publications slandered Zenkokuzei and said that the *News of the General Affairs Department* referred to by the complainants [8] never existed.[9]

1712. With regard to the document said to have been issued by the Tax Administration Agency on 12 March 1956[10] the Government stated that no such document had been published.[11]

2. *Pressure on Members to Leave the Union.*

1713. In its comments the Government denied that part of the authorities " backed by their authority " ever pressed members to leave the union but said that " it is considered proper for the supervising personnel in their official responsibility to express their opinions as to the justifiability of union activities " which are concerned with maintaining law and order and to " conduct an analytical study of the

[1] See para. 1612 above.
[2] Doc. No. 105, pp. 17-18.
[3] Ibid., pp. 6-7.
[4] Ibid., pp. 7-8.
[5] Ibid., p. 8.
[6] *Record of Hearings*, XXVII/14.
[7] Ibid., XXVII/22.
[8] See para. 1614 above.
[9] Doc. No. 105, p. 23.
[10] See para. 1615 above.
[11] Doc. No. 105, p. 24.

trend of the labour movement "[1]; moreover, as Zenkokuzei's constitution admitted to membership supervisory personnel, with few exceptions, supervisors, including those who had left the union, could " give critical views on the actions committed by the union in excess but these cannot be conclusively determined as the word and action of the supervisory personnel "[2], and the instances cited by the complainants as unfair labour practices by the authorities were " based on erroneous assumptions or misunderstandings ".[3]

1714. On this point the Counsellor of the Director's Secretariat of the National Tax Administration Agency said in his opening statement that it was natural that " the managerial staff, in the execution of their official duties ", should point out the illegality of certain union activities or that they " should make assessments of the labour situation " and, as most of these were qualified to join the union, there were cases where " their behaviour towards the union could not be considered uniformly as that of the managerial staff ".[4] Hence, he said, the allegations of unfair labour practices involved " misunderstandings and misconceptions of the facts due to this dual position of some of the managerial staff ".[4]

1715. The Commission questioned the witness on allegations made earlier in the case, by the General Council of Trade Unions of Japan, that the members of three regional organisations, of Zenkokuzei—those of Kanto-Shinetsu, Shikoku and Hokuriku—had been so coerced that their memberships had dropped respectively from 4,800 to 800, from 1,200 to 300, and from 900 to 200.[4] The witness replied that he did not know the exact figures but knew that there had been a considerable decline; he attributed this to the misguided policies of Zenkokuzei.[5] He informed the Commission that in the Kanto district 3,700 employees formed a new union on 1 August 1964 and negotiated with the authority, that 200 Hokuriku employees had formed a new union, and that 1,800 Osaka employees had formed a union and maintained contact with the authority.[6]

1716. The Government referred in its comments to the specific cases alleged by the Congress of Government Employees' Unions.[7]

1717. In reply to the allegations that a Mrs. Otaka and a Mrs. Pairo had been coerced to leave the union's Niigata branch in the spring of 1964, the Government said that a Mrs. Sakai and a Mrs. Minagawa joined a splinter union in September 1963.[8] Mr. Utsue and six others, out of its total of nine members, left the Nakanojo union branch not through coercion but because they disapproved of Zenkokuzei's ties with the Democratic Association of Commerce and Industry, an anti-taxation body.[9]

1718. With regard to the case of Miss Igarashi[10] the Government said that she did consult a managerial official on personal matters but that he did not press her to leave the union.[11]

[1] Doc. No. 105, p. 12.
[2] Ibid., pp. 12-13.
[3] Ibid., p. 13.
[4] *Record of Hearings*, XXVII/15.
[5] Ibid., XXVII/18-19.
[6] Ibid., XXVII/19.
[7] See paras. 1617-1625 above.
[8] Doc. No. 105, p. 25.
[9] Ibid., p. 26.
[10] See para. 1619 above.
[11] Doc. No. 105, p. 29.

1719. Concerning the Otsu case[1], the Government said that no recommendation to leave the union was ever made by Mr. Hayashi, Head of the Otsu Tax Office, and that no coercion was exercised against the union member Mr. Yasuda.[2]

1720. The Government said that Mr. Murata, of Kusatsu tax office, did visit Mr. Fujisawa[3], but that what happened was that, in reply to a direct question, Mr. Murata said that his daughter did not have to belong to the union but could do as she wished.[4]

1721. According to the Government the incidents alleged to have taken place at Minakuchi and Omihachiman Tax Offices[5] never took place at all[6]; the head of Muroran Office[7] engaged in a conversation concerning the marriage of the female employee concerned but did not recommend withdrawal from Zenkokuzei[6]; the alleged threats[8] to a union official, Mr. Izawa, were never made.[9]

3. *Transfers of Union Officers.*

1722. Owing to the number of retirements every year and also to the creation of new posts, said the Government, periodic large-scale transfers were necessary[10]; although consideration was given to personal wishes, official requirements did not always make it possible to meet them, but in no case were union officials treated differently from other employees.[11] The same points were made in evidence by the Counsellor of the Director's Secretariat of the National Tax Administration Agency.[12]

1723. In its comments on the further statement of the Congress of Government Employees' Unions the Government referred to the specific cases cited by the complainants. With regard to the case of Mr. K. Ohsone[13] the Government stated that on average positions were changed once every five years and, after over eight years at Mito Office, he was moved to fill a vacancy at Tsuchuira, within reasonable reach of his home; it was two months after the transfer, said the Government, that he changed his residence for his own reasons and so made his commutation more difficult, but on 22 July 1964 he was transferred to the office he preferred.[14] The Government denied that his chief ever told him that reinstatement would be easier if he were not a union member, and said that the retransfers of 98 other employees were not readjustments because they had grievances.[15]

1724. With regard to the other cases in Kanto-Shinetsu district[16] the Government said that the persons concerned were transferred from offices where they had worked

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[1] See para. 1620 above.
[2] Doc. No. 105, p. 31.
[3] See para. 1621 above.
[4] Doc. No. 105, pp. 31-32.
[5] See paras. 1622 and 1623 above.
[6] Doc. No. 105, p. 32.
[7] See para. 1624 above.
[8] See para. 1625 above.
[9] Doc. No. 105, p. 28.
[10] Ibid., pp. 13-14.
[11] Ibid., p. 14.
[12] *Record of Hearings*, XXVII/15.
[13] See para. 1626 above.
[14] Doc. No. 105, pp. 33-34.
[15] Ibid., p. 34.
[16] See para. 1627 above.

for from six to ten years to fill vacancies at offices within commuting distance of their homes.[1]

4. *Discrimination in Employment against Union Members.*

1725. The Government denied discrimination against union members in respect of promotion or pay increases[2], as, in evidence, did the Counsellor of the Director's Secretariat of the National Tax Administration Agency.[3]

1726. Mr. Yano (not Mr. Amano)[4], said the Government, was refused promotion because his service was bad[5], and, for the same reason, Mr. Ezumi (not Mr. Enami)[6], was refused his periodic pay raise according to law.[7]

5. *Miscellaneous Alleged Unfair Labour Practices.*

1727. The Government stated that the document concerning recreational activities referred to by the complainants[8] was not issued with the intention of hindering union activities[9], and denied[9] that the document alleged[10] to have been put out concerning ski training was ever issued at all. The Government argued[11] that Osaka Tax Bureau organised a culture course on 8 and 9 May 1964 and a party on 10 May, but denied all the other contentions of the complainant in this connection.[12]

1728. The applications for annual leave to perform union business made by Messrs. Fujiwara and Kawasaki[13] were refused, said the Government, because of pressure of official duties, while the applications at Fukigawa Office were refused because granting them would have left only one person on duty, the senior officials being away on official business.[14]

1729. The document alleged[15] to have been officially issued in respect of Zenkokuzei's fund campaign was, said the Government, not issued at all.[9]

6. *Promotion of Rival Unions by the Authorities.*

1730. The Government denied in its comments on the further statement of the Congress of Government Employees' Unions that the taxation authorities had ever promoted the formation of new unions in rivalry with Zenkokuzei, and said that withdrawals from that union and the establishment of splinter unions had in all cases been effected voluntarily by members who were dissatisfied with Zenkokuzei's policies.[16]

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[1] Doc. No. 105, p. 34.
[2] Ibid., p. 14.
[3] *Record of Hearings*, XXVII/15-16.
[4] See para. 1628 above.
[5] Doc. No. 105, pp. 34-35.
[6] See para. 1629 above.
[7] Doc. No. 105, p. 35.
[8] See para. 1631 above.
[9] Doc. No. 105, p. 25.
[10] See para.. 1632 above.
[11] Doc. No. 105, p. 30.
[12] See para. 1633 above.
[13] See para. 1635 above.
[14] Doc. No. 105, pp. 35-36.
[15] See para. 1636 above.
[16] Doc. No. 105, pp. 17-18.

1731. Mr. Kadama, unit chief of Takamatsu Tax Office, said the Government [1], had never referred to the formation of a new union, as alleged [2], and there was no truth in the allegations [3] concerning unfair labour practices within the jurisdiction of the Sapporo Tax Administration Bureau, and Mr. T. Shimamoto had been orally informed to this effect, on 13 and 15 May 1963, by the National Tax Administration Agency.[4]

1732. With regard to the Tohoku case [5] the Government said that the Zenkokuzei Tohoku National Tax Employees' Union had been enjoying facilities needed by a union with 3,000 members; by January 1964 its membership was only 480 because of the formation of a new union which, by that time, had 2,200 members; the authorities therefore asked Zenkokuzei to allot part of its office space to the new union and, when it refused, permitted the new union to have another office.[6]

1733. The Government denied [7] the occurrence of the incidents alleged in respect of Otsu Tax Office, Mimakuchi Tax Office and Fukui Tax Office.[8]

7. *Creation of Supervisory Posts to Weaken the Union.*

1734. The Government agreed that the number of managerial officials had increased, owing to requirements of taxation business, but said that, as they could organise as they wished, this entailed no infringement of freedom of association.[9]

1735. The Counsellor of the Director's Secretariat of the National Tax Administration Agency was asked by the Commission whether the 55 per cent. of the employees referred to by the complainants as " action officers " or " quasi-action officers " would be designated supervisory and managerial employees whom the Bill to amend the National Public Service Law would require to form a separate union.[10] The witness explained that this was not quite the case and that some of those referred to as " quasi-action officers " might not be so designated and that also some of those now classified as "action officers" might not be joining the supervisory employees' organisation after the Bill was enacted.[11]

8. *Collective Negotiation with the Union.*

1736. The same witness informed the Commission that, during the period 25 December 1958 to 31 August 1959, when Zenkokuzei had not been registered, the National Tax Administration Agency had not held any negotiations with it.[12]

1737. With regard to the case of Mr. Kaneko [13] the Government said that he could not speak at the negotiation table because, being a dismissed employee, he could not be regarded as a legal union representative.[14]

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[1] Doc. No. 105, p. 18.
[2] See para. 1639 above.
[3] See para. 1640 above.
[4] Doc. No. 105, p. 24.
[5] See para. 1642 above.
[6] Doc. No. 105, p. 29.
[7] Ibid., pp. 31-32.
[8] See paras. 1643 to 1645 above.
[9] Doc. No. 105, pp. 21-22.
[10] *Record of Hearings*, XXVII/20.
[11] Ibid.. XXVII/20-21.
[12] Ibid., XXVII/18.
[13] See para. 1648 above.
[14] Doc. No. 105, p. 26.

1738. With regard to the allegation [1] that the authorities refused to negotiate on the question of transfers the Government declared that the scale and date of the annual transfer plans were made clear in the course of negotiation meetings or at another appropriate time.[2] The Commission asked the Counsellor of the Director's Secretariat of the National Tax Administration Agency whether negotiation took place with the union in connection with the considerable transfers which were effected between June and August every year.[3] The witness replied that " the issue of a transfer of personnel order is not a subject of negotiation, but negotiation on personnel transfers in general takes place once a month between June and August. " [4] With regard to the allegations that in 1962 Zenkokuzei asked for consultation on problems of transfer of personnel and that the Tax Administration Agency replied that it alone had authority to decide on transfer of personnel and had no intention of discussing this with the union, the witness said that he did not think these allegations were correct, but repeated that " the issue of an individual transfer order is not a subject of negotiation. " [4]

1739. In its comments, the Government said that the National Personnel Authority had stated that whether or not to negotiate on individual transfers was a matter for the discretion of the proper authorities where the matter did not fall within section 98-2 of the N.P.S. Law, but that negotiation would be held if the matter concerned the working conditions of organised employees.[5]

1740. With regard to the Tomioka case [6] the Government stated that the union had asked for negotiation on issues which the chief of the tax office concerned had no power to discuss, such as basic pay raises, peace and independence, personnel administration within the powers of the national authority, etc.[7]

1741. With regard to the authorities' alleged refusal [8] to negotiate with Zenkokuzei in March 1964, the Government said that the matters proposed for negotiation by the union either did not fall within section 98-2 of the N.P.S. Law, or were not matters within the control of the authority concerned.[9]

1742. Concerning the frequency of and time allotted to negotiation the Government pointed out that Zenkokuzei was only one of several tax employees' organisations which wanted negotiation.[10] Between 28 February 1963 and 14 August 1964, said the Government, the Director of the Agency had negotiated ten times, and the Deputy Director once, with Zenkokuzei [11]; between 11 April 1963 and 29 June 1964 the authorities of Kanto-Shinetsu Bureau had negotiated seven times with Zenkokuzei and also with the Federation of Tax Employees' Unions, to which many employees belonged. Apart from direct negotiation, written answers had been given in several cases; between February 1963 and April 1964 only eight requests for negotiation had been made.[12]

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[1] See para. 1651 above.
[2] Doc. No. 105, p. 33.
[3] *Record of Hearings*, XXVII/19.
[4] Ibid., XXVII/20.
[5] Doc. No. 105, pp. 43-44.
[6] See para. 1653 above.
[7] Doc. No. 105, pp. 27-28.
[8] See para. 1655 above.
[9] Doc. No. 105, pp. 42-43.
[10] Ibid., p. 15.
[11] Ibid., p. 37.
[12] Ibid., pp. 38-39.

1743. The Counsellor of the Director's Secretariat of the National Tax Administration Agency informed the Commission that between January and December 1963 the Agency negotiated seven times with Zenkokuzei itself and twice with the union's chapter at the Agency's headquarters, the interviews lasting on average one hour and eight minutes.[1]

1744. The Government said in its comments that the Tokyo Tax Bureau had accepted without exception all the proposals for negotiation made by the Tokyo District Federation of Zenkokuzei [2], while the Kanazawa Bureau had negotiated eight times with the Hokuriku Federation between 13 August 1962 and 20 November 1963.[3]

9. *Disciplinary Sanctions against Union Members.*

1745. All the disciplinary sanctions imposed on union members, said the Government, were due to acts contrary to the N.P.S. Law and in no way related to lawful union activities.[4] The Counsellor of the Directors' Secretariat of the National Tax Administration Agency referred to acts such as neglect of duty, disturbing official duties or disobedience to orders.[5]

1746. The Government said that Mr. Nunami [6] was punished for repeated acts of violence and disturbance of employees during working hours [7]; Mr. Iwasaki and Mr. Tega [8] for refusing to go on an official duty trip [9]; Messrs. Hasegawa, Fujisawa, Kitagaki, Morimura and Yamada [8] for disturbing the workplace, refusing to go on official trips or leaving their duties.[10] Mr. Furuyama [11] was indicted and found guilty of violence punishable under section 208 of the Criminal Law.[12] The principal of Mr. Yamakawa [13], said the Government, passed on to him a message from the police but did not give him any " functional order " to see the police.[14]

B. The Case of the Council of National Public Servicemen's Unions of the Finance Ministry

1747. The Ministry of Finance consisted of several bureaux and sections, with affiliated external agencies, all of which had their respective employee organisations which negotiated with the respective chiefs concerned, while anything not resolved by this method was dealt with in the negotiations held four times a year between the Minister and the Council of All Finance Ministry Workers' Unions.[15] At the end of 1963 some of these unions registered a Council of National Public Servicemen's

[1] *Record of Hearings*, XXVII/19.
[2] Doc. No. 105, p. 39.
[3] Ibid., p. 40.
[4] Ibid., pp. 11 and 171-175.
[5] *Record of Hearings*, XXVII/15.
[6] See para. 1658 above.
[7] Doc. No. 105, p. 18.
[8] See para. 1659 above.
[9] Doc. No. 105, p. 19.
[10] Ibid., pp. 19-20.
[11] See para. 1660 above.
[12] Doc. No. 105, p. 20.
[13] See para. 1661 above.
[14] Doc. No. 105, p. 47.
[15] Ibid., p. 41.

Unions; when it asked for negotiation in January 1964, the authorities refused in view of the above established practice, but asked if any problems needed an interview with the Minister; subsequently, the authorities told the Council that if it negotiated first at government or bureau or section level the Minister would see its representatives concerning matters still outstanding afterwards, but the Council did not accept this.[1]

C. The Case of the All-Japan Finance Bureau Labour Union (Zenzaimu)

1748. Fifteen officials of the Shikoku headquarters of this union, not 17 as alleged [2], were punished by their chief for obstructive and illegal acts when the work performance evaluation system was put in force in 1962; proceedings arising out of this case were pending before the Takamatsu District Court and the Equity Commission of the National Personnel Authority.[3]

D. The Case of the All-Japan Customs Employees' Union (Zenzeikan)

1. *Police Interference with a Union Officer.*

1749. Messrs. Yamamoto and Seki [4] were mutual friends, said the Government, and, although they had talked about the subject alleged, this was no concern of the authorities.[5]

2. *Transfer of a Union Officer.*

1750. It was correct that, on the occasion mentioned by the complainants [6], 74 persons, including an officer of Zenzeikan's Nagasaki branch, had their positions changed, but the Government denied that any agreement existed which placed union officers in a special position in this regard or that the transfer of the officer concerned was unnecessary or discriminatory.[7]

3. *Pressure on Members to Leave the Union.*

1751. Originally, said the Government, nearly 100 per cent. of the eligible customs-house employees were members of the union, but about the time of the 1960 struggle against the United States-Japan Security Pact the Kobe branch of the union began to direct strife by radical measures and unlawful acts in terms of the N.P.S. Law, and criticism by members was followed by a mass withdrawal in 1962; some of these members formed a new Kobe union in March 1963 which became larger than the Kobe branch of Zenzeikan.[8]

1752. Similarly, said the Government, members of the Yokohama branch withdrew because of the political trend and disorderly acts of the union in September 1963, such as broadcasts " against inspection on the spot " during office hours, abuse of senior personnel, etc.[9] It was true, said the Government, that when members were leaving the Yokohama branch " some personnel holding responsible positions offered positive criticisms of the union, but they were personnel who had been sub-

[1] Doc. No. 105, p. 42.
[2] See para. 1663 above.
[3] Doc. No. 105, pp. 45-46.
[4] See para. 1664 above.
[5] Doc. No. 105, p. 47.
[6] See para. 1665 above.
[7] Doc. No. 105, p. 63.
[8] Ibid., p. 50.
[9] Ibid., p. 51.

jected to persistent questioning directed by union leaders and their criticisms are considered to have been hazarded from the standpoint of union members and of the criticisers' own free will, for the purposes of persuading their colleagues or giving them guidance. The authorities, therefore, had no concern whatsoever about their acts. " [1]

1753. Mr. Muto became Yokohama Customs Superintendent on 1 June 1963 but the Government denied that he ever made the anti-union remarks alleged [2] in June and August 1963.[3] When he inaugurated the training course in September 1963 [4] the head of the General Affairs Department said: " On account of their illegal acts, the leaders of the former union in the Tax Administration Agency were dismissed, and a new union was organised. Later no illegal acts were resorted to. There was a similar case in Kobe customs house, where three union leaders were subjected to punishment, and illegal acts ceased to occur. It is quite embarrassing if order in the workshop is disturbed and no important business can be entrusted to it for disposal. I hope you will mind that no illegal acts should be performed "—words which the Government considered it natural for an administrative official to use.[5]

1754. The Government said that the allegations [6] concerning what took place at a meeting of senior section chiefs on 1 October 1963 were groundless, and that the withdrawals from the union were voluntary acts by those concerned, in which the authorities had no part.[7] The Government also denied [8] the acts and words attributed by the complainants [9] to Mr. Ozawa and Mr. Hashimoto and pressure claimed to have been put upon Mr. Chiba and Mr. Gunji. In his opening statement the Counsellor of the Director's Secretariat of the National Tax Administration Agency said that the chief clerk who was supposed to have urged Mr. Gunji to leave the union neither knew Mr. Gunji nor worked in the same place, that there was no truth in a claim that the Chief of the Exchange Section urged one of his clerks to withdraw and that the clerks concerned had protested to the complainants against their names having been used in the further statement.[10]

1755. The *Appeal to All Employees of Yokohama—Reasons for the Withdrawal* (and not *Prospectus on the Secession from the Union* [11]), said the Government, was distributed by critical members of the union of their own free will and " there is no fact to prove that the handbills were prepared by the authorities " [12], nor was it proven that the authorities permitted their distribution during working hours.[13]

4. *Refusal to Negotiate with the Union.*

1756. The Government denied that negotiation had ever been refused to the union and gave 42 dates in 1962 on which it said negotiations had taken place with either the Customs Department or the Chief of the General Affairs Department.[14]

[1] Doc. No. 105, pp. 51-52.
[2] See para. 1666 above.
[3] Doc. No. 105, p. 53.
[4] See para. 1667 above.
[5] Doc. No. 105, pp. 53-54.
[6] See para. 1668 above.
[7] Doc. No. 105, pp. 55-56.
[8] Ibid., p. 56.
[9] See para. 1669 above.
[10] *Record of Hearings*, XXVII/16-17.
[11] See para. 1670 above.
[12] Doc. No. 105, p. 59.
[13] Ibid., p. 60.
[14] Ibid., pp. 121-124.

1757. It was customary for the Superintendent to negotiate only with officials of the Yokohama branch and when it was known that two central executive committee members were to attend negotiations on 14 October 1962, said the Government, the Superintendent stated that the matter would have to be studied but was then told that these two persons would not attend and accepted the request for the meeting.[1]

E. The Case of the Prime Minister's Office Statistics Bureau Employees' Union (Tokei Shokuso)

1. *Interference in Union Elections.*

1758. In January 1961 consideration was being given to the transfer of Mr. T. Yajima [2], because of his special qualifications, to a post in the Special Areas Liaison Bureau, and the Director concerned sounded him on the matter without knowing, said the Government, that he intended to be a candidate for union office, but Mr. Yajima rejected the proposal, which would have been to his benefit.[3] The reason why Mr. Fukuda, a member of the Diet, sent his secretary to Mr. Yajima was to tell him that to take up union office might make him neglect his duty and miss a chance important to his future; this, said the Government, was done purely out of personal friendship, because Mr. Yajima had entered the Statistics Bureau on the personal introduction of Mr. Fukuda, who had stood surety for him during his service.[4]

2. *Pressure on Members to Leave the Union and Promotion of a Rival Union.*

1759. The Government denied [5] that Mr. Masuda ever urged Mr. Shibukawa to leave the union as alleged.[6] With regard to the case of Mr. Shishido [6], the Government said that this member of the union asked for a transfer and saw his chief, Mr. Tokunaga, and, while agreeing that they talked about the union, the Government said that no coercion as alleged was exercised.[7] Mr. Hanazumi, said the Government [8], spoke to Mr. Chiba to ask him to give some necessary moral advice to his sister, an employee, and did not tell him to ask his brother to refrain from union activities, as alleged.[9]

1760. The Government agreed that a pamphlet [10] was prepared and distributed in December 1961, but only to employees of the Population Tabulation Section, and said that it was intended to give guidance against unlawful acts in connection with union activities and not to criticise or slander the union.[11] The Government said that for some time the union had been holding meetings during working hours, which had led to disciplinary sanctions, following which the union's acts had consistently interfered with the work.[12] Therefore, the head of the Population Tabulation Section drew up his pamphlet, which outlined the duties of civil servants, especially for the guidance of young female personnel, and drew attention to the legal definitions of

[1] Doc. No. 105, p. 124.
[2] See para. 1674 above.
[3] Doc. No. 105, pp. 64-65.
[4] Ibid., pp. 65-66.
[5] Ibid., p. 69.
[6] See para. 1675 above.
[7] Doc. No. 105, pp. 69-70.
[8] Ibid., pp. 70-71.
[9] See para. 1675 above.
[10] See para. 1676 above.
[11] Doc. No. 105, p. 72.
[12] Ibid., pp. 72-74.

unlawful acts of dispute and of union rights and activities.[1] The pamphlet did accuse the union of irresponsibly making false propaganda and slandering authority, and the concluding part of it contained the words: " . . . the employees' union may be able to attain its objectives only when it will undertake its activities in a legal way." [2]

1761. The Chief of the Public Service System Planning Room in the Prime Minister's Office denied in evidence that the authorities had ever tried to persuade members to withdraw from the union.[3] He said that the fact that its membership fell from 1,201 in June 1961 to 321 in December 1962 was " due to the voluntary judgment on the part of union members in criticising the union's excessive activities and planning of these activities," including its propaganda during working hours, which hampered the performance of official duties.[3] The witness said that those who withdrew from the union formed a new union, the Trade Union of the Statistical Bureau [4]; both this and the old union were registered and could negotiate.[5]

3. *Refusal to Negotiate with the Union.*

1762. In its comments on the further statement of the Congress of Government Employees' Unions the Government stated that no formal negotiations were held with the Statistics Bureau Employees' Union between 9 December 1961 and 25 June 1962 because its president, Mr. Yajima, who was a dismissed employee, signed the requests to negotiate and the union demanded that he should attend negotiations[6], although negotiations on welfare questions were held during that period.[7] Since 25 June 1962 there had been negotiation because requests had been made by officers who were office employees.[7]

F. The Case of the Federation of Prime Minister's Office Workers' Unions

1763. The application for registration by this Federation was rejected because the officers included non-employees and particulars required by Rule No. 14-2 of the National Personnel Authority were not given; negotiation was rejected because it was not registered and because its representative was not an employee.[8] The reason for the rejection of negotiation on 19 March 1964 by the Science Council of Japan was that the Federation asked to negotiate on a matter which was already under discussion with the employees' union for the secretariat of the Science Council; the Government stated that the " Federation was an unregistered organisation and in such a situation the authorities were not in a position that they had to respond to the application for a negotiation ".[9]

G. The Case of the All-Japan Justice Workers' Union (Zenshiho)

1764. The Government furnished detailed comments to show that the restriction placed on the posting of union notices was due to the fact that it had become necessary

[1] Doc. No. 105, pp. 75-77.
[2] Ibid., pp. 77-80.
[3] *Record of Hearings*, XXVII/1.
[4] Ibid., XXVII/1-2.
[5] Ibid., XXVII/2.
[6] Doc. No. 105, p. 115.
[7] Ibid., p. 116.
[8] Ibid., pp. 116-117.
[9] Ibid., p. 117.

to regulate the posting of such notices on court premises because they had been posted in unauthorised places and had sometimes been of such a kind as to cause public misgivings as to the impartiality of the courts.[1]

H. The Case of the All-Japan State Hospital Employees' Union (Zeniro)

1. *Pressure on Members to Leave the Union and Promotion of a Rival Union.*

1765. The Government denied [2] that the events alleged [3] in respect of the Kan-Shin Medical Bureau and Tottori Sanatorium ever took place.

2. *Interference with a Union Officer.*

1766. The Government categorically denied [4] the allegations [5] in respect of Mr. Adachi, President of the Tottori branch of Zeniro.

3. *Refusal of Facilities to the Union.*

1767. In the case of union notices posted at Matsuyama, Asahigawa and Kajiki [6] bulletin boards had been placed at the disposal of the union branches but the latter had also put up notices in unauthorised places all over the hospital buildings.[7]

4. *Refusal to Negotiate with the Union.*

1768. The Government stated that the reason for an "agreement" with the union's Niigata branch being cancelled on 18 September 1959 was that it had been obtained on 9 September under duress, after the Chief of the Sanatorium had been held forcibly in a room for eight hours by some 80 members of the union.[8] The allegation [9] relating to Fukushima branch was formally denied.[9] In the cases of Niigata and Kanto-Shinetsu the authorities refused to recognise one of the union officials as a negotiator because he was a dismissed employee.[10]

I. The Case of the Education Ministry Field Workers' Union

1769. The Government stated that when the repair works referred to by the complainants [11] were finished the authorities tried to transfer the employees to other work but that there were three more than the total number required; three had to be dismissed and those with the poorest records were chosen but, said the Government, the fact that these were union officials "had not been considered whatsoever", and the Government denied the existence of any agreement not to dismiss union officers.[12]

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[1] Doc. No. 105, pp. 94-101.
[2] Ibid., pp. 86-88.
[3] See para. 1682 above.
[4] Doc. No. 105, p. 87.
[5] See para. 1683 above.
[6] See para. 1684 above.
[7] Doc. No. 105, pp. 88-91.
[8] Ibid., pp. 124-125.
[9] See para. 1685 above.
[10] Doc. No. 105, p. 126.
[11] See para. 1686 above.
[12] Doc. No. 105, pp. 113-114.

J. The Case of the All Construction Ministry Workers' Union (Zenkenro)

1. *Interference with Union Meetings.*

1770. The Government denied that the police interfered with a meeting of the Shiga branch of the union.[1] The Yamaguchi meeting was stopped because outsiders came to it, as permission had been given for a meeting in working hours if no outsiders attended [2], while, said the Government, there never was any Nagano branch meeting at all on the day alleged.[3]

2. *Pressure on Members to Secede from the Union.*

1771. The allegations relating to Awa chapter of the union, said the Government, were entirely groundless.[4]

3. *Interference with Trade Union Officials and Members.*

1772. The Government said that on 19 and 20 November 1963 the President of the Shikoku headquarters of the union tried to enter the Kochi Construction Office, with other persons, to protest against the disciplining of a union member on 15 November; as many non-employees had repeatedly entered the building every day for the same reason, the union president and those with him were refused entry so as not to cause interference with the work.[5]

1773. Mr. Honjo Kokuo, Chairman of the Zenkenro executive and a dismissed employee, was refused entry to the office of the Director of Shikoku Construction Office because negotiations were held, according to practice, only with the employees, and had in any case to be arranged in advance.[6]

1774. Mr. Taira and Mr. Tanaka [7] were refused entry to the buildings concerned because they had been conducting propaganda there during working hours and interfering with the work.[8]

1775. The Government made the following comments on the alleged events at Kinki Construction Bureau.[9] On 1 April 1963 the Director of the Bureau had transferred the Chief of the Business Affairs Section and a Controller of the Shiga office; the Shiga chapter of the union demanded negotiation on the matter every day from 1 to 10 April, obstructing entry to buildings and hindering the work; similar incidents occurred in connection with transfers on 15 June and 1 July, and 20 staff employees from elsewhere were brought in to keep order.[10] Shiga chapter members and outsiders kept entering the building and disrupting order so measures were taken to control the identities of persons passing the doors.[11]

[1] Doc. No. 105 pp. 47-48.
[2] Ibid., p. 102.
[3] Ibid., pp. 102-103.
[4] Ibid., p. 104.
[5] Ibid., pp. 104-105.
[6] Ibid., p. 105.
[7] See para. 1689 above.
[8] Doc. No. 105, pp. 107-108.
[9] See para. 1690 above.
[10] Doc. No. 105, pp. 108-109.
[11] Ibid., pp. 109-110.

4. *Transfer of Union Officials.*

1776. The Kinki district transfers[1], said the Government, were normal transfers necessitated by the work; between 16 January and 16 May 1964 some 150 persons were moved, and they happened to include eight union officers.[2] Similarly, seven officials of the union's Shiga branch were among 20 persons who were moved between April 1963 and April 1964.[3] The Government denied[3] the alleged intimidation[1] of two executive members of the union's Kusatsu chapter.

5. *Refusal to Negotiate with the Union.*

1777. Negotiations were refused with the Tokushima, Awa and Kochi branches[4] of the union, but only when their respresentatives included persons who were dismissed employees.[5]

1778. It had been agreed with the union's Kakegawa branch that negotiations on 31 January 1964[6] should be attended on the union side only by three officers and executive members of the branch; on 31 January, without previous notice, the union wished two central executive members to attend, so they were asked to leave.[7]

1779. The head of Kuwana office did not, as alleged[8], refuse to permit union branch officers to attend negotiations but limited those attending to three.[5]

1780. Negotiations with the union's Shiga branch[9] had not been refused, said the Government, provided that prescribed procedures were followed; the Government gave the dates of 16 occasions on which negotiations were conducted between 10 April 1963 and 13 July 1964 and indicated the nature of the items discussed.[10] With regard to the dismissal of Mr. Tokeda, Secretary of the Prefectural Trades Union Council, negotiation was useless because a full examination of the reasons for his dismissal had been given to him.[7]

1781. The Chief of the Public Service System Planning Room in the Prime Minister's Office was asked by the Commission to comment on alleged refusals by the competent authorities to negotiate with the union and the Yusawa, Tokushima and Tehoku regional unions; the witness explained that this was because negotiation had been requested on matters which related to management and were not within the scope of matters for negotiations.[11] With regard to the contention that the authorities had refused since 1 April 1963 to negotiate with the Shiga branch of the union on such matters as transfers, evaluation of work, raising of status and salary, guarantee of status and disciplinary action, the witness said that at that time the union activities had been excessive and that " many union members forced the authorities to open negotiations ".[11] Asked how the authorities could refuse to negotiate with a registered union even if they did not like its behaviour, the witness said that the

[1] See para. 1692 above.
[2] Doc. No. 105, pp. 105-106.
[3] Ibid., p. 106.
[4] See para. 1693 above.
[5] Doc. No. 105, p. 132.
[6] See para. 1694 above.
[7] Doc. No. 105, p. 131.
[8] See para. 1695 above.
[9] See para. 1696 above.
[10] Doc. No. 105, pp. 127-130.
[11] *Record of Hearings*, XXVII/3.

authorities had been forced to negotiate when there were disturbances at workplaces but that the authorities would have been willing to negotiate if normal procedures had been followed.[1]

K. The Case of the All Labour Ministry Workers' Union (Zenrodo)

1. *Transfers of Union Officials.*

1782. On 16 July 1963 189 employees of Osaka employment security office were transferred; the result was that 15 executives of the union's Osaka chapter, previously assigned to 11 branches, found themselves assigned to eight branches, but, said the Government, there was no intention to dislocate the executive arrangements of the chapter.[2]

2. *Interference with Union Meetings.*

1783. Members of the Nishi-Nida chapter of the union who were told to work overtime on a Saturday [3] numbered six out of 52 employees; urgent work had to be done and there was no intention of intefering with the union rally on that day.[4] With regard to the Osaka-Nishi case [3] eight persons were given leave to attend the May Day rally and this permission was not cancelled, but the Superintendent of the Labour Office demanded the recall to work of seven others who had never been given leave of absence.[5]

3. *Interference with a Union Election.*

1784. The Government denied the allegations [6] that the Osaka authorities interfered with a union election or gave facilities to certain candidates whom they favoured.[7]

4. *Refusal to Negotiate with the Union.*

1785. There was no negotiation with the union's Osaka branch between 4 March and 10 April 1964 [8] attended by Mr. Yoshimato, head of the Business Management Section of Osaka Prefecture Labour Office, because he had many official functions elsewhere, but there were negotiations attended by other responsible officials.[9] Negotiation asked for on 12 February 1964 was refused because the items mentioned (such as mutual aid insurance fees) were not within Mr. Yoshimato's authority and control.[10] On no occasion, said the Government, did he slander the union or make the remark alleged.[11]

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[1] *Record of Hearings*, XXVII/3-4.
[2] Doc. No. 105, p. 81.
[3] See para. 1698 above.
[4] Doc. No. 105, p. 83.
[5] Ibid., pp. 84-85.
[6] See para. 1699 above.
[7] Doc. No. 105, pp. 83-84.
[8] See para. 1700 above.
[9] Doc. No. 105, p. 118.
[10] Ibid., p. 120.
[11] Ibid., pp. 120-121.

CHAPTER 41

ACTS OF INTERFERENCE WITH UNIONS AFFILIATED TO THE ALL-JAPAN PREFECTURAL AND MUNICIPAL WORKERS' UNION

I. Statements of the Complainants

1786. In the further statement [1] which it addressed to the Commission the All-Japan Prefectural and Municipal Workers' Union referred to a number of cases of interference with its affiliates alleged to have taken place more recently than the cases raised in its earlier complaints.

A. Case of the Tokuyama City Employees' Union [2]

1787. The complainants alleged that, between the end of 1961 and the spring of 1962, the Mayor of Tokuyama city (Yamaguchi Prefecture) took the following measures against the Tokuyama City Employees' Union. He unilaterally called off collective bargaining with the union, rarely complied with requests for negotiation since 1962, banned the check-off of union dues, disciplined members who staged a sit-down demonstration in support of demands for bargaining and restricted or banned union activity in municipal buildings. Further, it was alleged, he tried to persuade certain members to run for union office against the incumbent officers when new elections took place. The complainants stated that a handbill, signed by the directors of departments and chiefs of sections, was distributed to all union members with the object of promoting a split in the union.

B. Case of the Ibaragi City Employees' Union [3]

1788. It was alleged that since February 1962 the Mayor of Ibaragi city had committed the following acts against the Ibaragi City Employees' Union. He had reduced the wages of employees without consulting the union, dismissed three of its officers, suspended one and reduced the wages of five others, ordered a personnel reshuffle which affected only officers of the union and appointed a person to keep an eye on union activities. Distribution of handbills and posting of union notices were banned in municipal buildings. He had abolished the existing practice of allowing members to attend meetings of the union or of its parent organisation during working hours. He had never agreed to negotiate with the union. In addition to instigating members to split the union, it was alleged, the Mayor called upon supervisory employees to withdraw from the union and ordered the names of those who failed to do so to be reported to him.

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[1] Doc. No. 94.
[2] Ibid., pp. 17-18.
[3] Ibid., pp. 18-19.

C. Case of the Shobara Municipal Employees' Union [1]

1789. It was alleged that in 1963 the Hiroshima authorities wrongfully denied bonuses to certain employees and that, when the Shobara Municipal Employees' Union (Hiroshima Prefecture) took the case to court, the city administration adopted a by-law to suppress the union.

D. Case of the Takada City Employees' Union

1790. The union complained that the authorities of Takada city (Niigata Prefecture) had failed to grant its application for leave of absence for one employee to serve as a full-time union officer, the union paying his salary in accordance with established practice, because the municipal authority had neglected to enact the by-law governing this question.[2] The union adduced purported copies [3] of letters addressed to the Mayor on 7 May and 28 August 1962 and 25 May 1964 asking for necessary action.

E. Restrictions on Trade Union Activities on Local Government Premises

1791. The complainants alleged that in May 1961 the Ministry of Local Autonomy issued a circular for the guidance of local government administrations in which it was stated that the regulations concerning the control of government buildings could be applied by municipal authorities even to such matters as the posting up of notices inside union offices located in municipal buildings.[2] The complainants cited a number of alleged cases in which restrictions had been placed on the holding of union meetings in government buildings and the posting up of union notices, handbills, etc., had been prohibited or made subject to prior authorisation. These cases related to measures affecting the Itami City Employees' Union [4], the Niigata City Employees' Union [5], the Shizuoka Prefectural Government Employees' Union [2] and the Takamatsu City Employees' Union.[2]

II. Statements and Evidence of the Government

1792. The Government commented on the foregoing cases in the further statement [6] which it addressed to the Commission.

A. Case of the Tokuyama City Employees' Union

1793. The Government declared [7] that negotiations with the union were broken off when 70 or 80 persons stormed the Mayor's office, and denied that there were no negotiations in 1962; warning of disciplinary measures was given when union members carried out an illegal sit-down strike in the local government building in March 1962. When the union elected its officers in March 1962 there were differences within the union but the authorities did not intervene.[8] It was true that the authorities

[1] Doc. No. 94, p. 19.
[2] Ibid., p. 21.
[3] Ibid., pp. 36-39.
[4] Ibid., pp. 19-20.
[5] Ibid., p. 20.
[6] Ibid., No. 104.
[7] Ibid., p. 14.
[8] Ibid., pp. 14-15.

refused to continue the practice of checking off union dues and the practice of members taking paid leave to attend meetings of the union or of its parent organisation during working hours.[1]

B. Case of the Ibaragi City Employees' Union

1794. The municipality did not reduce the pay of its employees but, in 1963 only, a regular raise in pay was not accorded because the municipality had been designated a financial rehabilitation organisation.[1] The Government denied that the municipality encouraged supervisory employees to withdraw from the union or that transfers were made specifically aiming at the officers of the union [1] or that any person was appointed to watch over union activities.[2] The municipality found it inexpedient to allow leave of absence to attend union meetings during working hours and it was not true to say that it had been established practice to grant such leave.[2] Two officers of the union were dismissed for systematic neglect of duty and two others for disturbing the city water supply.[3] At no time did the Mayor instigate a split in the union.[2]

1795. With regard to the Mayor's alleged refusal to negotiate with the union, the Government declared that negotiations had continued with three other unions but not with the Ibaragi City Employees' Union, because the latter had failed to make the statutory report of change of officers.[2]

C. Case of the Shobara Municipal Employees' Union

1796. Allowances in excess of those authorised by the by-laws had been paid to certain employees and the excess was deducted from their pay subsequently. When the union took court action the court ordered the municipality not to make further deductions.[4]

D. Case of the Takada City Employees' Union

1797. The Government stated that a by-law concerning the granting of leave to employees in order to serve as full-time union officers was enacted on 20 July 1963 and an application from the union was expected.[5]

E. Restrictions on Trade Union Activities on Local Government Premises

1798. The Government explained[6] that the regulations for the management of local government buildings were fixed by virtue of the right of property management vested in the heads of local public bodies; their purpose was to maintain safety and order and their aims had basically no bearing on trade union activity. However, trade union demonstrations and sit-down strikes which disturbed safety and order were contrary to the regulations.[7]

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[1] Doc. No. 104, p. 15.
[2] Ibid., p. 16.
[3] Ibid., pp. 16 and 33.
[4] Ibid., p. 17.
[5] Ibid., pp. 17-18.
[6] Ibid., p. 13.
[7] Ibid., p. 14.

F. Case of Gyoda City

1799. In the course of the hearings the Commission questioned the Director of the Administrative Bureau of the Ministry of Home Affairs concerning a document alleged to have been signed by the Mayor of Gyoda city on 17 June 1961. Witness replied that his Ministry had caused the Government of Saitama Prefecture to investigate the matter and that the latter reported that no interference with trade union rights had been committed.[1] He stated that the document signed by the Mayor indicated the regret of the city authorities because there might have been a misunderstanding on the part of the union of what the city authorities had done; the document contained no specific reference to the form of withdrawal from their union which Mr. Yamaguchi, Chief of the Gyoda City Sanitation Section, was alleged to have circulated among employees of his section.[2]

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[1] *Record of Hearings*, XXIII/4.
[2] Ibid., XXIII/5.

Section 5

Visit by the Commission to Japan and Developments Subsequent to Its Departure from Japan

1800. In accordance with the arrangements referred to earlier[1], the Commission visited Japan from 13 to 26 January 1965. It is now proposed to give an account in the four following chapters of—(i) the discussions which it held in Tokyo with representatives of the Government and the trade unions from 13 to 18 January 1965; (ii) the visits made by members of the Commission on 19 and 20 January 1965 to provincial cities in Japan; (iii) the discussions held by the Commission with government and trade union representatives from 23 to 26 January 1965 after its return to Tokyo; (iv) developments which took place after the Commission's departure from Japan on 26 January 1965.

CHAPTER 42

DISCUSSIONS IN TOKYO FROM 13 TO 18 JANUARY 1965

1801. The discussions held by the Commission in Tokyo from 13 to 18 January covered various aspects of matters affecting industrial relations in Japan, which may be distinguished as follows: *(a)* first discussion on general matters with the Minister of Labour and the General Secretary of the General Council of Trade Unions of Japan; *(b)* discussions with the Minister of Education and the President of the Japan Teachers' Union; *(c)* discussions with the Minister of Home Affairs and representatives of the All-Japan Prefectural and Municipal Workers' Union and other unions; *(d)* discussions on legal matters with the Director-General of the Cabinet Legislative Bureau; *(e)* second discussions on general matters with the Minister of Labour and the General Secretary of the General Council of Trade Unions of Japan.

1802. On 15 January 1965, in supplementation of the matters raised by them in the discussions, the trade union representatives submitted a document to the Commission, dated 12 January 1965. This was a composite document containing submissions by the General Council of Trade Unions of Japan, the Japan Teachers' Union, the All-Japan Prefectural and Municipal Workers' Union, the Congress of Government Employees' Unions, the National Railway Workers' Union, the Nihon National Railway Motive-Power Union and the Japan Postal Workers' Union. These different submissions are analysed separately below in the context of the discussions to which they most closely related.

1803. The Commission wishes to point out that the Government did not have an opportunity to see or comment on the submissions in question.

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[1] See paras. 108-110 above.

A. First Discussions on General Matters with the Minister of Labour and the General Secretary of the General Council of Trade Unions of Japan

1. *First Discussion with Mr. Ishida, Minister of Labour*

1804. The Commission held its first discussion with Mr. Ishida, Minister of Labour, on 13 January 1965, at the Ministry of Labour. The Minister was accompanied by Ambassador Aoki, Permanent Delegate of Japan in Geneva, Mr. Hori, Administrative Vice-Minister of Labour, Mr. Shizeki, Parliamentary Vice-Minister of Labour, and Mr. Kudo, Counsellor in the Ministry of Labour.

1805. After welcoming the Commission, the Minister explained that the most important reasons for the failure thus far to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), had been the non-existence of mutual confidence, and considered that one of his tasks would be to remove the atmosphere of distrust. This, however, would take time and ratification could not be postponed until it had been achieved. He had tried to co-ordinate opinions within the government party and had drafted new proposals. He recalled that when Mr. Kuraishi had been Minister of Labour the latter had had discussions with the representatives of the opposition party, following which he had drafted certain legislative proposals, but it had not been possible to secure the accord of all trends within the Liberal-Democratic party. The Government therefore had redrafted the Bills; the Socialist party at first had opposed the submission of the Bills to the Diet unless the principle of central negotiation with the Japan Teachers' Union were accepted but had then agreed to the Bills being submitted.

1806. The Minister considered that the principles in the Bills regarding full-time union officers should be more acceptable to the trade unions, as being closer to the Kuraishi Plan than were the drafts previously placed before the Diet, even though they might not give them their unconditional approval. His own view was that the " full-time union officer system " should be gradually abolished. During the five years following the putting into effect of the proposed enactments he hoped for substantial improvements in the field of labour-management relations. Even when the five years had elapsed, he said, it would still be possible for employees to be appointed full-time union officers for a maximum period of three years, provided that they had not already served in that capacity.

1807. In reply to a question by the Commission referring to the fact that fears had been expressed that, after the provisions requiring managerial staff to form separate organisations had been enacted, members of unions of ordinary employees might wish to join unions of managerial staff, the Administrative Vice-Minister of Labour said that the Bills would stipulate expressly that ordinary employees could not join unions of managerial staff and there would be no scope for other interpretations of the position.

1808. With respect to the question of negotiation with non-registered organisations, the Administrative Vice-Minister of Labour explained that it would be left to the Ministers concerned to explain in the course of the debate in the Diet that such organisations would be able to negotiate but that there would be no express provision to that effect in the Bills to amend the National and Local Public Service Laws. The majority within the Liberal-Democratic party had expressed the opinion that the insertion of such a provision would involve the risk of Communist-dominated unions

trying to force the authorities of small and remote municipalities to negotiate with them.

1809. The Minister of Labour said that the reference to registered organisations had been retained in the first paragraph of the relevant section but the word " registered " was not mentioned in the second paragraph. He personally might have preferred to have an express provision, but the smaller municipalities had fears, for the reason stated above, of the consequence of inserting an express provision regarding the right of a non-registered union to negotiate. Larger municipalities had gained enough experience in dealing with unions but this was not the case in the remote municipalities, where the local authorities were weak and did not have such experience. Extreme left-wing elements began by trying to extend their influence first in the small municipalities as a matter of tactics. The new Bill would merely provide that the authority would be in a position to respond to requests for negotiation by registered organisations, but nothing would prevent negiotiation with non-registered organisations. If both were to be permitted to negotiate, he said, the danger mentioned above would exist. So discretion would be left to the Ministers concerned to negotiate or not.

1810. After explaining the procedure regarding recommendations of the National Personnel Authority the Minister said that if the Bill to amend the National Public Service Law became law the new Deliberation Council would consider further improvements of the existing system. The Administrative Vice-Minister of Labour said that these deliberations would cover also the procedures of personnel commissions and equity commissions.

1811. The Minister did not consider it necessary to enact specific provisions concerning the negotiating rights of teachers. The existing rule was that local education boards negotiated with the teachers, but this did not exclude negotiations between national unions and local bodies.

1812. The Minister agreed that greater flexibility and simplification of legislation would be a means of creating confidence, but he asked the Commission to take into account the special features of the trade union movement in Japan. The trade union movement came into existence just before the Russian revolution and was influenced by Marxism. Prior to universal franchise coming into force in 1927 the unions had no way of securing the improvement of conditions through parliamentary procedures and had to resort to radical means. There was no longer need for resort to radical means which, therefore, provoked unfavourable social reactions. The Minister wanted to see more understanding on the part of management and more self-restraint on the part of labour.

2. *First Discussion with Mr. Iwai, General Secretary of the General Council of Trade Unions of Japan*

1813. When the Commission received Mr. Iwai, General Secretary of the General Council of Trade Unions of Japan, on 14 January 1965, he was accompanied by Mr. Haraguchi, President of the All-Japan Metal Mining Workers' Union, and Mr. Takaragi, President of the Japan Postal Workers' Union.

1814. At the outset of the discussion the Chairman of the Commission made it clear that, contrary to press reports concerning the Commission's meeting with the

Minister of Labour on the previous day, the Commission had taken no standpoint whatever at that stage on the question of negotiation with the Japan Teachers' Union.

1815. The Commission then invited Mr. Iwai to give his own impression as to how the general situation had developed in recent months, and especially since the hearings in Geneva in September 1964, with particular reference to the general willingness on all sides to seek constructive solutions of outstanding difficulties and to the specific problems still to be resolved in connection with the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

1816. Mr. Iwai expressed the view that the prospects of ratification of the Convention had receded. The Government had not submitted the ratification Bill and related Bills to the Diet during its session from 8 November to 5 December 1964, and the recommendation by the National Personnel Authority of pay increases for public servants as from May 1964 had been implemented only from September. He referred also to other matters which had arisen—refusal of leave of absence to full-time officers of the Shizuoka Prefectural Government Employees' Union, and the suspension of one of them who absented himself, on the ground that the officers had been elected by simple majority vote; dismissal of the President of the Union of Public Telegraph and Telephone Workers and disciplining of 100 members in December 1964 because of their activities in support of wage demands; dismissal and disciplining of officers of the Tokyo Municipal Transport Workers' Union, the All-Agriculture and Forestry Ministry Workers' Union and the National Tax Administration Agency Workers' Union. He said that the latest Bills to be submitted to the Diet contained some legislative amendments which were worse than those contained in the Bills submitted on earlier occasions and that there had been and would be no consultation with unions on the matter, so that he could not see how the Bills could be deliberated on by the Diet.

1817. Mr. Iwai referred also to the fact that the Diet would be so occupied by the Budget Bill at its session opening in February 1965 and considered that submission of the Ratification Bill in mid-March would mean that deliberations would continue in April, when Diet members would be wishing to leave Tokyo as the Upper House elections were to be held in June. For the Bill to be adopted it was necessary, in his view, for the Government to meet with the General Council of Trade Unions of Japan and refer to the Diet only points on which both were agreed.

1818. He went on to state his objections to the Government's legislative proposals. The General Council of Trade Unions of Japan had not had the full text of the proposals but understood that they contained no provision for central bargaining between the Minister of Education and the Japan Teachers' Union, contrary to the earlier proposal contained in the Kuraishi Plan. He maintained that the Government fixed the various components of teachers' salaries and personnel strength in the localities and that only the right of negotiation with the central Government could offer teachers any hope of improving wages and conditions. They did not seek to negotiate on educational policy but to discuss and have the chance of expressing their views. But, he said, the unified view of the Government and the Liberal-Democratic party was to recognise only the right of individual employees to petition.

1819. In reply to a question by the Commission as to how the incidents cited by him related to the issue of ratification, Mr. Iwai referred to the recommendations of the Governing Body of the International Labour Office as to the avoidance pending

ratification of disciplinary measures for trade union activities and the provision of appropriate compensatory machinery in the absence of the right to strike.

1820. Mr. Iwai was questioned as to whether it would not be the wisest course to obtain the ratification and take that as a starting point for further developments, and he replied that the General Council of Trade Unions of Japan desired an early ratification but felt justified in asking that other matters related to the legislative proposals should be settled in a common-sense manner; it had been the common practice of the Diet, prior to ratification of any international treaty or agreement, first to amend conflicting provisions in the national legislation. His organisation had never opposed the *en bloc* deliberation of the ratification and legislation Bills. Despite the large majority of the Liberal-Democratic party, once the Bills were referred by the Diet to the Steering Committee discussions in that committee would be delayed for a long time in view of the opposition of the Socialist party to the Bills *per se*. Despite that large majority, previous attempts by the Government to get the ratification Bill approved by the Diet had failed; if the Liberal-Democratic party had been fully unified and vigorous, the I.L.O. Bills could have been adopted by the Diet without the co-operation of the General Council of Trade Unions of Japan, but some members of the party had been opposed to them. If, however, the Government was interested in discussions with the unions with a view to getting their support for the Bills, they could be passed.

1821. The Commission suggested that the best course for the trade unions might be to secure as many improvements as possible in the Bills being submitted and leave the rest to the future. Mr. Iwai was at a loss to know with which responsible officials of the Government improvements could be discussed and declared further that the workers could not be sure that any assurances obtained would be put into practice because—on previous occasions—in 1952 and in 1956 and in the case of the Kuraishi Plan—agreed proposals had afterwards been scrapped. In any event, while ready to make common-sense compromises, the workers could make no compromise on certain points. He expressed doubt as to whether the Government would carry out even assurances that it might give to the Commission and the General Council of Trade Unions of Japan jointly.

1822. Mr. Takaragi expressed the view that the workers would gain nothing from a ratification, even though accompanied by the repeal of section 4 (3) of the P.C.N.E.L.R. Law and section 5 (3) of the L.P.E.L.R. Law, if at the same time the Government forced through the other legislative amendments in the form it proposed.

1823. Mr. Iwai was reminded by the Commission that ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), would impose obligations on the Government and that the application of a ratified Convention was subject to strict control. Mr. Iwai considered that even then there would be divergent opinions as to which provisions of the legislation conflicted with those of the Convention.

1824. With regard to the question of national bargaining rights for the Japan Teachers' Union Mr. Iwai claimed that the Government did not even accept principles which were already accepted internationally. He concluded by stating that, while the trade unions looked to the Commission for help over the ratification, its terms of reference were also to improve labour-management relations and to promote the rights of the workers, and the General Council of Trade Unions of Japan wished it to use its good offices to settle other matters apart from ratification.

3. *Submission by the General Council of Trade Unions of Japan*

1825. The first part of this submission related to the final drafts of the Government's proposed amendments of the N.P.S. and L.P.S. Laws to be placed before the Diet at the beginning of 1965.

1826. The General Council of Trade Unions of Japan objected to the deletion of the word " mainly " from the Government's draft of section 108-2 (1) of the National Public Service Bill and section 52-1 of the Local Public Service Bill, defining the objects of employees' organisations, whereas the text provided for under the Kuraishi Plan had been: " An employees' organisation shall mean an organisation or its federation that employees form mainly with a view to maintaining or improving their conditions of employment. "

1827. The proposed sections 108-3 (3) of the N.P.S. Law and 53-3 of the L.P.S. Law would provide for the election of officers by a majority of members present and voting, whereas the Kuraishi proposal provided for a simple majority of effective votes.

1828. The organisation complained that the Government's new text of section 108-3 (4) of the N.P.S. Law and section 53-4 of the L.P.S. Law would allow non-employees serving as officers to be members of the union only as long as they held office and not afterwards and would make observance of this rule a condition of qualification for registration.

1829. The General Council of Trade Unions of Japan stated that the new proposed texts of sections 108-5 (1) of the N.P.S. Law and section 55-1 of the L.P.S. Law would require the authorities to respond to requests for negotiation from " registered " organisations, whereas the Kuraishi proposals had provided for the deletion of this word. Thus, it was alleged, the difference of treatment of registered and non-registered organisations would be perpetuated, while other amendments would tighten the negotiation procedures and allow the authorities to terminate them if they were considered not to comply with formal conditions laid down or " to impede job performance . . . or to hamper the normal operation of business ".

1830. Other objections of the General Council of Trade Unions to proposed amendments to the N.P.S. and L.P.S. Laws related to the organisation of and determination of the scope of supervisory and managerial personnel, to the failure to make provision for national-local negotiation, the full-time union officer system and the transfer to a Personnel Bureau under the Prime Minister's Office of certain of the existing functions of the National Personnel Authority. These objections had already been set forth at length in complaints and evidence already placed before the Commission.

1831. The General Council of Trade Unions of Japan went on to furnish statistical and other information on trade union organisation in the private sector which did not involve issues raised in the complaints referred for investigation to the Commission.

1832. The complainants then cited purported extracts from various notifications, decisions and instructions issued by different governmental authorities in agencies. In particular, they referred to an understanding said to have been reached at a Cabinet meeting on 27 September 1957 that unlawful acts of dispute by public corporation and national enterprise workers should be interpreted as including

workshop rallies prolonged into working hours, taking annual leave with pay in order to assist union " struggles ", reporting at the workplace at the hour prescribed for commencement of work, refusal of overtime work, working to rule, refusal of change of work assignment, refusal of day and night duty and refusal to travel on business.

B. Discussions with the Minister of Education and the President of the Japan Teachers' Union

1. *Discussion with Mr. Aichi, Minister of Education*

1833. The Commission met Mr. Aichi, Minister of Education, on 14 January 1965, at the Ministry of Education. The Minister was accompanied by Mr. Kobayashi, Vice-Minister of Education, and Mr. Takahashi, Chief of the Local Affairs Section of the Elementary and Secondary Education Bureau.

1834. The Minister, referring to a document entitled *Basic Statistics of Education in Japan*, published in 1959 by the Ministry of Education, explained to the Commission that a keen interest in education had developed throughout the nation during the past 90 years. There were many parent-teacher associations, and when problems concerning teachers arose they were a matter of interest to everyone. He described the wide range of the Ministry's activities and said that the problems of educational personnel had to be dealt with in general perspective; the nation wanted good, just and neutral education and teachers' problems could not be dealt with like those of workers in private industry. He was opposed to teachers who waged struggles with a view to securing the right to strike. Since 1945 the Government had been trying to democratise education and he felt that the attribution to local bodies of the responsibility for dealing with teachers' problems had been beneficial.

1835. The Minister said that it was not easy for the Commission to understand the reasons which had delayed the ratification of Convention No. 87. The Government wanted to ratify the Convention and he himself fully supported the new draft Bills which it had prepared.

1836. He went on to speak of the Japan Teachers' Union. He said that in 1957 the impression was that the legality or illegality of the union's activities depended solely on its strength, and that the union had launched campaigns against the United States-Japan Security Treaty and the peace talks with the Republic of Korea and still contained many extreme left-wing elements among its members. Ten members of the Diet, he said, were spokesmen for the union without being members of it, and 11 candidates supporting the union had been nominated for the Upper House elections in June 1965 and all were expected to be elected, while the union had about 100 spokesmen in local public assemblies. The Minister said that institutional and legal reasons prevented his meeting representatives of the union at central level on such matters as negotiating rights—the question of pay was allocated to local public bodies; from a general political point of view education was in the hands of the nation through the Diet; finally, the union had opposed the Government not only on educational matters but on political matters as well. But the union still had opportunities with the Minister through its spokesmen in the Diet and local authorities could hold discussions with the union. He said that if he held discussions too there would be overlapping, with harmful effects, and that the former Minister had had unfortunate experiences when he met the union. But he had hopes of solving the serious question of the position of the teachers' unions.

1837. The Minister referred to the question of the " full-time union officer system ", stating that in some cases local public officials had been on leave, with retention of status, while serving as union officers for from 15 to 18 years, a situation which he thought to be exceptional in other countries. The Commission pointed out that a survey by the Ministry of Education in June 1964 had revealed that there were 965 teachers in all engaged in full-time union work—less than 0.2 per cent. of all teachers.

1838. With regard to the new proposed legislative amendments the Minister said that his impression was that the Japan Teachers' Union was opposed to them.

1839. With regard to the proposed amendments to the N.P.S. and L.P.S. Laws, by virtue of which managerial staff and the like would not be able to unite in the same organisation and the scope of managerial staff and the like among local educational personnel would be determined by rules of the personnel or equity commissions in accordance with the practice to be followed for the educational staff and employees of national schools, the Minister stated that the headmasters in national schools should be classified as supervisory personnel. The National Personnel Authority would define the practice to be followed as regards classification. Difficulties existed in respect of head teachers in small schools which did not have headmasters.

1840. The Commission recalled that it had been alleged that the Ministry of Education had had some responsibility in encouraging acts of anti-union interference and discrimination in different prefectures, including Ehime, Gifu, Tochigi and Kagawa. The Minister said that, from what he had learned, his predecessor had never interfered in such cases by instructions in writing, but that he could not say anything at that stage with respect to the position of the municipal boards of education without first consulting his competent services. The Commission observed that during the hearings in Geneva in September 1964 it had been said that when the Ministry had sent officials to investigate matters alleged to have occurred in Ehime Prefecture they had made no contact with the persons against whom anti-union acts were stated to have been committed.

1841. The Commission referred to the view expressed by the Committee on Freedom of Association set up by the Governing Body of the International Labour Office that the determination of the broad lines of educational policy, although a matter on which it might be normal to consult teachers' organisations, was not one for collective bargaining between such organisations and education authorities, but said that it had been represented to the Commission that the status, number of staff members, salaries and other working conditions of public school teachers were usually decided by the Government, although such teachers were local public servants, and that accordingly central negotiation was necessary. The Minister replied that the working conditons of local teachers were defined by prefectural by-laws and ordinances. Some prefectures were rich, like Tokyo, some poor, like Ehime. The standard number of teachers in each prefecture was decided by national law. If there were no more teachers than the standard number, 50 per cent. of their salaries was paid by the State; if there were more, the State paid less than that as regards the number in excess. With regard to the allegation that teachers found that they had no one with whom they could negotiate, at either national or prefectural level, in respect of wages, the Minister said that it was not possible for teachers to enter into written contracts with local public bodies but that negotiation with such bodies was possible.

1842. In conclusion, the Minister expressed the view that first of all the Bills to ratify Convention No. 87 and to amend the legislation should be adopted by the Diet, after which he would have an opportunity to consider, as a domestic matter, what his relations with the Japan Teachers' Union should be.

2. *Discussion with Mr. Miyanohara, President of the Japan Teachers' Union*

1843. Mr. Miyanohara, President of the Japan Teachers' Union, was received by the Commission on 15 January 1965. He was accompanied by Mr. Makieda, General Secretary of the Japan Teachers' Union, Mr. Haraguchi, President of the All-Japan Federation of Metal Mining Workers' Unions, and Mr. Takaragi, President of the Japan Postal Workers' union.

1844. At the outset the Commission assured Mr. Miyanohara that, as it had previously stated to Mr. Iwai and contrary to reports made in the press, it had expressed no view or conclusion on the question of negotiating rights for the Japan Teachers' Union at its meeting with the Minister of Labour; nor had it done so at its meeting with the Minister of Education. The Commission asked him to say whether he felt there might be any advantage in the Commission exploring the situation, with a view to seeking a possible basis for compromise, and also to comment on the general industrial relations atmosphere and the more specific problems still to be resolved in connection with the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

1845. Mr. Miyanohara felt that the position had moved rather away from ratification because, without consulting the unions, the Government had made new legislative proposals, which did not include the right of central bargaining. The Government's rejection of central bargaining on the ground that teachers were local public servants whose wages and conditions were fixed by prefectural by-laws was, he claimed, contrary to law and practice. He said that on 6 September 1964 the Minister of Education issued an order fixing the number of teaching personnel and stating that the Government would not share in paying the salaries of teachers appointed beyond that number—contrary to previous practice. Wages, conditions, the numbers of teachers and hours were fixed by prefectures according to standards defined by the Government; working rules were made by the municipalities. Hence, his union had to deal with all kinds of agencies. Until 1948 it had enjoyed the right to negotiate with the Minister and had signed a collective agreement. There was need for a forum for exchanging views with the Minister. He disagreed with the Government when it said that negotiation between the union and the Ministry would cause disorder in the administration of education by the Ministry.

1846. He said that many of the 27,000 national public service teachers in universities and schools attached to them were organised by the Japan Teachers' Union, but that the Minister would not let the union negotiate for them either because it organised teachers both in national schools and public schools.

1847. Another reason given, he said, for the Minister's refusal to meet the union was that its Code of Ethics emphasised the class struggle, whereas in fact the Government refused negotiation because it did not like the union's policy, although the union itself was opposed to violence. He expressed the hope that the Commission would be sympathetic to the union's demand for central bargaining machinery, adding that the union hoped for early ratification of Convention No. 87 but that this would be meaningless if the central bargaining issue was not settled.

1848. The Commission suggested that perhaps the Government had refused to negotiate on the ground that the union's campaign policy in 1957 manifested its intention to nullify laws and regulations; this document contained the words: " The question of whether legal or illegal depends on whether we can enhance the strength of our unity and our united front to the extent that there is no room left for our opponent to exercise oppression and interference." In reply, Mr. Miyanohara said that if that had been the case bargaining would have been refused then, whereas talks on general educational policy, wages, etc., had continued until the change of Minister in July 1960.

1849. He said that most of the prefectural organisations of his union were negotiating at the prefectural level, but that the new Governor of Okayama Prefecture appointed in 1964—a former Political Vice-Minister of Labour in the central Government—had refused negotiation on the ground that the Government refused central negotiation. He regarded this as a significant development.

1850. The Commission, pointing out that the Committee on Freedom of Association had said that the determination of the broad lines of educational policy, although a matter on which it may be normal to consult teachers' organisations, is not one for collective bargaining, asked Mr. Miyanohara to say which matters affecting teachers he considered appropriate for central bargaining. Mr. Miyanohara said that educational policy covered broad lines and included matters having much bearing on teachers' status and conditions. The union did not claim negotiation on purely educational matters but the Government contended that subjects such as the merit rating, which affected working conditions, were purely policy matters. In his view, major subjects for negotiation were numerical strength, classroom hours and the education budget; on educational policy not related to working conditions there should be discussion—not negotiation but just informal talks. He said that the common-sense view was that collective bargaining meant bargaining accompanied by the right to strike and to conclude collective agreements—an unattainable ideal at the present time. The present aim was negotiation. In reply to further questions he said that it was not his view that the law should make the curriculum subject to collective bargaining, but he felt that it should not be enforced without discussion with the teachers, which was the practice in the United States and England.

1851. The Commission asked Mr. Miyanohara why he thought it necessary for the union's negotiation rights to be provided for by legislation. He said that the former Minister of Education had followed the line that negotiation was unlawful because it was not provided for by law, so Mr. Miyanohara's view was that the Government would not negotiate in the future unless the law required it to do so.

1852. The Commission then drew Mr. Miyanohara's attention to certain of the Government's new proposals for the amendment of the L.P.S. Law which would prohibit managerial staff and the like from organising a single organisation together with the ordinary employees, stating that it understood that the scope of managerial staff and the like among local educational personnel would be determined by rules of the personnel commission in accordance with the practice to be followed with regard to the educational staff and employees of national schools. The Commission asked Mr. Miyanohara to express his view on the proposal and to say what criteria he considered should apply to the making of determinations. He replied briefly that his own union was opposed to the proposed amendment and that the scope of different categories should be settled voluntarily by negotiation and not by law.

1853. Mr. Miyanohara was asked whether he felt that the Commission could help to find a basis for compromise on any of the issues which had been discussed. He said that the Japan Teachers' Union would like to reach a compromise and hoped for great help from the Commission, but he was sceptical as to the terms of any compromise; he did not mean that the union would not yield in anything but that its position had to be understood. With regard to a press report to the effect that the union was ready " to resort to force " in support of its demands, he said that this phrase was in common use in Japan; it did not signify violence but meant that the union would hold rallies, meetings and demonstrations.

3. *Submission by the Japan Teachers' Union*

1854. The major part of this submission was devoted to events in Ehime and Gifu Prefectures and was intended primarily for consideration in connection with the visits of members of the Commission to those prefectures following the discussions in Tokyo. It is therefore analysed in its appropriate context in the following chapter.

1855. The complainants also cited a number of legal texts in support of their contention that the Government exercises strong powers in determining salaries and other conditions of employment of public school teachers. These texts included—

(a) section 24-3 of the L.P.S. Law: " The compensation of the personnel must be fixed by taking into consideration the cost of living, the compensation of the personnel of the National Government and other local public bodies and the employees of private enterprises and other circumstances ";

(b) section 24-5 of the L.P.S. Law: ". . . In fixing hours of work and other working conditions apart from the compensation of the personnel, adequate consideration shall be exerted to ensure that they shall not be out of proportion to those of the personnel of the National Government and other local public bodies ";

(c) section 25-5 of the Special Law for Educational Public Service Employees: " The kinds and amounts of the remuneration of public school teachers who are educational public servants shall be decided, for the time being, following the pattern of those of educational public servants in schools run by the State ";

(d) section 5-3 of the Law for promotion of education in remote areas: " The scale for the allowance for education in remote areas shall be composed of five grades corresponding to the difficulty in the remote area where the school concerned is located. The standard for placing teachers concerned in the grades shall be determined by the Education Ministry ";

(e) section 3 of the Law concerning the provision of the allowance for technical and vocational education to teachers and practical training assistants engaged in technical and vocational training in agriculture, fisheries, industry or merchant marines at state or public schools: " The necessary matters concerning the allowance for technical and vocational education shall be decided by the Education Minister. In doing so, the Education Minister shall ask the opinion of the National Personnel Authority ";

(f) section 2 of the Law concerning the expense for compulsory education to be borne by the National Treasury: " The State shall bear the half of the expenses enumerated below out of those needed for compulsory education given by

public primary schools, secondary schools, schools for the blind and the deaf on behalf of each of the prefectures every fiscal year, provided that, under special circumstances, the maximum of the expense to be borne by the National Treasury in respect of each prefecture may be decided by an ordinance."

1856. Pursuant to section 2 of the Law concerning the expense for compulsory education to be borne by the National Treasury, said the complainants, Cabinet Ordinance No. 106 was issued on 15 June 1953. According to the text of the ordinance as furnished by the complainants, the maximum of expenses to be paid by the National Treasury shall be 50 per cent., the expenses being calculated according to "methods" laid down in the ordinance. As regards salary, dependency allowance, term allowance, diligence allowance and travel expenses, the total shall be 522,460 yen multiplied by the established number of teachers in the prefecture concerned. As regards other kinds of allowances (including overtime and retirement and pensions), the method of calculating the total amount shall be " on the basis of the decision made by the Education Minister in consultation with the Finance Minister every year, following the examples of national public servants ". The " established number of teachers in the prefecture concerned " shall be determined according to the provisions of the Law concerning the standards for the formation of classes and the established number of teachers (Law No. 116 of 1958). The ordinance then prescribes the maximum to be borne by the National Treasury in respect of prefectures where the actual number of teachers exceeds the established number. Section 5 of the ordinance as cited reads: " The matters concerning the actual number in each month and other matters necessary for the enforcement of this Ordinance shall be decided by ministerial order of the Education Ministry."

1857. Section 11 of the Law concerning the standards for the formation of classes and the established number of teachers of public schools for compulsory education, referred in the preceding paragraph, was cited by the complainants as follows:

The Education Minister is empowered to demand from the prefecture the report on the total number of teachers and the standards for the formation of classes in public schools for compulsory education, when he deems it necessary for ensuring appropriate placement of teachers and the adequate size of public schools for compulsory education. He shall also be empowered to give guidance or advice to the prefectures by giving in advance notification thereof to the Minister of Local Autonomy.

C. Discussions with the Minister of Home Affairs and Representatives of the All-Japan Prefectural and Municipal Workers' Union and Other Unions

1. *Discussion with Mr. Yoshitake, Minister of Home Affairs*

1858. The Commission met Mr. Yoshitake, Minister of Home Affairs, on 14 January 1965, at the Ministry of Home Affairs. The Minister was accompanied by Ambassador Aoki, Permanent Delegate of Japan in Geneva.

1859. The Minister stated that general relations between his Ministry and the All-Japan Prefectural and Municipal Workers' Union were friendly and smooth and that he was ready to hear them if they wished to submit petitions or to express their views on certain points; negotiating rights for the organisation at the central level

were, however, another question. Representatives of the organisation had visited him four or five times in the six preceding months. In August 1964, for example, after the Ministry had prepared recommendations concerning the national public service, representatives of the organisation came to request him to make recommendations in respect of the local public service also.

1860. The Minister confirmed that only individuals, and not their organisations as such, could make application to personnel or equity commissions for action on wages and working conditions. In reply to a question by the Commission as to why this was the rule, Ambassador Aoki said that any trade union officer could act on behalf of a union member.

1861. With respect to the delays in the disposal by personnel and equity commissions of appeals for review of adverse actions the Minister said that reasons for delay existed on both sides, but that he proposed to take steps to expedite the decisions. Reminded by the Commission that it had been said at the hearings in Geneva that the minimum time taken to dispose of an appeal was one year, the Minister said that in the case of trade unions which applied to the Central Labour Relations Commission the same period of time elapsed before a decision was handed down. He was considering how to improve the situation; one reason for the delays was that the persons concerned were not yet familiar enough with the procedure. With reference to the failure to require at hearings the presence of those persons against whose actions appeals were filed the Minister said that the personnel and equity commissions were composed of persons elected by the local public bodies; this was a recent development which had started only after the Second World War and the persons mentioned thus lacked practical experience. He agreed that it was necessary to have satisfactory compensatory machinery for local public servants and that the difficulty lay in the management and operation of the personnel and equity commissions.

1862. The Commission then referred to the question of the horizontal and vertical fragmentation of organisations of employees in local public services and local public enterprises, as the result of the application of legal provisions, and said that the trade unions had contended that, while it was possible to form *de facto* prefectural federations, these and the All-Japan Prefectural and Municipal Workers' Union itself could not register or acquire legal personality, so as to be able to own property, and they had no legally protected right to negotiate. The Minister pointed out that the members of the local public services and of the local public enterprises were separate categories and could not form a single organisation. The Commission asked the Minister whether it would not be possible, in the interests of good future relations, to take account both of the traditional concept in Japan of unions formed by workers of individual undertakings and of the requirements of negotiation in the modern industrial world by making provision to give legal recognition to local public employees' organisations at municipal, prefectural or such other level as they chose to organise, without interfering with the right of the employing authorities to conduct negotiations on their side at whatever level they might desire. The Minister observed that if the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), came to be ratified, freedom of association would be greater, but he felt that local civil servants and workers would continue to remain in their present unions. He added that there was no prohibition of prefectural federations, that such *de facto* federations existed and that they could own property.

2. *Discussion with Representatives of the All-Japan Prefectural and Municipal Workers' Union, the All Agricultural and Forestry Ministry Workers' Union and the Congress of Government Employees' Unions*

1863. On 15 January 1965 the Commission received Mr. Kuriyama, President of the All-Japan Prefectural and Municipal Workers' Union, Mr. Watarai, President of the All Agriculture and Forestry Ministry Workers' Union, and Mr. Higuchi, President of the All Port Construction Workers' Union and Vice-President of the Congress of Government Employees' Unions. They were accompanied by Mr. Haraguchi, President of the All-Japan Metal Mining Workers' Union, Mr. Takaragi, President of the Japan Postal Workers' Union, Mr. An-yoji, General Secretary of the All-Japan Prefectural and Municipal Workers' Union, Mr. Fujii, President of the All Taxation Offices Employees' Union, and Mr. Eda, General Secretary of the All Agriculture and Forestry Ministry Workers' Union.

1864. Mr. Kuriyama said that, in 1963, the All-Japan Prefectural and Municipal Workers' Union, although dissatisfied, had accepted the compromise Bills to amend the legislation, in the hope of an early ratification of Convention No. 87. But the organisation opposed the new Bills—it had held discussions with the Ministry of Local Autonomy but its right of discussion was not protected by law; the new Bills would include it in the definition of a personnel organisation but contained no provision enabling it to be registered or protecting its bargaining rights. He said that the Government had been exercising strong control over negotiation on bonuses with local public bodies and it was increasingly important for his federation to have the right to negotiate with the Government—not just the exchange of views but definite negotiating rights leading to the conclusion of collective agreements. His view was that the procedure of negotiation should be left to be decided by labour and management, but the new Bills imposed restrictive provisions.

1865. As his federation catered for both local public enterprise employees and local public servants it could not register, nor could its prefectural affiliates. Consequently, in Shimoni Prefecture, officers of the prefectural union had been refused leave to serve because it was not registered. The new proposals, he said, discriminated against non-registered unions, but in 1,120 local bodies a union could not register at all because there were no registration by-laws. In Shizuoka Prefecture unions were refused registration because their officers had been elected not by a majority of the membership but only by a majority of those present; the officers were refused leave of absence and suspended when they absented themselves; negotiation was accorded only after a hunger strike.

1866. In reply to questions by the Commission, Mr. Kuriyama said that in a small town having only five waterworks employees the union formed by the remaining town employees could not register if it admitted them to membership, and that in the case of the 1,120 local public bodies where no registration by-law had been passed neither a personnel commission nor the head of the local public body could register a union even if they wished to do so. He complained too that, while the unions naturally regarded their statutory annual leave with pay as a right, some local authorities refused to grant such leave if the employees intended to use it for union purposes.

1867. Mr. Watarai stated the objections of the All Agriculture and Forestry Ministry Workers' Union to the new legislative proposals. He said that the scope of union membership would be restricted by provisions preventing dismissed employees

from retaining membership for more than one year and excluding from membership officers who were not employees. Non-compliance with these provisions would prevent registration. The non-registered organisation was discriminated against: it could not be a legal person, register its property or enjoy the tax provisions relating to legal persons; as regards negotiation the authorities would still have to respond to a request for negotiation by a registered organisation but the legal texts made no reference to the negotiating rights of non-registered organisations.

1868. He went on to repeat statements previously made to the Commission concerning the failure to implement recommendations of the National Personnel Authority from the date recommended, contending that the Minister of Agriculture took adverse action against his own organisation because it had asked for the 1964 recommendation to be implemented as from May, which was the date specfied therein.

1869. Since the session of the Commission in September 1964, said Mr. Watarai, there had been further restrictions of the right to organise. The Bill to amend the National Public Service Law would oblige supervisory personnel to form separate organisations. But, he contended, the Government and agricultural authorities had already changed the status of lower supervisory officials who were union members by giving them a managerial allowance as from January 1965, but with no change in their duties, with the object of limiting the scope of union membership to arrive at a *fait accompli* before the Bills had even been deliberated by the Diet.

1870. Mr. Higuchi made a statement on behalf of the Congress of Government Employees' Unions. He alleged that the scope of union membership was determined one-sidedly by the authorities and not objectively and impartially by the National Personnel Authority, as government witnesses had testified in September 1964. In December 1964, he said, the National Personnel Authority decided without consulting the unions upon the revised regulation to enlarge the scope of allowances for supervisory posts and enforced it in January 1965, before the new Bill to amend the National Public Service Law had been submitted to the Diet. This revision trebled the number of managerial and supervisory personnel and there were facts, he contended, to show that each Ministry and the authorities were taking this opportunity to force those persons who had been newly classified as supervisory staff to leave the unions to which they belonged.

1871. He referred to the new conditions barring dismissed employees from union membership after a period and denying registration if such persons remained as members after that time as a fundamental restriction of trade union rights.

1872. Mr. Higuchi went on to say that collective negotiation in the civil service was not based on equal rights of the parties but was a petition addressed to management and that, if by any chance agreement was reached on any issues, management broke its promises to honour the agreement. He complained also of the restrictions placed by the Bills on the scope of matters subject to collective negotiation.

1873. He claimed that the failure by the Government to implement until September 1964 the wage recommendation of the National Personnel Authority dated back to May had caused a loss of salary for general employees of 9,700 million yen and that, according to figures put out by the Authority itself, the loss through tardy implementation of awards in the last nine years had been 151,150 yen per head.

1874. Finally, Mr. Higuchi accused the authorities of continuing to interfere with union activities and to commit unfair labour practices. He said that, for example, the authorities of the Ministry of Construction, at the end of 1964, had taken advantage of the one-week holiday period to organise a second union catering for supervisory employees within the jurisdiction of the Shikoku district office of the All Construction Ministry Workers' Union.

3. *Submission by the All-Japan Prefectural and Municipal Workers' Union*

1875. The All-Japan Prefectural and Municipal Workers' Union submitted various points, either on matters arising out of the evidence given in September 1964 or as supplements to its own further statement presented in June 1964.

1876. In support of its argument that restrictions should not be placed on the trade union rights of workers in public undertakings as compared with similar workers in the private sector, the complainants submitted tables to demonstrate that, apart from water services for industrial use, the same kinds of public undertakings as are covered by the L.P.E.L.R. Law all exist in the private sector, the publicly owned undertakings amounting to only a small proportion of the whole. According to the figures given and purported to be taken from official statistics issued by the ministries concerned, there were, in 1962, 218 privately owned local railway, subway and tramway undertakings, which transported 8,028,731,000 passengers and had 99,388 employees, whereas the 51 public undertakings transported 2,269,183,000 passengers and had 34,600 employees; there were 354 privately owned road passenger transport undertakings, which transported 8,318,364,000 passengers and had 230,686 employees, whereas the 54 public undertakings transported 2,121,311,000 passengers and had 40,688 employees; 69 private electric power undertakings generated 25 times as much power as did the 47 public undertakings; the 185 private gas companies supplied 20 times as much gas as did the 56 public undertakings and employed 26,383 persons as against 1,497; 6,452 private hospitals employed 326,432 persons as against 1,022 public hospitals employing 85,565 persons.

1877. Statistics were furnished with a view to demonstrating that the wages of prefectural employees in five named prefectures and of municipal employees in Yokohama and Nagoya were lower than those paid in the private sector. The complainants stated that average monthly pay in the private sector in Hiroshima Prefecture was 37,765 yen, while that of the prefectural government employees was 31,394 yen and that of administrative employees of 36 named cities and towns varied from 30,403 yen down to 17,793 yen.

1878. The union submitted allegations as to recent cases in which collective agreements were concluded and then rejected by the mayors and/or assemblies of Hino town (Shina Prefecture) and Yasudo town (Shina Prefecture).

1879. With reference to evidence given in September 1964 by a government witness before the Commission to the effect that local public service employees enjoy working conditions fixed by law, the union stated that it had investigated the position in 23 municipalities in Aomori Prefecture and that, on 1 November 1964, 11 had not enacted standards for starting salary, promotion and periodic pay increases, while various allowances had not been provided for in several others. In evidence in September 1964 the union had stated that few local public bodies in Ishikawa Prefecture

had by-laws guaranteeing working conditions. In its further submission the union said that the position had still not improved, 13 municipalities having issued no rule or regulation at all concerning standards for starting salary, promotion and pay increases and nine others having rules which had never been published.

4. *Submission by the Congress of Government Employees' Unions*

1880. In support of its earlier arguments that nothing in the N.P.S. Law requires an employee organisation to limit its membership to employees or entitles the authorities " not to respond positively " to requests for negotiation on the ground that an organisation is not registered, notwithstanding different interpretations by the authorities, and that contrary provisions in Rules 14-0 and 14-2 of the National Personnel Authority are *ultra vires*, the Congress of Government Employees' Unions submitted the following purported extract from the judgment of the Osaka District Court (Osaka District Court (WA) 1959, Case No. 1889), on 8 May 1962, in a criminal case involving members of the National Tax Administration Workers' Union:

(a) Paragraph 2, section 98, of the National Public Service Law only provides that employees shall be permitted to form or refrain from forming, join or to refrain from joining unions or other organisations. There is no provision in the law which requires that the organisations be composed solely of employees, prohibiting non-employees from becoming members thereof. Section 98 of the National Public Service Law, keeping in line with the constitutional guarantee of workers' right to organise, only made it explicit that national civil service employees could form organisations and bargain collectively concerning their working conditions. The Court agrees that with respect to the composition of the organisations, they should consist mainly of civil service employees; but we think it proper that the Law should be construed to allow non-employees to be included in their memberships within the scope necessary for the smooth functioning of the organisation in so far as it does not result in the loss of the autonomy of the employees in administering their organisations and in conducting negotiations on their service conditions. It is only proper to interpret the intent of the section 98 of the National Public Service Law in this light.

(b) It is also proper to interpret that the requirement for the registration of an organisation with the Personnel Authority is imposed merely for the purpose of making it publicly known that the organisation concerned has been inaugurated autonomously and in a democratic manner and should not be interpreted as allowing restriction on the right of employees to organise.

(c) If such were the case, we must say that it was an improper act for the Personnel Authority to have had denied the National Tax Administration Employees' Union to register merely on the ground that non-employees were included among the members of the union. It is also appropriate to dismiss the allegation that the union, in its relations with the authorities concerned, does not have the ability to negotiate under the law by virtue of its being an unregistered organisation and that, therefore, the authorities concerned have no legal obligation whatsoever to respond to the union's request for negotiation.

1881. The complainants submitted further evidence with regard to numerous occasions on which the authorities concerned were alleged to have refused to negotiate with several locals of the All Construction Ministry Workers' Union, the Yokohama local of the All-Japan Customs Employees' Union. The complainants alleged also that in September 1964 the head of the Nagano Construction Office ordered members of the All Construction Ministry Workers' Union to secede from it and tried to force union officers to withdraw a civil action which they had instituted in respect of the authorities' refusal to bargain.

1882. Finally, as further evidence in support of their allegations as to the inadequacy of the procedures for review of adverse actions by the National Personnel

Authority, the complainants submitted details concerning ten cases filed on behalf of members of affiliated unions, the time for the disposal of which varied from three years to seven years and eight months, while two applications for action on working conditions were alleged to have been reviewed for three years before decisions were given.

5. *Discussion with Representatives of Other Organisations of Civil Servants Employed by the Central Government*

1883. On 15 January 1965 the Commission received Mr. Yajiwa, President of the Federation of Prime Minister's Office Employees' Unions, Mr. Wakuno, Chairman of the Yokohama Branch of the All-Japan Customs Employees' Union, Mr. Isobe, President of the Kanto-Shinetsu District Council of the All Taxation Offices Employees' Union, Mr. Ohkawara, President of the Kanot Regional Headquarters of the All Construction Ministry Workers' Union and Mr. Tai, President of the Osaka Employment Security Office Branch of the All Labour Ministry Employees' Union, and Mr. Yoshida, President of the All Justice Ministry Workers' Union. They were accompanied by Mr. Haraguchi, President of the All-Japan Metal Mining Workers' Union, and Mr. Takaragi, President of the Japan Postal Workers' Union.

1884. The Commission invited these trade union leaders to make statements on any matters which had occurred since the events regarding which evidence had already been submitted to the Commission.

1885. Mr. Yajiwa stated that the Federation of Prime Minister's Office Employees' Unions objected to the establishment of the system of control of work performance by persons above the subsection-chief level. Sixty-five such persons had been forced to leave the union. Since the setting up of a rival union in 1962 some 800 persons had been recruited and given a guidance course during which they were told that his union was radical and the rival union preferable. He claimed that those in charge of personnel affairs encouraged them to join the new union.

1886. Mr. Wakuno complained of two transfers of customs employees contrary to a subsisting agreement made in 1956. He alleged that in October 1964, a Goods Inspection Department employee was told by his chief, Inspector Iwasaki, that his merit rating was good and that if he were not a union member he would become an assistant inspector, a promotion which was accorded to his fellow employees but not to him. A similar case was alleged to have occurred in July 1964. He claimed that only four union members were among the 129 persons whose salaries had been raised under a special wage progression system instituted on 1 July 1964. Finally, he alleged, Mr. Toyama, Counsellor of the National Tax Administration Agency, had stated falsely in Geneva in September 1964 that the complainants had submitted evidence by an employee, Mr. Tanaka, contrary to his wish; in fact, he said, this member had been intimidated in order to try to make him withdraw from the case. In reply to questions by the Commission Mr. Wakuno said that the agreement of 1956 referred to did not contain a specific provision regarding negotiation on individual transfers but that the practice had been not to make transfers without the consent of those concerned and that, until the two transfers he had just mentioned, his union had succeeded in obtaining the withdrawal of arbitrary transfer orders.

1887. Mr. Isobe stated that on 19 September 1963 the Chief of the Kanto Tax Administration Office made speeches against the All Taxation Offices Employees'

Union and that there had been over 50 cases of pressure by the Niigata authorities. As a result the membership of the Kanto Council of the union had declined from 3,942 in 1962, to 340. Although the Council was registered, he said, the authorities refused to negotiate with it.

1888. Mr. Tai complained that the authorities had refused to negotiate with the Osaka Employment Security Office Branch of the All-Labour Ministry Employees' Union over the dismissal of a member who, because he was a probationary employee, could also not have recourse to the appeal procedures established by the N.P.S. Law.

1889. Mr. Yoshida repeated allegations previously submitted to the Commission with regard to the procedure for investigating cases of adverse treatment of employees of the courts. He said that the Supreme Court had for years rejected the requests of his union to make the Equity Committee an independent third party, subject to an agreement between labour and management.

1890. Mr. Ohkawara said that the authorities would not admit even safety and health matters as an official subject of negotiation, but only as matters for petition by the All Construction Ministry Workers' Union. The authorities refused to discuss with the Kakegawa branch of the union and, he alleged, Mr. Okada, Chief of the Public Service System Planning Room in the Prime Minister's Office, had not stated the truth on this point to the Commission in his evidence in September 1964.

6. *Discussion with Representatives of Railway and Postal Employees' Unions*

1891. On 15 January 1965 the Commission held discussions with Mr. Suzuki, President of the National Railway Workers' Union, Mr. Kanetaka, President of the Nihon National Railway Motive-Power Union, and Mr. Shimomura, Vice-President of the Japan Postal Workers' Union. They were accompanied by Mr. Haraguchi, President of the All-Japan Metal Mining Workers' Union, Mr. Takaragi, President of the Japan Postal Workers' Union, Mr. Meguro, Vice-President of the Nihon National Railway Motive-Power Union, and Mr. Usui, Vice-President of the National Railway Workers' Union.

1892. Mr. Suzuki said that the right of central negotiation was enjoyed by unions of public corporation and national enterprise employees but that its exercise was restricted by section 8 (2) of the P.C.N.E.L.R. Law, which provides that matters concerning management and administration cannot be the subject of collective negotiation, because management had taken full advantage of this to exclude from negotiation matters relating to working conditions. This trend, he said, reflected government policy as a whole, so that, while he demanded that the unions in public corporations and national enterprises be given " real " bargaining rights, he demanded also that central bargaining rights be granted to unions of civil servants as well.

1893. The Commission reminded Mr. Suzuki that the Commission had been told in September 1964 that matters concerning management and administration were not excluded from collective bargaining if they affected working conditions and that the National Railway Workers' Union had concluded an agreement with the railway authorities on 14 April 1960 concerning modernisation, rationalisation, etc., and that on 13 November 1958 it had secured an agreement concerning special allowances in respect of modernisation. These were matters which might have been regarded as pertaining to management.

1894. Mr. Kanetaka said that the Nihon National Railway Motive-Power Union also had secured an agreement for prior consultation in respect of modernisation, etc., but that it was often a dead letter. He claimed that questions which management wished to exclude from negotiation included such matters as work schedules and the conditions of train crews. Unless everything was clearly written into the laws, he contended, the authorities took the opportunity to make things difficult for the trade unions.

1895. Mr. Shimomura claimed that section 8 (2) of the P.C.N.E.L.R. Law had been invoked to the detriment also of the Japan Postal Workers' Union and that this reflected government policy. Negotiation on wages and conditions had been arranged to take place on 23 December 1963 between the Minister and the President of the union, but, he alleged, pressure by the Liberal-Democratic party caused this to be postponed until 25 December. He said that the P.C.N.E.L.R. Law provided that promotion and demotion should be subjects for collective negotiation, but that the postal authorities maintained that postal employees were also covered by the N.P.S. Law, sections 33 and 55 of which prohibited negotiation on managerial matters, so that promotion and demotion were excluded from negotiation on this ground.

1896. The Japan Postal Workers' Union had also secured an agreement, he said, that matters be negotiated at central, regional and local levels, but, in spite of this, the Ministry had told the Tokyo Central Post Office, where the union branch had 3,500 members, to limit negotiation to questions of overtime and deduction of taxes from wages. He concluded that the legal right of negotiation of unions of public corporation and national enterprise employees had been inadequately implemented, while national and local public service employees, who had no collective bargaining rights, should be accorded such rights and these also should be properly implemented.

7. *Submission by the National Railway Workers' Union*

1897. Much of this submission was devoted to matters concerning which evidence had previously been laid before the Commission. Two judgments were cited in respect of prosecutions of railwaymen on charges arising out of " working to rule "; according to the citations given some of the persons concerned were acquitted by the Sendai District Court, on 13 July 1963, and the rest by the Nagasaki District Court, on 20 April 1964.

1898. The complainants alleged that, since the issue of orders by the P.C.N.E.L.R. Commission on 7 July 1962 finding proven certain cases of unfair labour practices in the Kanazawa and Niigata Railway Operating Divisions, there had been further cases of unfair labour practices. Twenty-nine cases were listed for these two divisions and five in other divisions. These were not evidenced in detail. The complainants gave the names of 22 persons stated to have been involved on behalf of the authorities in the matters on which judgment was given on 7 July 1962 and listed the higher posts to which they alleged these persons had been promoted.

1899. It was alleged that in the Niigata Division there had been engaged 320 new employees in 1960, 350 in 1961, 420 in 1962, 400 in 1963 and 510 in 1964, but that as a condition of engagement they were required to join the new rival union; only one or two of them had joined N.R.W.U. Of 1,247 new employees engaged in

1963 and 1964 in the Kanazawa Division, it was alleged, 694 had joined the new union, 11 had joined N.R.W.U., one had joined the Nihon National Railway Motive-Power Union and 541 had not joined any union.

1900. Evidence was submitted to show that unfair labour practice cases presented to the P.C.N.E.L.R. Commission on 10 July 1961 were ruled upon only on 3 April 1964, while others presented on 4 November 1961 and 11 May 1962 were still pending; cases presented to the National Personnel Authority on 5 May 1961 and 2, 20 and 28 February 1962 had taken from one year and nine months to three years and five months before they were ruled upon, while others presented on 22 and 25 April 1962 were still pending.

8. *Submission by the Nihon National Railway Motive-Power Union*

1901. This submission covered the issue of the refusal of the competent authorities to bargain with the union in 1957 and 1958, concerning which Mr. Meguro, Vice-President of the union, gave evidence in Geneva in September 1964, and contained further comments on the cases of alleged anti-union repression mentioned in the union's further statement presented on 25 June 1964.

9. *Submission by the Japan Postal Workers' Union*

1902. Supplementary to the evidence given by Mr. Takaragi, President of the Japan Postal Workers' Union, on 22 September 1964, the submission listed the following agreements: agreement on application procedure of conciliation, mediation and arbitration (effected 14 December 1957 to expire 13 June 1958), agreements on grievance procedure and on night duty in post offices (both effected 31 March 1958 for one year), agreements on take-home pay and on overtime work and holiday work (both effected 22 April 1958 to expire 30 June 1958). According to the submission, during the period in 1958 when negotiation with the union was suspended, these agreements were not renewed when they expired.

1903. Other evidence submitted was designed to show that, because of the suspension of negotiation at that time, the claim of the Japan Postal Workers' Union for wage increases made on 15 November 1958 was, unlike those of the other unions of public corporation and national enterprise employees, not accepted by the P.C.N.E.L.R. Commission.

D. Discussion with Mr. Takatsuji, Director-General of the Cabinet Legislation Bureau

1904. The Commission met Mr. Takatsuji, Director-General of the Cabinet Legislation Bureau, on 16 January 1965. He was accompanied by Ambassador Aoki, Permanent Delegate of Japan in Geneva, and Mr. Yoshikuni, Deputy Director-General of the Cabinet Legislation Bureau.

1905. Mr. Takatsuji said that the new legislative Bills, drafted since his return from the hearings in Geneva in September 1964, would probably be submitted to the Diet, together with the Bill to ratify Convention No. 87, on a date to be decided by a Cabinet meeting, due to take place on 19 January 1965. He proceeded to review the most important points in the Bills to amend the N.P.S. and L.P.S. Laws.

1906. Under the proposed amendments, he said, it would not be possible for ordinary employees to join organisations of managerial staff. The Commission pointed out that it was proposed in the Bills that the practice established in classifying the staff of national schools would have to be followed in the case of local education personnel and asked what the practice and criteria to be followed would be. Mr. Takatsuji said that it was felt appropriate to make the National Personnel Authority responsible for establishing such practice and criteria rather than to do so by cabinet orders, and the law would provide accordingly. Since the institutional structure of national and local schools was not identical it was not possible to apply identical criteria or follow identical practices in respect of both, but the personnel and equity commissions would have to follow as closely as possible those applicable to national schools. He was not yet able to say whether or not headmasters would be classified as managerial staff. In this connection, schools in which conditions were not the same might be treated differently and it was desired to ensure reasonable flexibility in dealing with such situations. Whether or not the National Personnel Authority would consult the Japan Teachers' Union before taking decisions in this connection was entirely for the Authority to decide, but he said that he presumed that either the Authority or the union would establish informal contacts with the other regarding such questions; both parties had had contacts for many years concerning matters of common interest. He expected also that the Japan Teachers' Union would also establish contacts with the Prefectural Personnel Commissions.

1907. With regard to the election of union officers Mr. Takatsuji said that, whereas under the former draft Bills a majority vote of the entire membership was required, under the new amendments a majority of the votes cast would be sufficient.

1908. He recalled that during the hearings in September 1964 he had been asked on what basis non-registered organisations could negotiate with the authorities and that he had answered that non-registered organisations had the same possibility as registered organisations of asking to enter into negotiations. Under the old text of the law the use of the words " a registered employees' organisation may negotiate " led to the fear that this could be interpreted as meaning that non-registered organisations could not ask to negotiate at all. The purpose of the proposed amendment was to remove this fear. The amendments regarding the procedures to be followed during negotiations applied to both registered and non-registered organisations, as both had the possibility of asking to enter into negotiations with the authorities. He added that, in order to remove all possible uncertainty as to the meaning of the new amendments, express statements would, if necessary, be made by the Government in the course of the debates in the Diet.

1909. The Commission pointed out that, from what had been said in the proceedings in Geneva, it had understood the position to be that, in the case of registered organisations, the authorities were obliged to consent to enter into negotiation and that, in the case of non-registered organisations, the authority was not obliged even to reply to the request for negotiation. Mr. Takatsuji recalled that he had said in Geneva that non-registered organisations also could come to the authorities with grievances or demands and said that this continued to be the case under the new amendments and that there was no difference between registered and non-registered organisations so far as requests for discussions were concerned, the only difference relating to whether the authorities were prepared to go into the substance of the contents of the requests for discussion or negotiation made by non-registered organisations. Mr. Takatsuji agreed that the Commission was right in understanding the

position to be that both registered and non-registered organisations could ask for negotiation, but that in the former case the authorities were obliged to consent to negotiate, whereas they were not under the same obligation in the latter case but could answer that they did not wish to negotiate or could abstain from answering at all. He said that it was not intended to insert an express provision concerning the negotiating right of non-registered organisations and that practice should be left to develop in this respect; this practice already existed and would continue.

1910. The Commission referred to the provision in the new draft amendments that " the authority is placed in a position to respond to the request for negotiation from a registered employees' organisation concerning working conditions " and asked Mr. Takatsuji to clarify the meaning of the words " placed in a position to respond ". He said that this meant that when a request was made by a registered organisation the authority was bound by the request. The Deputy Director-General of the Cabinet Legislation Bureau added that the provision in question did not refer to individual negotiations but stated in broad terms that the authorities were obliged to respond in principle.

1911. Asked by the Commission whether it was correct to say that the proposed amendments did not change the existing situation, Mr. Takatsuji replied that the only change brought about by the new text, as compared with the explanations he had given in Geneva, was to remove the existing doubt as to whether non-registered organisations had competence to negotiate. The question again being put as to whether there would be any change as compared with the existing situation, Mr. Takatsuji replied that there was no change in theory but that the doubt as to competence to negotiate would be removed.

1912. Mr. Takatsuji agreed that the provisions of the law relating to the granting of leave of absence to serve as full-time union officer applied only in the case of registered organisations. For example, he said, in Fukuoka Prefecture the services of a full-time union officer belonging to a local registered union were made available to the non-registered federation of the All-Japan Prefectural and Municipal Workers' Union to which such local union was affiliated, but he added that a local authority would not refuse to negotiate with a non-registered union only on the basis of the fact that it had a full-time officer.

1913. He went on to explain that, while the earlier Bills gave the Personnel Bureau a large share of the responsibilities of the National Personnel Authority, it would have only a small share under the new Bills. The proposed Public Service System Council of the Prime Minister's Office would be tripartite and would be called upon to conduct investigations with a view to improving the system in force. He said that this Council would consist, firstly, of persons of knowledge and experience, secondly, of members representing the State, the local public bodies and corporations and, thirdly, of employees' representatives. The appointment of the members would be the responsibility of the Prime Minister. He said that the trade unions attached certain hopes to the Council and he anticipated that they would look forward to its establishment, especially those which were to be represented on it.

1914. The Commission asked Mr. Takatsuji whether it was necessary to have such a complicated legal system in respect of the scope of unions under the L.P.S. Law and L.P.E.L.R. Law. He said that detailed provisions might become less necessary in the future but that at present differences in the conditions of employment of

different categories of employees made it necessary to have detailed provisions and it would be impossible to cover all categories by one law. He concluded, however, by saying that he would keep the Commission's observations in mind.

E. Second Discussions on General Matters with the Minister of Labour and the General Secretary of the General Council of Trade Unions of Japan

1. *Second Discussion with Mr. Ishida, Minister of Labour*

1915. The Commission held its second discussion with Mr. Ishida, Minister of Labour, on 18 January 1965, at the Ministry of Labour. The Minister was accompanied by Ambassador Aoki, Permanent Delegate of Japan in Geneva, Mr. Hori, Administrative Vice-Minister of Labour, and Mr. Shizeki, Parliamentary Vice-Minister of Labour.

1916. The Commission told the Minister that it had observed a mutual lack of confidence between the parties concerned which it seemed difficult to remedy. The General Council of Trade Unions of Japan felt it had lost something because the latest proposed legislative amendments differed from the Kuraishi proposals. The Commission had told the trade unions that they must be realistic and take as a basis the proposals which were going before the Diet. The Commission therefore wondered if it was possible for the Government to make any contribution towards dispelling the atmosphere of mistrust.

1917. The Minister said that it would be very difficult to make legal provision for central negotiation by teachers, whereas the workers seemed to think there would be no progress unless this was done. As many as possible of the points in the Kuraishi proposals had been embodied in the new amendments. As regards other questions, some additional statements might be made in the course of the debates in the Diet with a view to obtaining the support of the opposition parties for the amendments. At the same time he thought that the Commission might do something to convince the trade unions. The Commission pointed out that the crux was the question of legal provision for central negotiation—a provision on which the trade unions might not have continued to insist if they had confidence in the Government and which might not be necessary if more confidence could be created—and that when it had referred to the possibility of the Government contributing to the removal of mistrust it had had in mind some move such as the establishment of contacts with the employees' organisations through appropriate machinery. The Minister said also that if mutual confidence existed there would be felt no need for an express provision concerning central negotiation; on its side, the Liberal-Democratic party feared that such a provision would lead to innumerable demands. He felt that it would take a long time to establish mutual confidence. He was thinking of ways and means of establishing contacts with the unions without having express legal provisions, and pointed out that he and the Minister of Home Affairs and some other Ministers had already had exchanges of views with the trade unions, although they did not bargain with them.

1918. The Commission reminded the Minister that the Japan Teachers' Union was not thinking in terms of concluding collective agreements but hoped to be able to hold discussions with the Minister of Education. The Commission itself hoped that something could be done to break the wall between these two parties.

1919. The Minister confirmed that the Kuraishi proposals were now out of the picture because they did not have the support of the majority of the Liberal-Democratic party. When Mr. Kuraishi had found this to be the case he had informed the Socialist party accordingly. His proposals had not been binding on anyone, as had been made clear in the Diet at the time. But some of the principles in his proposals had been incorporated in the latest draft amendments to the legislation.

2. *Second Discussion with Mr. Iwai, General Secretary of the General Council of Trade Unions of Japan*

1920. On 18 January 1965, the Commission received Mr. Iwai, General Secretary of the General Council of Trade Unions of Japan, for the second time. He was accompanied by Mr. Haraguchi, President of the All-Japan Federation of Metal Mining Workers' Unions, and Mr. Takaragi, President of the Japan Postal Workers' Union.

1921. Mr. Iwai first referred to the Kuraishi Plan of 1963 concerning amendments to be made to the legislation. He said that the proposals then were not put forward by Mr. Kuraishi as an individual; they had been agreed between him and Mr. Iwai but had subsequently been confirmed by the General Secretaries of the Socialist and Liberal-Democratic parties. It had been part of that plan to guarantee the negotiating rights of national and local public service employees.

1922. In Japan's 45,000 schools about 45 per cent. of the school principals and 75 per cent. of the vice-principals belonged to the Japan Teachers' Union, but if the new Bills passed, said Mr. Iwai, more than 50,000 principals and vice-principals would automatically be forced to give up their union membership. He thought that it was generally accepted that the scope of managerial and supervisory employees should be discussed and decided between labour and management.

1923. In Mr. Iwai's view collective bargaining by teachers' unions should cover wage structure and scales, components of wages, numerical strength, working hours, hours of teaching, rest days, holidays, leave, severance pay, pensions, merit rating, personnel action, demotion, promotion, transfer, dismissal, suspension, safety, sanitation and workmen's compensation, and also various matters in administration policy which had a close relation to working conditions. The unions wanted bargaining rights written into the law because they no longer had any confidence in assurances.

1924. At this point the Commission reminded Mr. Iwai that it had two functions: fact-finding and conciliation. It had discharged the first function. Now it wondered if there were any chances of conciliation; if there were not, the Commission would say so in its report. The Commission therefore asked Mr. Iwai if the position was that, if the ratification Bill were presented to the Diet accompanied by other legislative Bills which did not provide for the central negotiating rights of the Japan Teachers' Union, the unions would oppose the ratification, and Mr. Iwai replied that it was. Mere ratification of Convention No. 87, he said, would not guarantee the rights laid down in it; he felt that the Liberal-Democratic party looked upon ratification as a means of preventing further complaints by international organisations. He was aware that after ratification there was I.L.O. machinery to exert pressure on the Government to fulfil its obligations, but wondered at what stage pressure might be most effective and whether it might not be better to get union rights, including

central bargaining rights, guaranteed before ratification. He was afraid that after ratification the Government would make its reports to the I.L.O. and try to escape its obligations and said that Japan had ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), 14 years before and that, although the Committee of Experts on the Application of Conventions and Recommendations had concluded that section 4 (3) of the P.C.N.E.L.R. Law and section 5 (3) of the L.P.E.L.R. Law violated Convention No. 98, no remedial action had been taken by the Government. The Commission reminded Mr. Iwai that if the General Council of Trade Unions of Japan continued to oppose the ratification of Convention No. 87 the Commission would have to say so in its report and the organisation then might come in for criticism, but Mr. Iwai was not sure: he agreed that a stand against ratification *per se* would invite criticism, but not a stand against ratification not accompanied by the amendment of legal provisions which violated the Convention.

1925. Mr. Haraguchi intervened to explain that the crucial issue was not just the ratification of Convention No. 87—the trade unions and the Government were agreed concerning ratification *per se*. The crux was how to improve labour relations simultaneously with ratification, and article 98 of the Japanese Constitution permitted ratification of international treaties and laws only after domestic laws had been brought into conformity.

1926. The Commission questioned Mr. Iwai as to what his attitude would be if it were to succeed in obtaining from the Government assurances which the Commission could regard as consistent with the guarantees provided for in Convention No. 87, that was to say, if the Commission were satisfied that the laws would be amended to cover the minimum guarantees laid down in the Convention, leaving further details to be agreed between the parties. Mr. Iwai wondered what kind of assurances the Commission had in mind and said that, since the arrival of the Commission in Japan, the Government had publicly announced that it would not negotiate with the Japan Teachers' Union but would only receive petitions.

1927. Mr. Takaragi declared that even within the labour movement there were elements which did not care about ratification and that public order groups and education groups in the Liberal-Democratic Party opposed ratification. He wished for conciliation based on the Kuraishi Plan. Mr. Iwai agreed with this, saying that the Kuraishi Plan represented common ground on which the Government, the Liberal-Democratic party, the Socialist party and the trade unions had been agreed—to reach it the trade unions had made concessions against the will of many of their members. He admitted, however, that a majority of the Liberal-Democratic party had not found the Kuraishi proposals acceptable.

1928. Mr. Takaragi said that the Kuraishi proposals had not provided for the right of teachers to negotiate at the central level but had provided for discussions, it being understood that the question of negotiation would be considered within one year later by the Deliberation Council of the Public Service System Council. The unions, said Mr. Iwai, still wanted what had been contained in those proposals, and not only for teachers but for national and local public service employees in general, not forgetting the promise of consideration by the Deliberation Council of the question of negotiation.

CHAPTER 43

VISITS BY MEMBERS OF THE COMMISSION TO PROVINCIAL CITIES IN JAPAN

1929. On 19 and 20 January 1965, following the discussions in Tokyo described in the preceding chapter, the three members of the Commission, travelling separately, made visits to certain Japanese cities, where they met trade union officials and representatives of the employing authorities. Mr. Erik Dreyer, Chairman of the Commission, visited Niigata and Kanazawa, Mr. David Cole visited Fukuoka and Gifu, and Sir Arthur Tyndall visited Matsuyama and Hiroshima.

1930. The three visits to different parts of Japan to be made by the members of the Commission had been arranged so that the Commission might have an opportunity not only to see the different conditions which might be peculiar to the different regions of Japan, but, more importantly, to hold discussions with responsible people in those areas. These included representatives of the trade union organisations, prefectural and local government officials, local representatives of public corporations and national or local enterprises and the like, all of whom might be in a position to discuss with the Commission member any details of a general nature concerning local affairs, conditions and labour-management relations which could be of particular value to the Commission's fuller understanding of Japan as a whole.

1931. The Commission made it well understood beforehand that the informal discussions which were to take place during these visits could in no way resemble a trial, inquest or hearing. The Commission was not prepared to accept additional evidence or testimony on specified cases involving allegations of unfair labour practices or interferences which had already been presented to the Commission in the written submissions or in the testimony at the hearings in September 1964. Neither was the Commission prepared to entertain any discussions of such cases which had already been decided by the appropriate judicial bodies which exist in Japan for that purpose.

1932. In addition to information of a general character, the Commission stated that it would be pleased to hear of any developments in the particular local areas which might have occurred since September 1964.

1933. The time available for discussion was divided evenly between the representatives of the unions on the one hand and the representatives of the Government and national and local authorities on the other. Each group was given the opportunity to hold discussions with the respective member of the Commission without interruption; however, a representative of each group was permitted to be present at the discussions to be held with the other group.

1934. An analysis of the discussions which took place in the cities visited and of certain documents and written statements submitted to the members of the Commission in connection with their visits is made below.

1935. The Commission wishes to point out that the Government did not have an opportunity to see or comment on the documents and written statements in question.

A. Visit by Mr. Erik Dreyer to Niigata and Kanazawa

1. *Meeting with Representatives of the National Railway Workers' Union and of the Niigata Regional Office of the Japanese National Railways in Niigata City*

1936. On 19 January 1965, Mr. Erik Dreyer met first of all Mr. Takahashi and Mr. Nakamura, respectively Chairman and Assistant Chairman of the Executive Committee of the Niigata Regional Organisation of the National Railway Workers' Union. Also present were Mr. Meguro, Vice-Chairman of the Nihon National Railway Motive-Power Union, Mr. Ishikawa, Chief of the Legal Affairs Division of the National Railway Workers' Union, and other Niigata officials of N.R.W.U. This phase of the meeting was attended, on behalf of the authorities, by Mr. Nishimura, Chief of the General Affairs Division of the National Railways Niigata Region.

1937. Mr. Takahashi claimed that since the relief orders given by the P.C.N.E.L.R. Commission in July 1962 interference with legitimate union activities had not diminished, and submitted evidence of over 20 alleged cases. He said that railroad officials found guilty of unfair labour practices by the P.C.N.E.L.R. Commission had since been promoted.

1938. Mr. Nakamura said that four Niigata members of N.R.W.U. had been subjected to pressure and discrimination, with a view to forcing them to leave the union, since the orders were made by the P.C.N.E.L.R. Commission and that, while those orders had stated that the authorities should not interfere with the union's methods of selecting officers or its organisational structure, the authorities at Mianchi Station had refused to negotiate with the local union because they disagreed with the union on these precise matters. He alleged that one member, Mr. Sato, had been forced by the authorities to leave N.R.W.U. and join the new rival union, that N.R.W.U. was discriminated against compared with the new union in respect of the use of premises for meetings, and that the authorities had not implemented an agreement concluded in December 1963 with regard to the promotion of persons who had been the victims in unfair labour practice cases.

1939. Mr. Dreyer then met Mr. Suzuki and Mr. Nishimura, respectively General Manager and General Affairs Department Director of the Japanese National Railways Niigata Region, who were accompanied by Mr. Inoue, Director of the Staff Administration Department of the Japanese National Railways, and other Niigata regional officials.

1940. Mr. Suzuki said that there were now three unions of railway workers in the Niigata Operating Division—the New Railway Workers' Union (Shinkokuro), with 9,079 members, the Motive-Power Union, with 2,714 members, and N.R.W.U., with 2,265 members. He said that the new union had been formed in 1957, without any interference on the part of the authorities, by N.R.W.U. members who disapproved of its policies. N.R.W.U. had lost about 10,000 of the 12,830 members it had had in 1956. He said that the management had never agreed with the findings of the P.C.N.E.L.R. Commission which had been unfavourable to it; the management was striving to obtain normal labour relations and did not at any time refuse to bargain collectively with proper union representatives.

1941. Mr. Nishimura denied the various allegations made by Messrs. Takahashi and Nakamura. In reply to a question by Mr. Dreyer Mr. Nishimura said that there was prior consultation with the leaders of all three unions on those aspects of the rationalisation plan which involved questions of conditions of work.

1942. In conclusion, speaking alone with Messrs. Takahashi and Nakamura, on the workers' side, and Messrs. Suzuki and Nishimura, on the employers' side, Mr. Dreyer expressed his regret at the lack of mutual confidence which he had observed and said that he hoped that they would remember in future that the creation of better relations was " in the interest of both parties ".

2. *Meeting with Representatives of the All-Japan Prefectural and Municipal Workers' Union and Representatives of Local Authorities in Niigata City*

1943. On 19 January 1965, Mr. Dreyer met first of all Mr. Shitoma, President of the Niigata Prefecture headquarters of the All-Japan Prefectural and Municipal Workers' Union, who was accompanied by other Niigata union officials and by Mr. Osanai, a member of the central executive of the union. Mr. Inai, Assistant Chief of the Personnel Section of the Niigata Prefectural Government, represented the authorities.

1944. Mr. Shitoma declared that the authorities generally issued regulations governing the use of publicly owned premises for the purpose of restricting union activities. He cited rules prohibiting demonstrations, posting of notices, banners and assemblies without permission. For contravention of these regulations 14 union officials were disciplined in December 1962 and 19 more in September 1964. The latter measure followed a mass protest meeting against what he called the Government's non-compliance with recommendations of the National Personnel Authority.

1945. Mr. Shitoma complained also that several authorities had not followed properly the practice of granting employees leave without pay to serve as full-time union officers. In Takada city the local union applied for leave for certain officers in May 1962; not until September 1963 was an answer given, and that was a refusal; finally, satisfaction was obtained in September 1964, after the case had been reported to the Commission. Of 116 autonomous bodies within the prefecture, he said, 74 had no system of granting leave to serve as full-time union officers.

1946. Mr. Dreyer then met Mr. Kodama, Chief of the General Affairs Division of Niigata city, Mr. Kurima, Assistant Mayor of Takada city, and Mr. Watanabe, Chief of the Personnel Division of the Niigata Prefectural Government. Mr. Hirano, General Secretary of the Niigata Prefectural Headquarters of the union, was present.

1947. Mr. Kodama said that the regulations for the management of Niigata government buildings were designed solely to ensure safety and order and did not restrict normal union activity. Massive demonstrations infringed the regulations.

1948. Mr. Kurima admitted that, partly because of a change of mayors, it had taken the Takada city authorities two years to dispose of the application of the local union for employees to be granted leave to serve as full-time union officers. However, the relevant by-law came into force on 1 August 1964. He said that smooth relations now subsisted between the city authorities and the Takada City Employees' Union.

1949. Mr. Watanabe said that the Prefectural Government had promulgated an ordinance concerning the use of government buildings on 30 December 1962, and many local public bodies in the prefecture had taken it as a model for their own regulations. He said that 81 of the 116 local public bodies in the prefecture had never promulgated by-laws concerning the granting of leave to employees to serve as full-time union officers. He suggested that one reason for this might have been the absence of any union activity in certain localities.

1950. In conclusion Mr. Dreyer, on this occasion also, expressed his regret at the lack of mutual confidence between the parties.

3. *Meeting with Representatives of the New Japanese National Railways Niigata District Labour Union (Shinkokuro)*

1951. On 20 January 1965, Mr. Dreyer met Mr. Watanabe and Mr. Kazama, respectively Chairman and Executive Secretary of the New Japanese National Railways Niigata District Labour Union.

1952. Mr. Watanabe denied that the new union had been formed through unfair labour practices and sponsorship by the authorities. In fact, he alleged, the leadership of N.R.W.U. had been in the hands of extreme left-wing elements who had urged the members to defy the law, and the founders and members of the new union were persons who had wished to get away from tactics of violence and bureaucratic union management. His union was affiliated with the National Federation of New National Railway Workers' Unions, which was a part of the new Domei organisation.

4. *Meeting with Representatives of the National Railway Workers' Union and the Nihon National Railway Motive-Power Union and Representatives of the National Railways Administration in Kanazawa*

1953. During the first part of this meeting Mr. Dreyer met Mr. Fukumura, President of the Hokuriku district headquarters of the National Railway Workers' Union, Mr. Shinozuka, Chairman of the Kanazawa Branch of N.R.W.U., and Mr. Tahira, President of the Hokuriku district headquarters of the Nihon National Railway Motive-Power Union, who were accompanied by several local officials of their respective organisations.

1954. Mr. Fukumura considered that the growth of unfair labour practices since 1959 was due to the attempts of the National Railways administration to split N.R.W.U. and that also the rationalisation programme was used as a weapon against trade unionism. He referred to certain officials found guilty of unfair labour practices as having been promoted as a result. As regards pay rises and promotion, he said, members of N.R.W.U. were discriminated against and members of the new union favoured, and a new worker got permanent status more quickly if he changed from N.R.W.U. to the other union. He claimed also that N.R.W.U. members had been disciplined because they had worn badges indicating their participation in the organisation's programme to ensure proper security and maintenance procedures on the railways. He said also that there had been cases of discrimination in wage progress and that in September 1964 an agreement was concluded between the parties concerning temporary employees, but that a number of such temporary employees were employed in a division in which it had been agreed there should be none.

1955. Mr. Shinozuka alleged that on 22 December 1964 a new worker, Mr. Kinozawa, was threatened by his assistant stationmaster with discriminatory treatment if he left the new union and that he was in fact demoted when he did so.

1956. Mr. Tahira said that on 21 September 1964 the local Motive-Power Union started to work to rule in connection with wage implementations and that 99 members were forced to leave the union, 70 railway security officers and 100 supervisors having been mobilised against the union. He alleged that a subsection chief, Mr. Tanata, threatened a union member, Mr. Okabe, with reprisals, and told another member, on 3 December 1964, that he would be promoted if he left N.R.W.U., and that temporary employees had been called to a meeting by the general secretary of the new union and told that if they joined it they would become established employees more quickly.

1957. Mr. Dreyer then met Mr. Banno, Superintendent of the Kanazawa Railway Operating Division, and Mr. Mori, Director of its General Affairs Department, accompanied by other officials.

1958. Mr. Banno said that in his division N.R.W.U. had 3,616 members, the Motive-Power Union had 2,440 and the New Union had 5,671. The New Union was formed in January 1960. He dismissed as propaganda the allegations of N.R.W.U. that the New Union had been sponsored by the authorities. He said that in October 1963 an understanding had been reached; collective bargaining was carried on with all three unions and he considered that there were no major problems outstanding in the district.

1959. Mr. Mori said that in his view the main problems arising out of the struggle against the rationalisation programme in 1959 had been solved. He denied that the authorities had exercised discrimination in respect of examinations for promotion and wage progression; candidates were recommended by their chiefs, and the results depended solely on the basis of the written and oral examinations. In the case of promotions not depending on examinations, he said, consideration was given to length of total service, length of service in the particular job and qualitative remarks on the service record; no consideration was given to union membership. In principle, regular employees were chosen from among temporary workers with the longest service. As regards the disciplinary action for wearing badges, he said, there were regulations prohibiting the wearing of unauthorised markings on uniforms, but that the incident mentioned occurred over three years before and there had been no recurrence.

1960. The 99 members who left the Motive-Power Union in September 1964, contended Mr. Mori, did so of their own accord, without pressure by the authorities, because of the union's decision to work to rule.

5. *Written Statement Furnished at Kanazawa by the All-Japan National Tax Workers' Union*

1961. When Mr. Dreyer was in Kanazawa on 20 January 1965, a written statement dated 17 January was submitted by Mr. Murotani, Chairman of the Hokuriku District Federation of the All-Japan National Tax Workers' Union. As Mr. Dreyer was not informed before hand of this statement, it was not possible to invite a representative of the Kanazawa Tax Administration to attend.

1962. Mr. Murotani said that his organisation catered for employees of Kanazawa Tax Administration Bureau and its subordinate officers in the Hokuriku district, including the prefectures of Ishikawa, Fukui and Toyama. He alleged that since 1960 the local authorities had violated freedom of association and union activities recognised by the N.P.S. Law and that, especially between September 1962 and January 1963, Mr. Murai, Chief of the Kanazawa Bureau, had brought such pressure on members to leave the union that in the said four months' period the total membership of its Ishikawa, Fukui and Toyama chapters declined from 891 to 83. He concluded that in September and October 1962 Mr. Murai had called his section chiefs together to initiate anti-union measures and then his senior officials persuaded local administration officers to leave the union, after which the latter forced their subordinates to leave it. He gave details in this connection of alleged measures taken in the Komatsu, Takefu and Fukui Tax Offices.

1963. As part of this campaign, he alleged, Mr. Murai and his local office and section chiefs had defamed the union, restricted union activity, refused annual leave with pay if it was to be used for union activity and refused or placed unreasonable restrictions on collective bargaining, limiting the number of bargaining representatives and the periods of bargaining and refusing to bargain on employment and discharge, discipline, transfer, wage increases and promotion. Collective bargaining between the union's Hokuriku Federation and the head of the Kanazawa Bureau, he said, had been limited between October 1962 and October 1964 to a total of three hours. The same thing had happened at other offices. Examples given of alleged unjustified administrative punishment of members because of union activity related to the period 1957-62.

1964. Mr. Murotani contended that Mr. Nishikawa, Chairman of the Kanazawa branch of the union, and five others had been denied promotion, and that Mr. Nishida, former Chairman of the union's Hokuriku Federation, had been unfairly denied promotion and salary raises, and that Mr. Ueda, Chairman of the Uozu branch of the union, had been demoted from his position as a section chief and transferred from Uozu at the moment when the authorities were exerting pressure there which resulted in 40 members being forced to resign from the union.

1965. Mr. Murotani then listed a number of examples of alleged interference by the Kanazawa authorities in legitimate welfare activities carried on by the union.

1966. Finally, he alleged, the authorities sponsored the formation of branches of a new government-controlled union at Fukui, Takefu, Ono, Tonami and Uozu, promoting or increasing the wages of workers who helped in this venture. Since then, he said, administrative officers had used their positions to urge workers to join the new union.

B. Visit by Mr. David Cole to Fukuoka and Gifu

1. *Meeting at Fukuoka with Representatives of the All-Japan Prefectural and Municipal Workers' Union and Representatives of Local Public Bodies*

1967. In Fukuoka city, on 19 January 1965, Mr. Cole met together with representatives of the employees and local authorities. The meeting was attended by Mr. Hanada, President of the Fukuoka Prefectural Employees' Union, Mr.

Miyaji, President of the Fukuoka prefectural headquarters of the All-Japan Prefectural and Municipal Workers' Union and Mr. Ooki, General Secretary of Omuta City Government Employees' Union, and others, and on the part of the authorities by Mr. Shirotori, Chief of the Fukuoka Prefecture Welfare Division, Mr. Noda, Chief of the Executive Office of the Personnel Commission, Kitakyushu city, Mr. Torigoe, Assistant Mayor of Omuta city, and others.

1968. Mr. Hanada declared that the Governor of Fukuoka Prefecture concluded an agreement with the Fukuoka Prefectural Employees' Union, on 27 May 1960, providing that employees should be allowed to attend union meetings, that the union would be notified in advance of wage changes and personnel changes and that union dues would be checked off from wages. He alleged that some of these provisions were overridden by the Ministry of Local Autonomy and the Prefectural Assembly. He said that the present Governor, elected in 1959 and re-elected in 1963, had a democratic outlook, and that the union had sincerely co-operated with him.

1969. Mr. Miyaji also complained of the interference with the implementation of the said agreement.

1970. He then referred to an agreement concluded with the Mayor of Omuta city by the Omuta Municipal Employees' Union containing an undertaking to promote 53 temporary employees to regular status and said that it had been opposed and adversely amended by the Omuta Municipal Assembly.

1971. Mr. Miyaji said that the Kitakyushu Personnel Commission had still refused to register the Kitakyushu Municipal Employees' Union and that the city authorities had taken this as a pretext to call the union unlawful and to refuse negotiation with it. He produced a statement by the secretary of the union in question to the effect that registration was refused because it catered at the same time for public enterprise workers, local public servants and persons employed for simple labour.

1972. Mr. Miyaji complained that an appeal filed on 13 July 1962 with the Fukuoka City Fair Labour Practice Committee against disciplinary measures taken against 24 employees was still outstanding, the Committee having examined it only six times and those responsible for the measures having failed to attend hearings when called upon to do so.

1973. He said also that registration had been refused to the Fukuoka Municipal Employees' Union in November 1964 because it elected as officers employees who had been dismissed, following which the city authorities refused to negotiate with it because it was not registered.

1974. Mr. Ooki, General Secretary of the Omuta City Government Employees' Union, said that in 1964 Omuta city was placed under the application of the Law for special measures for recovery of local government finance. In the same year the Diet approved the revision of the wage schedules of government employees based on an increased standard wage, which was applicable to both national and local government personnel. Almost all the local and municipal governments in the country, he said, enforced the revised schedules in September 1964, in accordance with law, but the Mayor of Omuta proposed postponement of the pay raise to

January 1965 and revision of the wage schedule to the disadvantage of the employees by fixing standard pay at a lower level than that generally applicable elsewhere.

1975. Mr. Shirotori, Chief of the Fukuoka Prefecture Welfare Division, said that the authorities whom he represented desired the collective agreement referred to by Mr. Hanada, but that its implementation had been paralysed by instructions given to the Governor by the Minister of Home Affairs, who had questioned the authority of the Governor to conclude the agreement and the conformity of the agreement with the L.P.S. Law. He said that the Governor had been forced to give in and so the agreement, which the prefectural authorities wished to implement in accordance with the spirit of the prefectural regulations, could not be implemented because of the attitude of the Minister.

1976. Mr. Torigoe, Assistant Mayor of Omuta city, said that the wage increases referred to by Mr. Ooki had not been approved by the Municipal Assembly, so that the municipal authorities were sorry but could not help it.

2. *Meetings at Gifu with Representatives of the Japan Teachers' Union and Representatives of the Gifu Prefectural Education Board*

1977. In meetings in Gifu city on 20 and 21 January 1965, Mr. Cole met Mr. Ishida, General Secretary of the Gifu Prefectural Teachers' Union, and other officials of the union, and Mr. Ito, Superintendent of the Gifu Prefectural Education Board, and other officials of the Board.

1978. Mr. Ishida, for the union, alleged that the Prefectural Education Board proposed to request a budget of 20 million yen in order to foster rival unions and develop a " reward system " in order to destroy the Teachers' Union. In Komo county in 1963, he said, 2 million yen were distributed to teachers who left the union, under the guise of " travel expenses ", so that they all seceded. He claimed that his union had held demonstrations but had not resorted to violence, as was proved by the fact that no members had been prosecuted for violence.

1979. In reply, Mr. Ito expressed the view of his Board as being that educational staff must abide by laws and regulations and engage solely in education matters, with good discipline. He said that all the teachers who left the union complained unanimously of bad influences arising from the political bias of the Japan Teachers' Union and its Gifu affiliate, which did not use contributions for the benefit of the members.

3. *Statement by Mr. Kitazaki, President of the Saga Prefectural Teachers' Union*

1980. As Mr. Cole was not visiting Saga, a typed statement was put in by Mr. Kitazaki, President of the Saga Prefectural Teachers' Union. Most of the statement referred to matters prior to 1960 and the present analysis is confined to that part of it which was concerned with matters of current importance.

1981. Mr. Kitazaki complained of the time taken by the Saga Personnel Commission to dispose of appeals against adverse action submitted to it by employees. He said that an appeal submitted on 10 April 1957 was still pending, the latest (twenty-seventh) hearing having taken place on 12 December 1964.

C. Visit by Sir Arthur Tyndall to Matsuyama and Hiroshima

1. *Meeting at Matsuyama with Representatives of the Ehime Prefectural Teachers' Union and Its Affiliates and Representatives of the Ehime Education Authorities*

1982. During the first part of this meeting, in Matsuyama city on 19 January 1965, Sir Arthur Tyndall met Mr. Inoue and Mr. Saeki, Chairman and General Secretary of the Ehime Prefectural Teachers' Union, and other local union officials. Mr. Nobuyoshi was present on behalf of the education authorities.

1983. Mr. Inoue began by stating that, of the teachers who figured in the complaints submitted to the I.L.O. in 1960, Messrs. Imura and Ogawa had been transferred to remote areas as a reprisal in March 1961, and that others, already in remote areas, were told that no schools would want teachers who appealed to the I.L.O., so they could stay in their remote areas ten or 15 years and then appeal to the I.L.O. again.

1984. The Ehime Personnel Commission, said Mr. Inoue, afforded no protection; between 1958 and 1964, 111 union members appealed to it against disadvantageous assignments, but decisions had been given in only 13 cases and not in any of those submitted since 1960. He claimed that the Prefectural Education Board brought pressure to bear on teachers to withdraw appeals they lodged with the courts or the Personnel Commission, and under such pressure 48 had been withdrawn.

1985. No member of the Japan Teachers' Union, said Mr. Inoue, had been made a principal since 1958, nor even promoted to the post of head teacher since the founding of the Ehime Educational Research Conference in 1961—resignation from the union and adherence to E.E.R.C. were conditions precedent to such promotion. In 700 primary and lower secondary schools in the prefecture, only one principal, Mr. Takayoshi Inoue (appointed in 1954) and two head teachers, Mr. Iwaki (appointed in 1954) and Mr. Itakura (appointed in 1961) were union members, and even these three, he alleged, were virtually downgraded in the personnel reshuffle of March 1964 by being reassigned to small schools where no administrative allowance was paid. Mr. Inoue said that in March 1964 the head of the Education Board had promised teacher Nagasaki to recommend him for an administrative position if he left the union, and that all new teachers were forced to promise to join E.E.R.C. before they were given permanent status.

1986. Special raises (shortening by from three to six months of the normal period between increments) were given to between 5 and 10 per cent. of the teachers on the basis of their efficiency rating since 1958 but, alleged Mr. Inoue, still not a single union member had ever received a special raise; one teacher, Mr. Aono, was told by his principal that he could not recommend him for a special raise, despite his good record, because the special raise was reserved for E.E.R.C. members and union members were excluded.

1987. In November 1964, said Mr. Inoue, Mr. Yamagami, a union member and one of 14 teachers at Kofuji Primary School, was refused annual paid leave to take part in an education research meeting sponsored by the Japan Teachers' Union on the ground that his absence would impede school management, but five of the other teachers were granted leave at the same time to participate in a research meeting organised by E.E.R.C.

1988. Mr. Inoue declared that E.E.R.C. was sponsored and completely controlled by the Education Board, which defined the subjects on which it should deliberate,

and that E.E.R.C. itself, on 24 September 1964, urged the Board to take measures against union leaders. When a union member, Mr. Taniguchi, applied to join E.E.R.C., said Mr. Inoue, he was refused and was told by Mr. Maguchi, Chief of the Uwajima chapter of E.E.R.C., that no union members would be accepted.

1989. Mr. Saeki confirmed what Mr. Inoue had said regarding discrimination in respect of promotion, transfer and special raises. In support of the contention that the authorities brought pressure on union members to withdraw appeals against adverse action which they had filed with the courts or the Personnel Commission, he submitted as evidence the Japanese text of a letter in which, he said, the Chief of Tsushima Town Education Board sent a specific request to a school principal to cause some of his teachers to withdraw appeals.[1] He alleged also that the Chief of Yahatahama Education Board had written to the head of Kushu Junior High School telling him to convene his teachers and to instruct them to leave the union and join E.E.R.C.

1990. Sir Arthur Tyndall then met separately the representatives of the Ehime education authorities: Mr. Takeba, Chairman of the Ehime Prefectural Education Board, Mr. Ohnishi, Chief of the General Affairs Department of Ehime Prefecture and former Superintendent of the Education Board, Mr. Nakaya, Superintendent of the Education Board, Mr. Kamei, Assistant Chief of the General Affairs Section of the Education Board, and Mr. Mukai, President of the Association of Ehime Elementary and Lower Secondary School Principals and Managing Director of the Ehime Education Research Conference. Mr. Makieda attended on behalf of the Japan Teachers' Union.

1991. Mr. Nakaya said that there were four teachers' associations in the prefecture—two organisations of elementary and junior high school teachers (one affiliated to the Japan Teachers' Union) and two organisations of general high school teachers (one affiliated to the Japan Teachers' Union). He said that all four had the right to negotiate and that the two which were not affiliated to the Japan Teachers' Union had done so " in a peaceful and democratic manner ". He denied that teachers had ever been transferred to remote areas because of union membership.

1992. Sir Arthur Tyndall reminded Mr. Takeba that, when he was asked in Geneva, in September 1964, to comment on the allegation that 16 teachers in all had been transferred out of the Shuso district, including the whole executive of the union chapter, he had said that this " just happened " and that he could not say how many teachers in all were employed in the district at that time; he asked him now to state what was the total number employed there at the material time. Mr. Ohnishi replied: " About 440."

1993. In reply to further questions Mr. Nakaya said that the two unions not affiliated to the Japan Teachers' Union had respectively 1,600 and 80 members, the Japan Teachers' Union having 670. Mr. Takeba agreed that some 9,000 teachers, formerly members of the Japan Teachers' Union, now belonged to no union at all.

1994. Sir Arthur Tyndall asked for comments on the document submitted by Mr. Saeki[2], saying that it had been alleged that it contained a request from the Chief

[1] See, further, para. 1995 below and footnote thereto.

[2] See para. 1989 above.

of Tsushima Education Board to a school principal to cause his teachers to withdraw appeals they had made to the Personnel Commission.

1995. Mr. Kamei perused the document and said that it was written on 11 February 1963 by the Superintendent of Tsushima Town Education Board to the principal of Takegashima Elementary and Junior High School and referred to the withdrawal of applications to the Personnel Commission relating to unpaid salaries, implementation of annual increment and disciplinary actions from 1957 to 1960. According to Mr. Kamei, the letter merely said that the teachers " wished to withdraw " their applications and that " the Superintendent was informing the principal accordingly and asking the latter to inform him whether they actually withdrew ".[1]

1996. Mr. Mukai said that he left the Japan Teachers' Union in November 1956 because of its opposition to the merit assessment system. The school principals met in November 1956 to study the question of merit assessment but a majority were against it. He and 19 other principals left the union then and others followed because J.T.U. resorted to violence. By 1960 some 5,200 teachers, including 680 principals, had left the union, so that, in his view, it was not true to say that large-scale secessions took place only after the formation of E.E.R.C.

1997. In reply to questions by Sir Arthur Tyndall Mr. Mukai said that he had been Managing Director of E.E.R.C. since its formation in September 1960 but " did not know " whether any union applicants had been refused admission to it. He was still a school principal and his E.E.R.C. post was unpaid, although he received a travel allowance. He admitted his hostility to the union but said that this had not caused him to encourage members to resign from it. Sir Arthur Tyndall reminded him that in Geneva Mr. Fukuda, Director of the Elementary and Secondary Education Bureau of the Ministry of Education, had said definitely that J.T.U. members were excluded from E.E.R.C., and asked him again if this was correct. This time Mr. Mukai said that " it was a fact that J.T.U. members were excluded from E.E.R.C." but that he did not know of any cases of applications being refused. Sir Arthur Tyndall asked him, therefore, whether he could assume that, if the remaining members of J.T.U. asked for admission to E.E.R.C., there would be no difficulty. Mr. Mukai could not say, as " it all depended on their being sponsored ".

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[1] The English translation of this letter is as follows:

Tsushima Board of Education, Despatch No. 78—11 February 1963—to the Schoolmaster and Principal of Takegashima Primary School and Middle School respectively, concerns: the withdrawal of teachers' complaints.

With reference to the caption concerning the respective claim or demand for unpaid wages, implementation of measures for periodical wage increase, annulment of disciplinary measure, alleviation of stipulations related to disqualification for wage increment, and annulment of disposition for transfer, which were submitted either to the Prefectural Personnel Commission or the Matsuyama District Court by the teachers concerned during the period from 1957 to 1960.; I consider it desirable that they be all withdrawn and request you accordingly to advise the teachers referred to below to withdraw their complaints in accordance with the separate application forms, which should immediately be prepared by the teachers themselves, and addressed direct to the Personnel Commission or the District Court. In this connection you are requested also to verify if the application for withdrawal of complaint has been duly submitted and report it to the Board.

(Signed) Hideo WATANABE,
Chief of Education, Tsushima Education Board.

Note: 1. Be sure to use the appropriate form of application for withdrawal of complaint as there exist forms from No. 1 to No. 6, depending on the content of the problem.

2. The application must be written on a private sheet of paper in the applicant's own handwriting (printed application forms which are signed and sealed are improper and no official sheet of paper may be used).

3. To send direct to the address indicated.

2. *Meeting with Trade Union Representatives at Hiroshima*

1998. In the morning of 20 January 1965, in Hiroshima, Sir Arthur Tyndall met Mr. Fujiwara, President of the N.R.W.U. Hiroshima district headquarters, and Messrs. Uchiyama and Imoto, local N.R.W.U. branch executive members, accompanied by several other local N.R.W.U. branch officials, and Mr. Noda, President of the Hiroshima district headquarters of the All-Japan Prefectural and Municipal Workers' Union, accompanied by Mr. Tanaka, of the Shobara Municipal Employees' Union. Mr. Usui, Vice-Chairman of N.R.W.U., and Mr. Fujii, Chairman of the National Tax Administration Agency Workers' Union, were also present.

1999. Mr. Fujiwara made a long statement, none of which related to matters not already considered by the Committee on Freedom of Association or by the Commission, except for the data given in the concluding part. Here Mr. Fujiwara said that, as a result of a long history of persecution of the railway workers' unions, certain members had seceded from fear of victimisation and had formed a new union, sponsored by the authorities, which had on 1 October 1964 some 1,714 members, but N.R.W.U., still had 18,028 members in the Hiroshima region and the Nihon National Railway Motive-Power Union had 4,181.

2000. Mr. Uchiyama stated his own case of alleged personal victimisation. On 30 April 1959 he had been indicted on charges of damaging buildings, wilful injury to property and violation of the Law for punishment of acts of violence, for which the authorities had held him responsible as president of the N.R.W.U. Ogori branch when the members of the branch had committed certain acts in March 1958. On 24 November 1964, finally, the Supreme Court found him not guilty on all these charges but fined him 1,000 yen for trespass. This fine was in respect of his having participated in the posting of union notices in a room at Ogori station. When originally charged he had been suspended from duty as a conductor and was not reinstated until 6 December 1964, subject to an administrative sanction of a 10 per cent. wage reduction for six months. He said that when he was suspended in 1958 he was earning 27,000 yen per month. During his suspension he earned 10,000 yen per month as a helper in the union office. He alleged that he had been reinstated at his old wage of 27,000, whereas, but for the suspension, he would have been earning 38,000 yen by December 1964.

2001. Mr. Imoto made a statement relating to cases of alleged victimisation of N.R.W.U. members occurring in 1954 and 1958.

2002. Mr. Noda complained that in March 1964 the new Mayor of Shobara city unilaterally abrogated subsisting agreements concluded with the previous mayor by the Shobara Municipal Employees' Union and relating to pay of employees and collective negotiation causing serious financial loss to employees of Shobara city, whose wages had become the lowest in any city of the prefecture. In the spring of 1964, it was also alleged, the Mayor deducted from the wages of kitchen employees money which had been paid to them in June 1963. He said that since then the Mayor had been refusing to negotiate with the union, had conducted propaganda against the union and had tried to force union officers to resign from their employment. In other cities besides Shobara, he concluded, collective bargaining was often refused if officials from the Hiroshima prefectural headquarters of the All-Japan Prefectural and Municipal Workers' Union were present.

3. *Meeting with Representatives of the Railways Administration and the Mayor of Shobara City at Hiroshima*

2003. In the afternoon of 20 January 1965, in Hiroshima, Sir Arthur Tyndall met Mr. Akagi, General Manager of the National Railways Chugoku Region, and Mr. Kawahara, Director of the Regional General Affairs Department, accompanied by other railway officials, and Mr. Mikami, Mayor of Shobara city.

2004. Mr. Akagi presented a general statement relating to the troubled atmosphere of industrial relations in recent years but concluding with the expression of his view that matters had now become much more normalised, problems being settled by negotiation, and that there were no major matters at issue which were likely to endanger mutual relations between the management and the trade unions.

2005. Mr. Akagi said that when Mr. Uchiyama was suspended his wage was only 16,700 yen per month and that now it was 27,300 yen; in accordance with National Railway Regulations he had been paid 60 per cent. of his normal wages during suspension. He agreed that railway employees' wages had lagged behind those paid in the private sector in recent years.

2006. Sir Arthur Tyndall expressed the view that the decision of the Supreme Court meant in fact that Mr. Uchiyama should never have been suspended at all. To this, Mr. Kawahara said that if a person was prosecuted there was always suspension pending a final court decision. The relevant regulation said that there " may " be suspension but in fact a prosecuted person was always suspended.

2007. Mr. Akagi was asked whether Mr. Uchiyama was reinstated at much less than he would have been earning if he had not been suspended. According to Mr. Kawahara a person of 35 years (the age of Mr. Uchiyama) with 15 years' service would now be getting 35,000 yen; Mr. Uchiyama was getting 27,300 plus allowances, about 30,000 altogether. The maximum pay for a conductor was 50,000 yen at 55 years of age. The figure of 38,000 mentioned by Mr. Uchiyama could have been attained at 35 years of age only by an excellent employee.

2008. Mr. Kawahara was asked why the administrative penalty on reinstatement was so high, the 10 per cent. wage cut for six months representing 16,000 yen, or 16 times the fine imposed for the minor offence of trespass by the Supreme Court. Mr. Akagi agreed that he himself fixed the amount of the administrative penalty.

2009. Sir Arthur Tyndall asked whether, when the Supreme Court found Mr. Uchiyama not guilty of all the serious charges conviction on which would justify suspension, the 40 per cent. of the wages not paid during suspension was reimbursed. Mr. Kawahara said that it was not. Mr. Akagi said that, at the end of the suspension period, when the final court decision was given, it was for the management to decide, in its discretion, as to dismissal or reinstatement, and on what conditions, and that even a person committing a minor criminal offence could be severely punished for " infringing the dignity of the workers ".

2010. Mr. Mikami, Mayor of Shobara city, referred to the evidence given by Mr. Noda in the morning. He said that the agreement concluded by the previous mayor had contained matters which were impracticable or incompatible with law—provisions relating to changes in ordinances and regulations which could be decided only by the city assembly; provisions relating to union activity in working hours by persons other than full-time union officers, which was contrary to section 35 of the

L.P.S. Law; provisions concerning pay which were incompatible with section 24 of the same Law. With regard to the deductions from the wages of kitchen employees, he said that by a clerical mistake they had been paid summer allowance in April 1963 above the legal rate, so that the excess was ordered to be deducted from their wages from February 1964 onwards. In May 1964 the Hiroshima District Court ruled that no further deductions must be made. In conclusion, the Mayor stated that relations between the city authorities and the Shobara Municipal Employees' Union had become normal and that peaceful negotiation was pursued between both parties.

CHAPTER 44

THE FINAL CONVERSATIONS IN TOKYO (23-26 JANUARY 1965)

2011. On reassembling in Kyoto on 21 January 1965, after their individual visits in the country, the members of the Commission considered what further steps they could take upon the return to Tokyo for the final days of discussions. It was decided that the stage had been reached at which the Commission might submit suggestions concerning further action which might be taken to the Government and to the General Council of Trade Unions of Japan.

2012. On the morning of 23 January the Commission met briefly with both the Minister of Labour and the General Secretary of the General Council of Trade Unions of Japan. The Chairman, on behalf of the Commission, announced that in the light of the Commission's previous activities it was felt that the proper stage had been reached at which the Commission could usefully address certain remarks jointly to the Minister of Labour and the General Secretary.

2013. The remarks were cast in the form of written proposals, a copy of which was given to both parties present. The full text of the proposals was as follows:

The Freedom of Association and Protection of the Right to Organise Convention, 1948, should be ratified without further delay. In the light of the history of the present case such early ratification has now become an indispensable condition of further progress in dealing with any of the questions which still remain at issue; early ratification is also desirable to give Japan an influence in the I.L.O. commensurate with her status as an advanced industrial power.

The Commission reserves its view at this stage concerning the terms of the Bills providing for ratification and the revision of the related laws which have been submitted to the Diet, but notes that in drafting them account has been taken of certain important points raised by the complainants and the Commission in the course of the proceedings.

The Commission concurs in the view that, in order to expedite ratification, it is desirable to concentrate attention in the first instance on matters directly related to giving full effect to the terms of the Convention, such as the repeal of section 4 (3) of the Public Corporation and National Enterprise Labour Relations Law and section 5 (3) of the Local Public Enterprise Labour Relations Law.

Ratification alone will not, however, create the mutual confidence without which satisfactory labour-management relations cannot be created between public authorities, corporations and enterprises and their employees. The Commission expresses no view at this stage concerning the degree of responsibility which may rest on various parties for the lack of mutual confidence which at present exists. Its immediate concern is with the steps which should be taken to create such confidence for the future. Important changes of attitudes on both sides will be necessary to achieve this result, but the initiative must necessarily come from the Government at the highest level.

It is therefore suggested that the Government should make it clear that it regards the ratification of the Convention as the first, rather than the last, of the steps which it proposes to take for the improvement of relations between public authorities, corporations, and enterprises and their employees.

It would be a great step forward if the Prime Minister found it possible to make it clear that it will be the general policy of the Government to promote and encourage regular exchanges of views at appropriate intervals, between responsible representatives of government, employers and labour on matters of common concern. The primary purpose of such exchanges of views should be to create

the confidence necessary to the solution by mutual understanding of the problems which remain outstanding and such further problems as may arise.

The Diet should be kept informed from time to time of the progress made by means of such exchanges of views and of any action resulting therefrom.

The Commission further suggests that the Minister of Labour of Japan and the General Secretary of the Council of Trade Unions of Japan should meet with the Chairman of the Commission and the Director-General of the International Labour Office in Geneva, in the course of the 49th Session of the International Labour Conference to be held in June 1965, to inform them of the progress made.

The Commission is confident that if the situation is approached along these lines with mutual good will solutions can be found for problems which may at present be widely regarded as insoluble.

2014. At the request of the Commission the meeting was adjourned without any discussion on the written texts distributed. It was agreed that both the Minister of Labour and the General Secretary would meet again with the Commission on the morning of 25 January, for the purpose of expressing their reactions to the proposals.

2015. The representative of the Director-General on 23 January called upon Mr. Tadao Kuraishi, former Minister of Labour of Japan, on behalf of the Commission.

2016. On the afternoon of 23 January the Chairman, on the authority of the Commission therefor, called upon the Minister of Education in order to discuss the Minister's reactions to the proposals which had been submitted by the Commission that morning. The Minister, in the course of the discussion, stated his acceptance of the views of the Committee on Freedom of Association expressed in its 54th Report, but he referred to the position announced by the Government and government party on 12 January 1965 that the holding of *de facto* discussions is primarily a matter to be left to the discretion of the parties concerned. In this respect the Minister stated that it ought to be understood that it was the Ministry of Education which was responsible, through the Diet, to the people as a whole for educational policy and administration. In addition, however, the authorities of local public bodies, and not the Minister of Education, were the actual employers of local public servants such as educational personnel and no talks at the Ministry level should be allowed to interfere with the execution of the responsibilities of local public bodies.

2017. As had been previously agreed, on the morning of 25 January the Commission met again with the Minister of Labour and the General Secretary of the General Council of Trade Unions of Japan. The Minister stated that the Government would accept the proposals, and having due regard to them would make positive efforts—(i) to ratify Convention No. 87; (ii) to amend legislation not in conformity with the standards set in that Convention; (iii) to eliminate the present mutual lack of confidence in labour-management relations in the public sector; and (iv) to establish a new, sound basis for these relations.

2018. The General Secretary of the General Council of Trade Unions of Japan sought explanations of the text of the proposals from the Commission. In addition, he sought to know in exactly what way the Government had interpreted the proposals in agreeing to accept them, and what specific steps the Government agreed to take. Until these inquiries were answered, the trade unions would not be in a position to respond to the proposals.

2019. The Minister of Labour, in reply to the questions directed by the General Secretary to the Government, stated that two factors were emphasised in the proposals—the ratification of the Convention and the revision of legislation directly

concerned thereby, and the assumption by the Government of the initiative in attempting to create an atmosphere of mutual confidence between the parties, with the adoption of a programme of exchanges of views between the parties to begin the process. With respect to these two main points the Government proposed to make special efforts towards securing the ratification and relevant amendments, Bills for which were already before the Diet. As regards the second point the Government had already begun to work out concrete proposals to accommodate the Commission's suggestions, and schedules were presently being considered to consult with the trade unions and management to discover the most effective means for accomplishing these goals.

2020. The General Secretary stated that once the Government had ratified Convention No. 87 the trade unions understood the position to be that the Government was required to repeal provisions of national legislation not in conformity with the standards of the Convention. He asked the Minister whether this view conformed to that held by the Government. The Minister replied affirmatively.

2021. In reply to the questions directed to it by the General Secretary of the General Council of Trade Unions of Japan the Commission made the following statement, copies of which were provided to both parties:

Mr. Iwai, we are glad that we can answer all of your questions very simply.

You asked us whether, in our view, ratification and the steps to be taken to create mutual confidence should be simultaneous. In our view, both series of steps should be taken without delay. The process of ratification involves proceedings in the Diet. The process of creating mutual confidence calls for the exchange of views suggested by the Commission. It may be difficult for the two processes to be completely simultaneous, but both should be pressed to a successful conclusion without delay.

As we indicated in our statement, we believe that both Government and labour will need to review their present policies and attitudes in order to generate confidence in each other.

We have already indicated that we would welcome an initiative by the Prime Minister in the matter.

You also asked, Mr. Iwai, the meaning of the phrase " regular exchanges of views ". The most suitable form for such exchanges of views is essentially a matter to be settled among yourselves. The results which can be secured will depend entirely upon the degree of mutual confidence and respect which exists between you. We have tried to suggest a way in which such mutual confidence and respect can be created, but you alone can create it. As we have already said, you can create it only by generating such mutual confidence and respect in each other. How much you achieve through the proposed regular exchanges of views will depend on the measure of success which you attain in generating such mutual confidence and respect. Good will and confidence cannot be produced by legislation; only good will can create confidence. Neither the Government nor labour can create good will or confidence without the full co-operation of the other. We emphasise this whole approach because, in our view, it is the approach which will determine how much is achieved, rather than whether the exchanges of views are regarded as being petition, discussion, negotiation, or collective bargaining. The measures appropriate to secure that any understandings reached are carried out are among the matters which could be discussed between the parties. We cannot solve now all of the problems which will arise as you proceed to deal with this matter. All that we can hope to do is to help you to proceed together in a direction which should make it possible for you to reach agreement upon a solution. Japan is a sovereign nation. In the final analysis, the responsibility for the future is yours as a people and the credit for what you achieve by co-operation among yourselves as a united nation will be yours.

It is for the parties to determine how many representatives should take part in exchanges os views on particular occasions. We would like to see such exchanges of views taking place at all levels according to the questions being discussed and the circumstances.

It is not for us to say how the Diet should be kept informed or what action it should take from time to time, but we would hope that the Diet would have an opportunity of considering how far the progress being made is satisfactory to all concerned.

You asked, Mr. Iwai, whether the Commission considered a number of points which you mentioned to be among those of which account had been taken in drafting the Bills and asked for the views of the Commission concerning the provisions relating to these matters. We did have in mind the points which you raised but, as we indicated in our proposals, we have reserved our view concerning the terms of the Bills while they are before the Diet. The provisions mentioned in the following paragraph which are introduced by the words " such as " were given as illustrations of matters directly related to giving full effect to the terms of the Convention. We will, of course, deal with all these matters fully in our final report.

In regard to early ratification, the Commission ventures to recall the 13 spontaneous assurances of such ratification which the International Labour Organisation has received from the Government of Japan; any failure to proceed to ratification without further delay would not be consistent with Japan's position as an advanced industrial power.

2022. The General Secretary requested that the Commission permit the trade unions, before giving a formal reply to the proposals, to submit further questions in writing, as he did not regard the Commission's statement as responsive to his questions, particularly with reference to the issue of negotiations at the central level. The Commission granted this request and agreed to meet jointly with the parties once again, after new inquiries had been received from the trade unions.

2023. On the afternoon of 25 January the Commission was received by the Prime Minister at his official residence. The Prime Minister referred to the statement that the Minister of Labour had been authorised by the Government to make to the Commission earlier that day, and added the weight of his authority to the acceptance of the proposals made by the Ministry of Labour. The Government felt that it should take the initiative in the field of labour relations. On behalf of the Commission the Chairman made the following reply to the Prime Minister's remarks:

May I first express our keen appreciation of the statement which you have just made. We were most happy to learn this morning from the Minister of Labour that the suggestions which we have put before the Government of Japan and the General Council of Trade Unions of Japan are acceptable to the Government. We are particularly gratified that you have this afternoon added the full weight of your authority to the acceptance of these suggestions conveyed to us by the Minister of Labour. We will not fail to inform the Governing Body of the International Labour Office of your acceptance.

We have learned with great interest of the intention which you expressed in the Diet today to try to foster a spirit of settling the problems which inevitably arise between labour and management in a rational manner through talks conducted from the standpoint of the national economy. The most important conclusion which emerges from our visit to Japan is that the key to all of the problems which we have been called upon to discuss is mutual confidence. We have learned with great satisfaction of your intention to take appropriate steps to broaden the basis of confidence in the interest of the nation as a whole. We welcome your statement, which shows a complete identity of view with our own suggestion that you should take a personal initiative in the matter. We hope that our visit may have furnished the occasion for a new departure in the consideration of outstanding problems in the field of labour-management relations, but these problems are essentially the responsibility of the Government, the Diet, organised employers and workers, and the people of Japan.

We are awaiting with great interest the outcome of the steps which you propose to take to ratify the Convention, create the necessary mutual confidence, and, on the basis of such confidence, progressively resolve the outstanding further problems.

We have been received throughout our visit to Japan with unfailing courtesy and consideration by all with whom we have come into contact and we would be glad if you would convey our gratitude for this reception to all concerned.

2024. On the evening of 25 January the General Secretary of the General Council of Trade Unions of Japan submitted the following document, entitled " Questions ", to the Commission:

Your Commission has indicated that a key to the creation of mutual confidence between the Government and labour is to provide an arena where the parties are to exchange views and discuss matters of common interest.

However, in view of the fact that " central negotiation " at issue has not been held due to the arbitrary refusal on the part of the Government, that the Government has one-sidedly scrapped so-called " Kuraishi Plan " on which agreement was reached between the General Secretaries of the Liberal-Democratic party and the Socialist party and that a new series of Bills for revising domestic laws concerned have now been presented to the Diet without any exchange of views between labour and management, we cannot but take the view that the attitude your Commission has recommended us to take which is based upon " solution of problems to be attained through voluntary talks between the parties " can hardly bring about any practical progress.

We therefore firmly believe that the only thing your Commission can contribute to the solution of the whole problem is to secure from the Government the guarantee that the latter accepts " talks at the central level " at which an organisation of local public employees is one of the parties.

We shall appreciate it if you will let us have your view on the points raised above.

Two or three questions are to be asked orally.

2025. In connection with the document entitled " Questions " which was received from the General Council of Trade Unions of Japan the Commission met once again jointly with the Minister of Labour and the General Secretary of the General Council of Trade Unions of Japan on the morning of 26 January. Before responding to the document the Commission heard first the Minister of Labour. The Minister reported that at a meeting of the Cabinet, earlier that morning, the Prime Minister had made a statement thanking the Commission for its efforts and acknowledging that it was the responsibility of the Government to proceed to attempt to find solutions to the present problems. To this end the Prime Minister had instructed the Minister of Labour to formulate a programme to create mutual confidence in labour relations in the public sector and to take immediate steps to effectuate such a programme. The Minister of Labour concluded by announcing that, in accordance with the words of the Prime Minister and the authorisation of the Cabinet, he would maintain close contact with the trade unions in order to begin to work out the mutual outstanding problems.

2026. In response to the document submitted by the General Secretary [1] the Commission made the following statement:

Thank you for having sent us last night the question which you wished to put to us. We consider that this is one of the matters which you should explore further with the Government in the course of the exchanges of views which we have proposed and to which the Government has now agreed. We believe that the acceptance of our suggestions by the Government has created a new situation. We hope that you will feel able to take full advantage of this new situation in endeavouring to secure effective results by building up mutual confidence. We hope also, Mr. Iwai, that you will be prepared to accept our proposal that you should, together with the Minister of Labour, meet with myself, as Chairman of the Commission, and the Director-General of the International Labour Office in Geneva in June to report the progress made by that time.

2027. In reply to this statement the General Secretary of the General Council of Trade Unions of Japan expressed regret that the Commission had not changed its position with regard to affording definite guarantees to the unions in connection with the proposals. Notwithstanding the statement of the Minister of Labour reporting the events of the Cabinet meeting, the trade unions were not willing to accept words alone as guarantees. The General Secretary requested and received permission to put additional questions to the Commission concerning the proposals.

[1] See para. 2024 above.

2028. The first question asked whether the " understandings " referred to in the proposals were to be reached in discussions on an equal footing so that the trade unions would not simply be relegated to listening to the opinions of the government authorities. The Commission indicated that it envisaged conversations taking place between the parties on a basis of mutual confidence, with full participation by both sides. The Minister of Labour stated that his understanding conformed to that expressed by the Commission and that the Government conceived of conversations in which both parties participated, under conditions of good will, with concessions being made by both sides.

2029. The second question related to the scope of the contemplated exchanges of views; more precisely, would the subjects for discussion comprehend the problem of all the workers in Japan, including teachers? The Commission stated that the proposals it had submitted had not envisaged any exception and that the actual scope of the discussions was more properly to be determined by the parties themselves. On behalf of the Government, the Ministry of Labour stated that, in accepting the proposals, the Government had no specific exceptions in mind; the scope of the discussions depended on the particular problem being discussed, but the Minister stated that he himself, as the delegated government representative responsible, remained flexible on the question of agendas for the several discussions. No further questions were put to either the Commission or the Minister.

2030. During the course of the afternoon of 26 January the Commission received the following written communication from the General Council of Trade Unions of Japan:

Let us first of all take this opportunity to express our sincere thanks for the painstaking fact-finding and conciliation efforts the Commission has made for us for the past 16 days.

It was our original expectation that the Commission would certainly come out with a recommendation for the establishment here of such fundamental trade union rights as the right of national public employees to bargain collectively and the right of local public employees to do the same at the central level through which to determine the basic standards of wages and other working conditions. Because it is, as we feel, a matter of course for Japan to take such a step in order to bring the level of labour-management relations up to what is obtaining in highly industrialised countries in the West. We therefore thought that the Commission's mission would include doing this.

What has actually been released by the Commission as a proposal, however, is its expectation for the creation of mutual confidence through exchange of views between the parties concerned—a practice to be initiated by the Prime Minister. Apparently the Commission must have reached this conclusion in fear of a censure that it tries to interfere with domestic affairs. The recommendation, we cannot but say, is based upon what we described as Western common sense rather than due consideration given to the very peculiar situation obtaining in the field of labour-management relations in Japan.

However, as to the good faith the Commission expects to see in the Government, it is a historical fact that a series of agreements reached between labour and Government concerning post-war labour legislation have all the time been one-sidedly destroyed by the latter. It must also be pointed out that the Kuraishi Plan on which agreement was reached between the General Secretaries of the government party and the Socialist party has arbitrarily been scrapped by the Government.

In the light of such an attitude of the Government, we can hardly expect to see an effective solution on the whole issue. For this reason, we are not in a position to accept your proposals.

On the other hand, the Government has accepted your proposals and pledged that they would implement the measures requested. Since they have accepted it, we believe, it should be an essential obligation for the part of the Government to fundamentally change its attitude taken in the past and withdraw all the Bills in question from the Diet and immediately take legislative measures anew for the perfect recovery of the union rights and for the ratification of the I.L.O. Convention No. 87.

Since the Commission, in disregard of our repeated indications, has provided these proposals in reliance upon and expectation to the good faith of the Japanese Government, we believe that the Commission is responsible hereafter for its strict superintendence over and encouragement to the Japanese Government for the prompt and exact enforcement of the proposals.

We are confident that the mutual confidence between labour and management, which was specifically referred to in the proposals, will be established only after the Japanese Government revises the attitude it has hitherto maintained, recovers the fundamental workers' rights of public employees and takes complete legal measures needed for these purposes.

2031. Following the delivery of the written answer to the Commission, the General Secretary of the General Council of Trade Unions of Japan called upon the Chairman and informed him that the General Council of Trade Unions of Japan, although not at present in a position to accept all of the proposals, had decided to accept that portion of them which suggested that the General Secretary of the organisation, together with the Minister of Labour, attend the International Labour Conference in June 1965 and to meet there with the Chairman and the Director-General and report on the progress which had been made in Japan after the departure of the Commission.[1]

2032. On the evening of 26 January 1965, immediately before its departure from Japan, the members of the Commission met with the Japanese and foreign press and communicated to them the text of the proposals which the Commission had submitted to the Government and the General Council of Trade Unions of Japan. This information was accompanied by the following explanatory remarks:

The Panel of the Fact-Finding and Conciliation Commission on Freedom of Association appointed by the Governing Body of the International Labour Office to examine the case relating to Japan has completed the visit to Japan which constitutes the third phase of its work. It now has at its disposal the information necessary to enable it to reach findings of fact concerning the case and to submit its report to the Governing Body. The Commission will reassemble in due course in Geneva to consider the terms of its report.

During its visit to Japan from 10 to 26 January the Commission held consultations in Tokyo with the Minister of Labour, the Minister of Education, the Minister of Home Affairs, the Director-General of the Cabinet Legislation Bureau, and representatives of the complaining organisations, including the General Secretary of the General Council of Trade Unions of Japan, the Presidents and Vice-Presidents of the National Railway Workers' Union, National Railway Motive-Power Union and All Postal Workers' Union and All-Japan Prefectural and Municipal Workers' Union and the All Agriculture-Forestry Ministry Employees' Union and the Presidents of the All Port Construction Workers' Union and the All Taxation Offices Employees' Union.

One or other of the members of the Commission also visited the Aichi, Ehime, Fukuoka, Gifu, Hiroshima, Ishikawa and Niigata Prefectures, where certain of the events complained of in the case are alleged to have taken place. In arranging these consultations and visits the Commission received at every stage the full co-operation of the Japanese Government and the General Council of Trade Unions of Japan.

On 23 January the Commission met with Mr. Hirohide Ishida, Minister of Labour, and Mr. Akira Iwai, General Secretary of the General Council of Trade Unions of Japan, and submitted to them certain proposals concerning the matters which appear to the Commission to be immediately at issue.

[The proposals followed.]

On 25 January Mr. Ishida, at a meeting of the Commission also attended by Mr. Iwai, accepted the proposals of the Commission on behalf of the Japanese Government. On the same afternoon the Commission met with Mr. Eisaku Sato, Prime Minister of Japan, who confirmed the acceptance of its proposals by the Government and his intention of taking a new initiative concerning problems

[1] See Ch. 46 below.

of labour-management relations with a view to the creation of the mutual confidence necessary to their solution.

At meetings of the Commission held on 25 and 26 January Mr. Iwai asked a number of questions concerning the proposals. At the meeting held on the morning of 26 January the Chairman of the Commission and the Minister of Labour of Japan both confirmed that the exchanges of views contemplated by the Commission were designed to permit all the participants to state their views fully and freely and that no class of workers was excluded from the scope of the proposals. On the afternoon of 26 January Mr. Iwai informed the Chairman of the Commission that, while not in a position to accept the proposals of the Commission at this stage, he accepted the suggestion contained therein that he should, together with the Minister of Labour, meet with the Chairman of the Commission and the Director-General of the International Labour Office in Geneva in June to report the progress made by that time.

The Commission remains at the disposal of the Government of Japan and the General Council of Trade Unions of Japan for any further consultations which may be desirable at any later stage.

We hope that the full report which we will submit in due course to the Governing Body will be of value to both the Government and the trade unions in their efforts to secure a better understanding. We will take fully into account all that we have heard and learned in Japan and spare no effort to make it as useful and helpful as possible for the purpose. But all that we can hope to do is to help the Government and trade unions to proceed together in a direction which should make it possible for them to reach agreement upon a solution. Japan is a sovereign nation. In the final analysis, the responsibility for the future is yours as a people. We hope that our visit may have furnished the occasion for a new departure in the consideration of outstanding problems in the field of labour-management relations but, as we stated when meeting with the Prime Minister yesterday, these problems are essentially the responsibility of the Government, the Diet, the organised employers and workers, and the people, of Japan. The credit for what you achieve by co-operation amongst yourselves as a united nation will be yours.

We have been received throughout our visit to Japan with unfailing courtesy and consideration by all with whom we have come into contact. We have already requested the Prime Minister to convey our gratitude for this reception to all concerned and have had opportunities of conveying it personally to both the Government and the General Council of Trade Unions of Japan. We would however, like to take this opportunity of expressing our appreciation to you, gentlemen of the press, and to our friends and constant companions, the photographers.

CHAPTER 45

DEVELOPMENTS AFTER THE COMMISSION'S VISIT TO JAPAN

2033. Since the departure of the Commission from Japan it has been kept informed of the developments in the case by both the Government representative and the Japanese Workers' member of the Governing Body. The Minister of Labour and the General Secretary of the General Council of Trade Unions of Japan were informed, on the occasion of their meeting with the Chairman in June 1965, of the information at the disposal of the Commission, their comments concerning which have been taken into account herein.

2034. On 2 February 1965 the Government proposed to the General Council of Trade Unions of Japan that through the initiative of the Prime Minister a meeting of members of the Government and the General Council of Trade Unions of Japan should be convened on or about 4 February.

2035. At a meeting of its Central Executive Committee on 3 February the Japan Teachers' Union decided—

(a) that it was not in a position to accept the proposal of the Government if it was intended that the suggested meeting would be only for an " exchange of views ";

(b) that the Japan Teachers' Union would continue to insist on an explicit provision for " negotiation at the national level ";

(c) that, unless the Government changed its position on these foregoing issues, the Japan Teachers' Union would withhold its support for the ratification of Convention No. 87;

(d) that the Japan Teachers' Union would attempt to unify the views within its organisation to conform to the foregoing principles it had adopted; and

(e) that the Union would request an interview with the Minister of Education to discuss questions relating to the wages and recruitment of teachers.

2036. According to the Japan Teachers' Union, the union had submitted on 3 February 1965 the following communication to the Minister of Education:

> 1. In each 46 prefecture the authorities are now going to establish the number of teachers employed in each prefecture for the new school year (beginning from 1 April). But the standard set by the Ministry is so poor that the surplus teachers exceeding this standard are foreseen to be discharged in many prefectures.
>
> The need is acutely felt for amending the Ministry-set standard so as to make it meet the actual needs and for revising the government order to the effect that the prefectures which disregard the standards shall not be financially assisted by the Government.
>
> 2. Unless the Education Ministry authorises the provision with teachers of an overtime allowance, each prefecture is not allowed to pay this allowance.
>
> Furthermore, in addition to the normal work of teaching, teachers are made responsible for the guarding of their school buildings in order to protect them from fire and robbery, so that they are forced to be on night duty every night as well as on day duty on holidays.

These problems will not be solved satisfactorily, so far as the Minister is not determined to present to the Diet the Bills on the payment of the overtime allowance for teachers and on the placement of school guards.

The Education Minister is cordially requested to meet the representatives of the Union to find out satisfactory solutions to these problems.

2037. In response to the proposal of the Government for a top-level meeting the General Council of Trade Unions of Japan, on 5 February, decided to propose that a preliminary talk be held between the Minister of Labour, the Chief Cabinet Secretary, the General Secretary of the General Council of Trade Unions of Japan and the Japanese Workers' delegate to the Governing Body. On 9 February the previously named representatives plus the President of the Japan Postal Workers' Union met. The General Council of Trade Unions of Japan informed the representatives of the Government that its decision to agree to enter into preliminary discussions would be based on the replies of the Government to the following five points [1]:

(1) whether it may be understood that all the ministers concerned, including the Minister of Education, will be present from the beginning at the meeting between the responsible representatives of the Government, employers and labour;

(2) whether it may be understood that individual talks (for example, between the Minister of Education and the representatives of Nikkyoso) will be held for individual problems, as a part of the above-mentioned meeting;

(3) whether it may be understood that the results of the meeting will be confirmed in writing, where appropriate, according to the nature of the problem being resolved;

(4) whether it may be understood that as to the Bills concerned submitted to the Diet, amendments will be made through negotiation between the Government, the Liberal-Democratic party and the Socialist party since, according to the proposal of the Commission, any action resulting from the meeting should be reported to the Diet;

(5) whether it may be understood that the problem concerning collective bargaining and right to strike of the public employees will be considered by the proposed Advisory Council on the Public Service Personnel System.

2038. On 12 February the House of Representatives of the Diet approved the creation of an I.L.O. Special Committee. The Bills approving the ratification of Convention No. 87 and amending the P.C.N.E.L.R. Law and the L.P.E.L.R. Law were referred to the Committee. On 16 February the House of Representatives further referred to the I.L.O. Special Committee the Bills amending the N.P.S. Law and the L.P.S. Law.

2039. On 24 February the Minister of Labour and the Chief Cabinet Secretary met with the General Secretary of the General Council of Trade Unions of Japan and the President of the Japan Postal Workers' Union. The representatives of the Government repeated the suggestion that preliminary discussions begin at once, and as an answer to the questions previously put forward delivered the following memorandum:

Taking into full account the proposal made by the Sohyo on 9 February, the Government informs that it wishes to hold a preliminary talk.

[1] The substance of the five points is corroborated in the letter from the Japan Teachers' Union received by the Commission on 26 February 1965.

The Government considers that it is of utmost importance to establish mutual confidence between labour and management in the public sector, as pointed out in the Commission proposal.

It is expected that the above-mentioned objective may be attained through free exchanges of views at the meeting between the Government, employers and labour set up based on the Commission proposal and where the Ministers concerned are present.

It is understood that the scope of those who will be present and the procedure to be followed for the meeting be decided beforehand either at the preliminary talk or during the course of the meeting.

(1) It may be probable that there is talk on the issue concerning the ratification of I.L.O. Convention No. 87 between the Government party and the Opposition party during the course of deliberation by the Diet.

(2) Basic rights related to labour-management relations in public services and public corporations will naturally be subject for deliberation in the proposed Advisory Council on the Public Service Personnel System.

2040. In his reply on 5 March to the request by the Japan Teachers' Union for talks concerning problems of wages and recruitment of teachers the Minister of Education stated that, since educational personnel were considered to be local public servants, their wages, hours of work and other working conditions were determined by by-laws of local public bodies. There was, therefore, no room for talks of a negotiating nature between the union and Minister of Education. The Minister's reply continued by explaining that, while the Ministry of Education took cognisance of the constructive views of educational personnel, as it did also of views of the general public, basic educational policy was not considered as an appropriate matter for negotiation.

2041. In response to requests made by the Liberal-Democratic party the Speaker of the House on 9 March requested that the Chairman of the House Steering Committee place on its agenda of 11 March the problem of constituting the I.L.O. Special Committee. The decision taken by the Steering Committee was to leave the entire matter at the discretion of the Speaker.

2042. On 9 and 10 March, at a joint meeting of the Socialist party and the General Council of Trade Unions of Japan, it appeared that a majority of both favoured the withholding of a list of candidates in the House of Representatives until such time as concrete guarantees were forthcoming from the Government, principally concerning the issue of negotiation at the national level for the Japan Teachers' Union. The meeting produced a consensus in favour of awaiting further developments before taking further action in the Diet. On 11 and 12 March repeated requests were made to the leadership of the Socialist party in the Diet for the immediate submission of its list of candidates for membership of the I.L.O. Special Committee.

2043. On 15 March the Socialist party, meeting with the representatives of the General Council of Trade unions of Japan, took up the question of the proposals before the Diet. A decision was taken to establish a small subcommittee consisting of eight members drawn from both the Socialist party and the union. The handling of the " I.L.O. issue " was entrusted to this subcommittee, which included the question of the submission of a list of candidates from the Socialist party who would participate on the House of Representatives' I.L.O. Special Committee.

2044. On 16 March the Steering Committee of the House of Representatives once more took up the question of constituting the I.L.O. Special Committee. On that occasion the position expressed by representatives of the Socialist party, in reply to a request that it submit immediately a list of its candidates to serve on the Committee,

was that such a list would be submitted as soon as possible, but within ten days. On the same day the Speaker of the House also requested that the Socialist party submit its list, to which the Chairman of the Diet Policy Committee of the Socialist party replied by referring to the joint conversation between the party and the union which was in progress and at which the final arrangements for compliance with the Speaker's request were being taken.

2045. At a meeting between the Secretary-General of the Liberal-Democratic party and the General Secretary of the Socialist party on 19 March both parties expressed a desire to attempt to institute successful exchanges of views as suggested by the Commission in its proposal. Accordingly, on 20 March, the Socialist party submitted to the Secretariat of the House of Representatives a list of candidates to serve as members of the I.L.O. Special Committee. On 22 March the I.L.O. Special Committee had its first meeting at which Mr. Ohashi, former Minister of Labour, was elected Chairman.

2046. At 24 March the Japan Teachers' Union, at its national-level policy-making conference, decided, in connection with its future programme and the general " I.L.O. issues ", to recommend that its membership pursue the following policy in the immediate and near future.

(a) in the middle of April, tentatively 14 to 16, at the time when the deliberations of the House of Representatives' I.L.O. Special Committee would be approaching the critical stages, the Japan Teachers' Union would hold " a large-scale concerted action ", together with the Congress of Government Employees' Unions, in an attempt, on the third and final day thereof, to mobilise 10,000 of its members in the Tokyo area;

(b) on 20 April, a " nation-wide concerted action " would be organised by the Japan Teachers' Union, the Congress of Government Employees' Unions and others, employing such slogans as " Hamper the retrogressive revision of domestic laws "; " Recover the right of collective bargaining; secure the right to negotiate at the national level for Japan Teachers' Union " and " Demand a uniform wage increase by 7,000 yen each ". In connection with such activity the Japan Teachers' Union planned to have 30 per cent. of its members take one-half day off from work;

(c) on 21 April all members of the Japan Teachers' Union would attend a general meeting to be held at each middle school unit in order to present demands and protests to the authorities concerned;

(d) the Japan Teachers' Union would try to strengthen and enlarge the scale of its " struggles " by incorporating therein demands concerning each workplace, such as additional rights for teachers in each school and the ending of unfair personnel reassignments;

(e) where it was deemed necessary, the Japan Teachers' Union would organise another concerted action in May at the time when the Diet session was drawing to a close, but that the detailed programme for that activity would not be adopted until the following national-level policy-making conference at the end of April.

2047. The preliminary meeting to arrange for the regular exchanges of views as suggested by the proposal of the Commission was held on 2 April; in attendance were the Minister of Labour, the Chief Cabinet Secretary, the General Secretary of

the General Council of Trade Unions of Japan, the Japanese Workers' member of the Governing Body, the President of the Japan Postal Workers' Union and the President of the Japan Teachers' Union. During the course of the conversation the Minister of Labour explained what the Government envisaged concerning the tentative agenda for the exchange of views. The topics should include the questions of " negotiation at the national level " by the Japan Teachers' Union, fundamental labour rights of public service employees and the modalities to be adopted to handle the prospective amendment of Japanese labour legislation.

2048. As a result of this preliminary talk it was agreed that, as to the first two topics suggested for inclusion on the tentative agenda for the exchange of views, both parties would attempt to come to a basic agreement at talks to be held thereafter. As to the third point, the matter was to be submitted to negotiation between the Liberal-Democratic and Socialist parties.

2049. On 6 April the I.L.O. Special Committee of the House of Representatives held a meeting at which the Minister of Foreign Affairs, the Minister of Labour, the Minister for Autonomous Government and the State Minister in charge of salaries of the national public service employees all made statements explaining the Bills before the Diet as they affected their respective ministries and departments. It was agreed that the next meeting should be held on 10 April.

2050. A talk between the Chairmen of the Diet Policy Committees of the Liberal-Democratic and Socialist parties was held on 8 April. The principal topic discussed was the issue concerning the handling of the Bills amending domestic laws. No common conclusions or agreement could be reached except to keep the matter under continuing discussion.

2051. On 9 April the House of Councillors, at its plenary meeting, established an I.L.O. Special Committee consisting of 25 members (15 from the government party, seven from the Socialist party and one each from the three other parties). That Committee then met to elect its Chairman and legislative liaison officers.

2052. At a cabinet meeting held on 9 April the Minister of Labour made an interim report on the status of the current discussion being held between the Government and the General Council of Trade Unions of Japan. On the occasion of this meeting the Prime Minister stated his determination to settle the " I.L.O. issues " during the present sessions of the Diet and he requested the co-operation of all Ministries therein concerned to that end.

2053. On 10 April, as scheduled, the I.L.O. Special Committee of the House of Representatives held a meeting which was attended by the Prime Minister, the Minister of Foreign Affairs, the Minister of Labour, the Minister of Education, the Minister for Autonomous Government and the State Minister in charge of the salaries of national public servants. In reply to questions the Prime Minister stated again that the Government was making every constructive effort, in accordance with the proposals of the Commission, to remove the existing mistrust between management and labour and that the Government was firmly determined to settle the issue of the ratification of Convention No. 87 during the present Diet session.

2054. On 15 April the Committee approved *en bloc* the Bill requesting the approval of the ratification of Convention No. 87 and the Bills amending the four major domestic laws concerned.

2055. On 15 April, after the Special Committee had taken the action just referred to, the Secretary-General of the Liberal-Democratic party made a statement to the effect that—

(a) the Government, in February 1959, had decided that Convention No. 87 ought to be ratified; since that time it had submitted to the Diet on seven occasions Bills concerning the " I.L.O. issues ". During both the 43rd and 46th Sessions of the Diet these Bills were exhaustively deliberated for a total of 80 hours by I.L.O. Special Committees of the House of Representatives. The present Bills had been carefully drafted with due regard to the previous deliberations of the Diet;

(b) since the establishment of the present I.L.O. Special Committee on 12 February the Socialist party had attempted to prevent it from deliberating, and the Chairman had even been prevented by force from performing his duties;

(c) the Liberal-Democratic party had therefore reached the limit of its patience and believed that the general public would understand this. The hope was that the Socialist party would reconsider its attitude and co-operate in the deliberations.

2056. In response to the foregoing statements both the Socialist party and the Democratic Socialist party issued counterstatements to the effect that the " forced voting " procedure used by the Liberal-Democratic party was invalid.

2057. After having made various efforts to find a way out the Speaker of the House of Representatives summoned on 20 April the Secretaries-General and the Chairmen of the Diet Policy Committees of the Liberal-Democratic, Socialist and the Democratic Socialist parties to a meeting at which he presented a compromise proposal on the following lines:

(a) the Bill requesting the approval of the ratification of Convention No. 87 and the Bills amending the four domestic laws concerned would be put to a vote after sufficient deliberation in the Diet;

(b) the points still at issue in the Bills amending the four domestic laws concerned, which were presently awaiting further negotiations between the government party and the opposition parties would be left to the consideration of the tripartite Advisory Council on the Public Service Personnel System;

(c) the provisions of the above-mentioned points at issue would be suspended from entering into force until the conclusions of the Advisory Council were reached, and such amendments would be made with due regard to the conclusion of the Advisory Council.

2058. The foregoing proposal was accepted by the Liberal-Democratic, Socialist and Democratic Socialist parties. On the occasion of the reaching of that agreement the Secretary-General of the Liberal-Democratic party asked, concerning the provisions [1] whose effectuation would be suspended according to the proposal, whether,

[1] Main provisions whose effectuation would be suspended are as follows:

(1) for the Bill amending the P.C.N.E.L.R. Law, " article 7 " (Restriction on Acts of Employees for Unions);

(2) for the Bill amending the L.P.E.L.R. Law, " article 6 " (Restriction on Acts of Employees for Unions);

(3) for the Bill amending the National Public Service Law, " section IX " (Employees' Organisations);

(4) for the Bill amending the Local Public Service Law, " article 8 " (Powers of Personnel Commission or Equity Commission), article 52 through to 55-2 (Employees' Organisations), paragraph 20 of the Supplementary Provisions (National Public Service Employees Who Serve the Local Public Entity), and article 3 of the Supplementary Provisions (Application to the Educational Public Service Employees).

in the event the conclusions of the Advisory Council would not have been reached at the time of the effectuation of Convention No. 87, measures would be taken at that moment to put into force the provisions in question. The Speaker of the House of Representatives replied affirmatively.

2059. The amendments called for by the aforementioned Speaker's proposal were thereupon introduced in the plenary session of the House of Representatives and on 21 April, the Bill requesting the approval for ratification of Convention No. 87 and the Bills amending the domestic laws concerned, as modified by the new amendments thereto, were approved by the House of Representatives. The decision was made by a rising vote, and as to the Bills amending the domestic laws concerned all members of the House of Representatives except those of the Communist party stood up, while the Bill requesting the approval for ratification of Convention No. 87 was unanimously approved.

2060. On 28 April the I.L.O. Special Committee of the House of Councillors held a meeting at which the Minister of Labour, in reply to a question, stated that it was his hope that the first of the meetings of regular exchanges of views would be held in May, but in any case before the International Labour Conference in June 1965.

2061. A preliminary talk aimed at discussing the start of the regular exchanges was held on 8 May at the residence of the Prime Minister. Attending were the Minister of Labour, the Chief Cabinet Secretary, the General Secretary of the General Council of Trade Unions of Japan, the Japanese Workers' Deputy member of the Governing Body, the President of the Japan Postal Workers' Union and the President of the National Council of Local and Municipal Government Workers' Unions. It was decided that—

(a) the first regular meeting would be held on 15 May at the Prime Minister's residence;

(b) the following would be present:

(1) Prime Minister;
(2) Minister of Finance;
(3) Minister of Education;
(4) Minister of Transportation;
(5) Minister of Posts and Telecommunications;
(6) Minister of Labour;
(7) Minister for Autonomous Government;
(8) State Minister in charge of the salaries of national public servants;
(9) Chief Cabinet Secretary;
(10) Director-General of Administrative Affairs in the Prime Minister's Office;
(11) President, General Council of Trade Unions of Japan;
(12) General Secretary, General Council of Trade Unions of Japan;
(13) President, Japan Postal Workers' Union;
(14) Japanese Workers' member of the Governing Body;
(15) President, National Council of Local and Municipal Government Workers' Unions;
(16) President, All Agricultural and Forestry Ministry Workers' Union;
(17) President, Japan Teachers' Union;

(18) President, National Railway Workers' Union;
(19) President, Japan Telecommunications Workers' Union;
and others;

(c) problems concerning labour-management relations in the public sector would be placed on the agenda; and

(d) a regular meeting would take place approximately every two months thereafter.

2062. On 10 May a similar preliminary meeting was held between the Government and the Japanese Confederation of Labour. Attending were the Minister of Labour, the Chief Cabinet Secretary, the General Secretary of the Japanese Confederation of Labour, the Chairman of the National Council of Government and Public Workers' Unions and the General Secretary of the National Council of Government and Public Workers' Unions. It was decided that—

(a) the first regular meeting would be held on 21 May at the Prime Minister's residence;

(b) that, in addition to those present at the preliminary meeting, the following persons would attend the first regular meeting: Prime Minister, Minister of Finance, Minister of Education, Minister of Transportation, Minister of Posts and Telecommunications, Minister of Autonomous Government, State Minister in charge of the salaries of national public servants, the Director-General of Administrative Affairs in the Prime Minister's office, the President of the Japanese Confederation of Labour, the Vice-President of the Japanese Confederation of Labour, the President of the All-Japan Privately Owned Post Office Workers' Union, the President of the All-Japan National Tax Workers' Union and others;

(c) problems concerning labour-management relations in the public sector would be on the agenda;

(d) the meetings would be held at intervals of approximately every two months thereafter.

2063. On 13 May the I.L.O. Special Committee of the House of Councillors unanimously approved the Bill requesting approval for the ratification of Convention No. 87 and the Bills amending the domestic laws concerned, subject to the amendments made thereto in the House of Representatives.

2064. A plenary meeting of the House of Councillors was convened on 17 May. On that day it approved the Bill requesting the approval for the ratification of Convention No. 87 and the Bills amending the domestic laws concerned, as amended.

2065. The first regular meeting between the Government and the General Council of Trade Unions of Japan was held at the Prime Minister's residence on 18 May rather than 15 May as previously scheduled. During the course of this meeting statements were made by the Prime Minister and the President of the General Council of Trade Unions of Japan.

2066. The Prime Minister announced that he was greatly pleased by the approval given by the National Diet for the ratification of Convention No. 87 and was equally pleased that the first of the regular meetings mentioned in the proposals of the Commission was taking place on the day following the approval of the ratification. On that occasion he mentioned the following points:

In view of the fact that the matter relating to talks between the Minister of Education and the Japan Teachers' Union is considered the focal point of the whole I.L.O. problem, it is important to foster favourable conditions for such talks. It will endeavour to reach a solution, utilising these regular meetings that are also attended by the Minister of Education, ensuring that the relationship between the Government and the trade unions is not one of immortal conflict. By means of these regular meetings, the Government will do its best to increase its understanding of the trade unions. But it is also requested that the trade unions will always act in the knowledge that they are also responsible for the prosperity of the nation.

2067. The President of the General Council of Trade Unions of Japan stated that he wished to express his gratitude for all the efforts made by those concerned and for the initiative of the Prime Minister in bringing about the first regular meeting. On that occasion he mentioned the following points:

I estimate it is a step forward that, in spite of a number of problems that remain to be settled, the Government has succeeded in having the ratification of Convention No. 87 and the amendment Bills of the domestic laws approved. We hope that the Government will step up its pace in order to improve labour-management relations in Japan, whose modernisation has been delayed. It is desirable to hold such a regular meeting like this, but it is also highly desirable that the Ministers concerned will make an appearance in collective bargaining with the respective trade unions concerned. I believe such a policy to be in conformity with the spirit of co-operation that brought about the ratification of the Convention No. 87.

2068. With reference to the substance of the first meeting for regular exchange of views the following requests were presented by the General Secretary of the General Council of Trade Unions of Japan:

(a) the establishment, at the earliest opportunity, of the Advisory Council on the Public Service Personnel System;

(b) efforts for the full implementation of recommendations of the National Personnel Authority;

(c) reconsideration by the Government of the policy of applying penal punishment to workers who engaged in acts of dispute.

In response to these requests the Minister of Labour and the Chief Cabinet Secretary made the following observations:

(a) the Government intended to establish the Advisory Council on the Public Service Personnel System as soon as possible;

(b) in principle the Government did not intend to fail fully to implement the recommendations of the National Personnel Authority, but there were cases where immediate implementation was technically impossible, particularly for financial reasons;

(c) the Government hoped that trade union members would engage in proper trade union activities, which were never subject to criminal punishment.

2069. On 21 May the first regular meeting between the Government and the Japanese Confederation of Labour was held, also at the Prime Minister's residence.

CHAPTER 46

THE REPORT OF THE MINISTER OF LABOUR AND THE GENERAL SECRETARY OF THE GENERAL COUNCIL OF TRADE UNIONS OF JAPAN

2070. On 12 June 1965, the Minister of Labour, Mr. Hisao Kodaira, and the General Secretary of the General Council of Trade Unions of Japan, Mr. Iwai, met in Geneva with the Chairman and Mr. C. Wilfred Jenks, Deputy Director-General, who represented the Director-General. In his introductory remarks the Chairman recalled the paragraph in the proposals made by the Commisssion in Tokyo in January 1965 in which it was suggested that the Minister of Labour and the General Secretary might wish to come to Geneva in June, on the occasion of the International Labour Conference, in order to report to the Director-General and to the Chairman on the developments in labour-management relations in the public sector which had occurred since the departure of the Commission from Japan. The Chairman thanked both the Minister of Labour and the General Secretary for having fulfilled their acceptance of this part of the Commission's proposals.

2071. The Chairman outlined the position concerning the acceptance of the proposals as of the time that the Commission left Japan. The Government had fully accepted these recommendations and had committed itself to a policy designed to accomplish the objectives set forth in the proposals. The General Council of Trade Unions of Japan, however, did not feel able at that time to accept the proposals completely, but had accepted that part of them which suggested the meeting which was, in fact, taking place that day.

2072. The General Secretary of the General Council of Trade Unions of Japan, in making his report, explained that the proposals of the Commission had not been accepted by the trade unions when they were made, for a variety of reasons. The proposals had suggested an exchange of views between labour and Government; the spirit had been that which the trade unions had supported, but the suggestions themselves were vague and no concrete measures had been suggested to make these exchanges a reality. Accordingly, there had been no guarantee that the exchange of views would ever take place. However, after the Commission had left, preliminary talks had been held with the Government, and after several of these a general agreement had been reached so as to permit the first of these meetings between representatives of the trade unions and of the Government to take place.

2073. The General Secretary continued by reporting that the first regular exchange of views between the trade unions and the Government had actually taken place on 18 May 1965. In addition, the Diet had passed a Bill requesting the ratification of Convention No. 87 as well as the Bills amending the major laws not presently in conformity with the standards of the Convention, but these problems had only partially been solved. From the trade union point of view the remaining issues were—

(a) after the Diet had finished its ratification proceedings in the beginning of June, the Government had taken disciplinary measures against workers who had participated in the " Spring Offensive " for wages. These actions had amounted to major victimisation and a total of 195,000 workers had suffered some penalty. These measures conflicted with paragraph 25 *(f)* of the 64th Report of the Committee on Freedom of Association as well as that part of the Commission's proposals which had suggested the creation of an atmosphere of mutual confidence between labour and management. It was unfortunate that such victimisation had coincided with the departure of the Parliamentary Vice-Minister of Labour for Geneva, carrying a protocol of ratification of Convention No. 87. It had raised substantial doubts on the Government's actual intent for the future of labour relations in Japan, particularly as the total number of victims of disciplinary action had been the largest figure for ten years;

(b) during the first of the regular exchanges of views, on 18 May, the Prime Minister had said, with respect to a meeting between the Minister of Education and the leadership of the Japan Teachers' Union, that the Government would make an effort to see that these conversations were held. None the less, this meeting had not yet taken place;

(c) when Convention No. 87 received the Diet approval for its ratification it had also been decided that certain amendments to the major legislation in conflict with the standards of the Convention should be further considered. With respect to those portions of the N.P.S. and L.P.S. Laws the decision on actual amendments had been postponed pending a report to be submitted by the newly appointed Advisory Council on the Public Service Personnel System. This Council would discuss the laws related to Convention No. 87 as well as laws which were not directly related, but which were important in the over-all labour-management relations in the public sector. The trade unions now saw a danger that some of the workers' acquired rights and practices would be nullified by the Government at the same time that the other amendments were made. Such a result would be in conflict with article 19 (8) of the I.L.O. Constitution;

(d) although the ratification of Convention No. 87 had been achieved, it remained a fact that 2,600,000 workers in Japan were still deprived of their fundamental trade union rights, principally the right to enter into collective bargaining and conclude agreements, as well as the right to strike. This entire question was to be discussed at the proceedings of the Advisory Council mentioned above, and the Government had promised to put the subject on the agenda of the regular exchanges of views to be held in the future.

2074. With respect to the victimisation which had occurred during the " Spring Offensive ", while a report of the facts had been made to the Chairman, the trade unions were reserving their right to submit the full facts to the Committee on the Application of Conventions and Recommendations of the Conference, as it was felt that the action of the Government conflicted with Convention No. 98, already ratified and in force, and Convention No. 87, which would come into force within the next year.

2075. In concluding his report to the Chairman the General Secretary of the General Council of Trade Unions of Japan stated that it was the belief of the trade unions that the progress of the work of the Advisory Council would depend in large

measure on the final report of the Commission, and therefore the trade unions were anxious that the report should be published as soon as possible.

2076. In introducing his remarks the Minister of Labour announced that the Prime Minister had asked him to convey his best wishes to the Chairman and the entire Commission.

2077. With respect to the developments after the Commission's departure from Japan the Minister recalled that a number of reports had been made by the Japanese Government representative on the Governing Body at the February session. Subsequently, as was known, both houses of the Diet had approved the Bill approving the ratification of Convention No. 87, together with Bills to amend domestic labour legislation. The International Labour Organisation had already been informed of the details of this through the normal channels of communication and it was therefore not necessary to give a full history of the ratification proceedings; it was only necessary to mention that those provisions of the P.C.N.E.L.R. Law and the L.P.E.L.R. Law which were not in conformity with the standards set in the Convention had been amended and that the principal parts of the N.P.S. and L.P.S. Laws had been left to a tripartite Advisory Council, to be established in the future for discussion. The Government would examine the findings of the Council in order to see what action should be taken to give them effect.

2078. The Minister of Labour confirmed the holding of the first of the top-level regular exchanges of views between the Government and the General Council of Trade Unions of Japan, and between the Government and the Japanese Confederation of Labour, held on 18 and 21 May respectively. As a result, it was now felt that a favourable atmosphere seemed to be emerging in which " labour-management relations in the public sector could be undertaken ". The second meeting between the Government and the public sector trade unions was to be held in the near future, and the Government would continue to make efforts to solve the outstanding problems of labour-management relations in successive stages. The Minister reported that the accomplishment of these aims was still a matter to which the Prime Minister was devoting special attention.

2079. With respect to the disciplinary measures taken by the administrations of the public corporations in response to the " Spring Offensive " for wages, the Government had not been pleased that such large-scale labour disturbances had occurred at a time when the first of the regular exchanges suggested by the Commission in its proposals had been actually under way. These administrative measures had been taken by the management of the respective public corporations because trade union members had committed acts in violation of specific laws. The measures taken had been in conformity with the relevant provisions of these laws. The Government did regret, however, that this incident had taken place at the precise time when the P.C.N.E.L.R. Commission had been considering proposals leading towards a reconciliation. With respect to the statement concerning the disciplinary action taken being inconsistent with the spirit of paragraph 25 *(f)* of the 64th Report of the Committee on Freedom of Association the Government had repeatedly stated that, when acts committed by trade unions contravened existing legislation, actions taken by the management of public corporations and national enterprises did not come within the meaning of the Committee on Freedom of Association's observations.

2080. With reference to the conversations to be held between the Japan Teachers' Union and the Minister of Education the position of the Prime Minister had not

changed, since he had stated that it was the intention of the Government to see that all efforts would be made to create favourable conditions which could lead to the realisation of these talks.

2081. With reference to the work of the Advisory Council which was to be established, and particularly with reference to the previous statement by the General Secretary concerning the possibility that certain acquired rights of trade union members might be infringed as a result of the Council, the Minister stated that the Government had every reason to believe that the Advisory Council would reach fair and impartial conclusions in keeping with the fair and impartial character of its membership.

2082. The Minister further stated that, with respect to the fundamental rights of workers, the Government had repeatedly sought to make it clear that its aims were to achieve harmony between the rights of workers and the public welfare. All of the present deliberations had been approached in this spirit, and as the question of the fundamental rights of workers was going to be referred to the Advisory Council the Government awaited its fair and impartial conclusions.

2083. The Chairman expressed his gratitude to both the General Secretary and the Minister of Labour for the reports they had just delivered.

2084. The Commission was represented by the Chairman at the ceremony in Geneva on 14 June 1965 at which Mr. Morio Aoki, Ambassador Extraordinary and Plenipotentiary, deposited the instrument representing the ratification by the Government of Japan of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), with the Director-General, in the presence of the Minister of Labour of Japan.

PART VI

CHAPTER 47

FINDINGS AND RECOMMENDATIONS

2085. The Commission has completed its fact-finding mission and its discussions with the Government of Japan with a view to the adjustment of difficulties by agreement. It must therefore proceed to formulate its findings and recommendations. In so doing it must naturally have regard to the stage which has now been reached.

General Considerations

2086. In the course of the proceedings of the Commission, and in pursuance of the proposals made by it on 23 January 1965, two major developments which should change profoundly the whole future of industrial relations in Japan have already occurred.

2087. Japan, which since 1953 has been a party to the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), has recently ratified, by a unanimous decision of both Houses of the Diet, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

2088. An encouraging start has been made in the practice of high-level exchanges of views at appropriate intervals between responsible representatives of government and labour.

2089. These important developments are complementary to each other. They are both potentially of the utmost importance, but neither yet represents more than a starting point. Far-reaching changes of attitude on the part of both government and labour continue to be necessary to give Japan a system of labour relations adequate to the needs of an advanced industrial society exploiting to the full the resources of modern science and technology, and playing a major role in world economic co-operation and development.

2090. Japan has highly distinctive traditions in labour relations as in other matters, and the Commission has every confidence that she will in due course evolve a synthesis of old traditions and new practices which will express the genius of her own people and be appropriate to her own special needs. In so doing she will, naturally, as she has done so successfully in many other respects, draw upon but transmute the experience of the world at large.

2091. In framing its findings and recommendations the Commission has endeavoured to furnish a basis on which the parties directly concerned can progressively resolve by agreement the issues and problems which remain outstanding rather than to pass judgment upon controversies, many of which have by reason of these

new developments already lost much of the importance which they may have had when originally submitted to the Commission.

2092. In order to be of assistance in the matter the Commission must necessarily examine thoroughly, and comment critically upon, the wide range of questions which, as the Government and Diet have recognised, still call for further consideration. It was clearly understood, when the Commission submitted its proposals on 23 January 1965, that this task remained to be performed, and its importance was again discussed at the meeting which the Minister of Labour and the General Secretary of the General Council of Trade Unions of Japan held with the Chairman of the Commission and the representative of the Director-General on 12 June 1965.

2093. The Commission attaches the utmost importance to avoiding any misunderstanding of the spirit in which it has undertaken the task. Its criticisms and suggestions are designed as a contribution to the understanding of the difficult and complex problems which confront all advanced industrial societies. Their purpose is to facilitate agreement on matters which both the Government and the trade unions recognise are still in suspense. The findings and recommendations of the Commission qualify each other and must be read as a whole.

2094. If more of the recommendations are addressed to the Government than to the trade unions, that is because they relate to matters within the sphere of government responsibility. The Commission wishes to place special emphasis on its recommendations concerning the future policy of the trade unions; unless these are accepted by the trade unions and loyally applied, the unions cannot reasonably expect the Government to carry out the recommendations calling for governmental action.

2095. The Commission is satisfied that if its recommendations are accepted as a whole in good faith by both sides they will serve as a basis for resolving by agreement the outstanding problems. It may not be possible to resolve all these problems immediately—in some cases patience may be required—but there will be a solid foundation for progress.

2096. The Commission must dissociate itself in advance from any attempt which may be made to invoke any of its findings or recommendations out of context to perpetuate disagreement, or to claim that the Commission has given a general endorsement to the contentions of either the complainants or the Government, or to accept only the findings and recommendations favourable to one side while rejecting those favourable to the other, or to secure any special advantage. Any such attempt to misuse its findings and recommendations will do a grave disservice to the future of labour relations in Japan and the welfare of the whole Japanese people.

2097. There is one overriding factor which dominates the situation. On 23 January 1965 the Commission submitted certain proposals for immediate action to the Government of Japan and the General Council of Trade Unions of Japan. These proposals envisaged ratification of the Convention and periodic high-level meetings. They were accepted promptly and without qualification by the Government of Japan. They have now been carried out in full by the Government and Diet, which, if the Commission may say so with respect, have shown imagination and courage in adopting a wholly new approach to the problem of labour relations in the public sector in Japan. All of the criticisms and suggestions in respect of particular matters which follow must be read in the context of the major decisions of policy already taken by the Government and approved by the Diet.

2098. The future now depends on two factors: whether the trade unions give the Government on a non-political basis the measure of co-operation necessary to enable it to make a reality of the new policy; and whether the Government then proceeds, on the basis of such co-operation, to resolve the innumerable questions still outstanding with the same imagination, courage and persistence as it has revealed in its decisions on matters of major policy.

Significance of Conventions Having Been Ratified

2099. By ratifying the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Japan has undertaken a solemn international obligation to give full effect to its provisions.

2100. The Convention provides that " 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 " [1]; that " Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes " [2]; that " The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof " [3]; that " Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority " [4]; that " 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 " [5]; and that the foregoing provisions shall " apply to federations and confederations of workers' and employers' organisations ".[6]

2101. The Convention specifies further that in exercising these rights " workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land " [7], but that " 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 the Convention.[8]

2102. The extent to which these guarantees apply to the armed forces and the police is left to be determined by national laws or regulations [9], but subject to this qualification the Convention applies to activities of the State and its agencies no less than to private industry.[10]

2103. The Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Japan in 1953, provides that " workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment ".[11]

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[1] Art. 2.
[2] Art. 3 (1).
[3] Art. 3 (2).
[4] Art. 4.
[5] Art. 5.
[6] Art. 6.
[7] Art. 8 (1).
[8] Art. 8 (2).
[9] Art. 9 (1).
[10] See *Record of Proceedings*, International Labour Conference, 30th Session, Geneva, 1947 (Geneva, I.L.O., 1948), Appendix X, p. 570.
[11] Art. 1 (1).

2104. Such protection is to apply more particularly in respect of acts calculated to " *(a)* make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership " [1], or " *(b)* cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours ".[2]

2105. Workers' and employers' organisations are to enjoy " adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration " [3]; in particular, " acts which are designed to promote the establishment of workers' organisations under the domination of employers or employers' organisations, or to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers or employers' organisations, shall be deemed to constitute " such acts of interference.[4]

2106. Where necessary, machinery appropriate to national conditions is to be established for the purpose of ensuring respect for the right to organise, and measures appropriate to national conditions are to be taken to encourage and promote the full development and utilisation of machinery for voluntary negotiation with a view to the regulation of terms and conditions of employment by means of collective agreements.[5]

2107. The Convention, in addition to leaving the position of the armed forces and the police to be determined by national laws or regulations in the same manner as the 1948 Convention [6], contains further provisions that it does not deal with the position of public servants engaged in the administration of the State and is not to be construed as prejudicing their rights or status in any way.[7]

2108. In the provisions of these Conventions—which, in addition to constituting an obligation of Japan towards the International Labour Organisation, also create mutual obligations between Japan and the 69 other parties to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the 74 other parties to the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)—Japan now has a code of basic principles governing labour relations.

2109. To ensure the effectiveness of this code of basic principles it is necessary that the law of Japan should be brought fully into accord with its provisions and should be so applied in practice.

2110. In this connection the Commission has noted the circumstances in which the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), was approved by the Diet. In conjunction therewith, the Diet also approved Bills amending the Public Corporation and National Enterprise Labour Relations Law, the Local Public Enterprise Labour Relations Law and the National and Local Public Service Laws, together with certain further amendments to such

[1] Art. 1 (2) *(a)*.
[2] Art. 1 (2) *(b)*.
[3] Art. 2 (1).
[4] Art. 2 (2).
[5] Art. 3 and 4.
[6] Art. 5.
[7] Art. 6. See also *Record of Proceedings*, International Labour Conference, 32nd Session, Geneva, 1949 (Geneva, I.L.O., 1951), Appendix VII, pp. 472-475.

Bills providing that some of their provisions would not come into effect until they have been further considered by a tripartite Advisory Council on the Public Service Personnel System.[1] The ratification of the Convention was registered by the Director-General on 14 June 1965; the Convention, in accordance with Article 15, paragraph 3, thereof, comes into force for Japan on 14 June 1966 and the obligation of full compliance with its provisions is operative from that date.

2111. The effect of the ratification of an international labour Convention on earlier legislation inconsistent therewith which has not been expressly repealed is a familiar problem for the International Labour Organisation and was discussed fully by the Commission appointed under article 26 of the Constitution of the International Labour Organisation to examine the complaint filed by the Government of Portugal concerning the observance by the Government of Liberia of the Forced Labour Convention, 1930 (No. 29).[2] In brief, the position is that in some countries the ratification of a treaty operates as an implied repeal of earlier legislation inconsistent with the provisions of the treaty to the extent of such inconsistency, whereas in others it does not. In Japan there is no constitutional provision on the matter, except article 98 of the Constitution, which declares that " treaties concluded by Japan and established laws of nations shall be faithfully observed ". The Commission notes the assurances given by the Japanese Government in the Diet that, by virtue of this provision and the established practice in Japan, the ratification of the Convention will operate as an implied repeal of all legislation inconsistent therewith at the time that the Convention comes into force for Japan.

2112. The Commission accepts these assurances in full, but must nevertheless point out that it does not necessarily follow that such an implied repeal of any earlier legislation inconsistent with the provisions of the Convention is either sufficient to give effect to all the obligations of the Convention or the most effective manner in which to ensure that the provisions of the Convention are fully applied in practice. The Commission recommends that due regard should be had to the foregoing considerations in the course of the discussion of the matters which have been referred for further examination to the Advisory Council on the Public Service Personnel System.

2113. The legal framework of labour relations is important because, by defining the rights of the parties, including the State as employer, in relation to each other and in relation to the State as government, it reduces the area of disagreement between them to an extent which makes possible the adjustment of their conflicting interests in an orderly manner. But the Commission wishes to stress that satisfactory labour relations depend primarily on the attitudes of the parties towards each other and on their mutual confidence.

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[1] See Ch. 16 above.

[2] See *Official Bulletin*, Vol. XLVI, No. 2, Apr. 1963, Suppl. II, paras. 399-416, pp. 158-165. The Committee of Experts on the Application of Conventions and Recommendations has also stated that " it would be desirable, in such cases, to bring the national law formally into conformity with the Convention (by expressly repealing or amending the earlier laws or codes on the points covered by the Convention), so as to leave no doubt or uncertainty as regards the position in law " (*Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)*, Report III (Part IV), International Labour Conference, 47th Session, 1963 (Geneva, I.L.O., 1963) para. 31, p. 11). This view was endorsed by the Conference Committee on the Application of Conventions and Recommendations which stated, the same year, that " even when earlier legislation has been implicitly repealed or amended through the automatic incorporation of a ratified Convention in internal law, it is essential to bring the legislation formally into harmony with the Convention so that all the persons concerned are aware of these amendments and any uncertainty as to the position in law is avoided " (*Record of Proceedings*, International Labour Conference, 47th Session, Geneva, 1963 (Geneva, I.L.O., 1964), para. 5, p. 513).

Significance of High-Level Exchanges of Views

2114. By initiating a new policy of high-level exchanges of views at appropriate intervals between responsible representatives of government and labour the Prime Minister of Japan has accepted the proposal of the Commission that the Government should make it clear that it regards the ratification of the Convention as the first, rather than the last, of the steps which it proposes to take for the improvement of relations between public authorities, corporations and enterprises and their employees.

2115. In repeated assurances given at the meeting of the Commission on 26 January 1965 [1] and at meetings between government and labour representatives held at the Prime Minister's residence subsequent to the departure of the Commission from Japan [2] it has been made clear that these high-level exchanges represent a major change of policy designed to open a completely new chapter in the history of labour relations in Japan. The Commission agrees that these high-level exchanges will afford an unprecedented opportunity for recasting labour relations in Japan in the interest of the nation as a whole, but wishes strongly to stress that they will be successful only if *both* parties give their full and continuing co-operation.

2116. It is within this new framework of solemnly accepted and binding international obligations, on the basis of a clear policy of creating the conditions of mutual confidence without which satisfactory labour relations cannot be established and maintained, that the problems which continue to be outstanding must be approached and resolved.

2117. If this policy is to be effective there must be a grasp, on the part of all concerned, of certain of the fundamentals of satisfactory labour relations in the public sector of a highly industrialised economy. The Commission therefore proposes to attempt the formulation of certain of these fundamentals in recording its findings and making its recommendations on more specific issues. While the Commission recognises that the history and problems of Japan are unique in certain respects, the general experience of mankind at large nevertheless has a significant bearing on these matters. But the context in which that experience applies in Japan is a very special one.

Main Problems of Labour Relations in the Public Sector

2118. Since shortly after the Second World War there has been an attitude of undisguised and unremitting tensenesss which has permeated the whole labour relations field in the public sectors of the Japanese economy. This appears to have arisen from the circumstances under which some of the legislative curbs on trade union activities came into being after the war.

2119. Between 1945 and 1948 the trade unions in the public services, public corporations and national and local public enterprises were accorded a degree of freedom of action to which they had never before been accustomed. It may well be that in certain respects—as in the case of the use of the strike weapon even in the most essential services, with even less temporary restrictions placed upon such use than in many Western countries—trade union liberty to act without due premeditation may have been carried too far. It is clear that in the first years of post-war inflation, when commodity prices had risen considerably and real wages were only two-thirds

[1] See Ch. 44 above, paras. 2025-2031.

[2] See Ch. 45 above, para. 2066.

of what they had been before the war, heavy demands in relation to the general state of the economy were made by the trade unions and the strike weapon was resorted to in some cases precipitately without mature reflection or a full sense of responsibility.

2120. The consequence was that the authorities deemed it necessary in 1948 to impose not merely temporary restrictions but a complete prohibition on the right to strike in all public services and public enterprises, national and local.

2121. The Commission is convinced that this outright prohibition of strikes following a period during which there were virtually no restrictions on strikes at all has affected the atmosphere of labour relations ever since. The unions appear to resent not merely the prohibition of strikes in the public sector but, above all, the wholesale and sudden manner in which it was imposed on over 2 million publicly employed workers who had enjoyed the right to strike. They believed, as they do to this day, that this right was unassailably enshrined in the National Constitution. Some of the complaining organisations appear to be more anxious to have the right to strike fully restored in vindication of what they believe to be their right than to consider measures by which there might be a partial restoration of the right to strike with compensatory safeguards when strikes are not permitted.

2122. Failure to implement collective agreements or arbitration awards promptly and in full also appears to have contributed to this tenseness.

2123. In these circumstances both the Government and the unions have adopted general concepts of labour relations which are open to serious criticism.

2124. On the one hand, the attitude of the Government and of many local public bodies is well characterised by the testimony given before the Commission that " negotiation is a petition ". Evidence presented to the Commission has shown the effect of this approach on the bargaining process in the public sector. At the time of the Commission's visit to Japan in January 1965 there were many different ways in which employing authorities could refuse to participate in or render ineffective or futile the negotiating process—by either refusing to recognise the union, discrimination against the union, unilateral limitation of the subject-matter of the discussions or strict application at the local level of policies determined at the central level. Thus, if non-employees were officers of unions, or if the union was not registered, all bargaining was refused. If the matters sought to be discussed were outside the scope of discussions, such as matters of operation or management, as judged by the authority alone, or disciplinary matters according to Rule 14 of the National Personnel Authority, bargaining was refused. A claim that a given disciplinary action did not involve conditions of work was enough to exclude this matter from the bargaining agenda. If rival unions were set up by dissidents the authority could undermine the effectiveness of the original union by including the rival union on an equal level in the bargaining programme. The rival union could be designated a research body and thus qualify for financial support from the authorities, or rewards or specially favourable treatment could be given to employees who defected from the original union and joined the rival unions. In addition, bargaining could be suspended if national or prefectural union officers were present at local negotiations without the consent of the local employing authority or if the authority believed that the behaviour of union representatives was " improper ". The bargaining process was even affected by time limitations on the bargaining sessions that could be set by the authorities. In addition, it appeared that entire groups of workers could be excluded from the right to organise and thus to bargain by being designated supervisory or managerial

personnel. Even if bargaining had been successfully concluded, the reservation of the budgetary power of the public body could render agreements ineffective; any particular agreement concluded on a prefectural or local level could be rendered ineffective subsequently either by disapproval or rejection because it was in conflict with by-laws.

2125. A number of far-reaching changes have now been made in the law and practice to improve the position, but further changes continue to be necessary, and the acuteness which the whole problem has assumed can be fully understood only against this background.

2126. On the other hand, as much of the evidence has illustrated, some of the trade unions in the public sector have persistently engaged in political campaigns relating to matters which appear to have no demonstrable relation to the economic interests of their membership.

2127. The nature of the political activities followed by the central organisations of Japanese workers has indeed been another major disturbing factor in labour relations. The General Council of Trade Unions of Japan and certain of the national organisations of workers which are complainants in this case have persisted in pursuing political objects of a nature not directly linked with the economic interests of their members.

2128. It is a truism to say that, having regard to the interdependency of national politics and the furtherance of the respective economic interests of workers and employers, it has become normally accepted practice in highly industrialised countries for trade unions, including organisations of public employees, to support, and to be recognised by governments as having the right to support, the programmes of democratic political parties which they consider to be in the interests of their members and to recommend those members, in their capacity as individuals, to support the candidates or elected representatives of such parties. But the General Council of Trade Unions of Japan, and the Japan Teachers' Union in particular, have systematically proceeded far beyond the point justified by economic aims and, in doing so, have called upon their local unions to utilise the strike weapon—an economic weapon—in an endeavour to force the Government of Japan to undertake particular policies in political fields which are peculiarly the responsibility of the Government.

2129. A recent illustration is afforded by the resolution adopted by the " enlarged meeting of Sohyo Councillors " held on 2 April 1965, that is to say some nine weeks after the Commission's departure from Japan, at a time when crucial discussions were being held in the Diet with a view to the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and to the amendment of relevant Japanese legislation. At this point the Commission was entitled to expect that nothing would be done to jeopardise the hopes which had been held out of a gradual *rapprochement* between the Government and the trade unions. The resolution unanimously adopted by the meeting and cited in *Sohyo News*, No. 247, of 25 April 1965, related to the " strengthening of the campaign to crush the Japan-South Korea talks, to prevent calls of U.S. nuclear-powered submarines and to withdraw U.S. troops from Viet-Nam ", and called upon member unions which had not yet " discussed the set-up to organise strikes against the Japan-South Korea talks and the nuclear submarine calls " to " immediately be ready for such a set-up ". In the event of the Viet-Nam situation deteriorating further, the resolution went on, " member unions must be empowered by their lower organisations to handle the situation at their discretion, including strikes ".

2130. The Commission is not called upon to comment on these matters which, in so far as they are of general concern, fall within the responsibility of the United Nations rather than of the International Labour Organisation. In accordance with the general principles followed by the International Labour Organisation in the examination of allegations relating to trade union rights, while situations which are political in origin may have social aspects which the International Labour Organisation may be called upon to examine by appropriate procedures, it is inappropriate for the International Labour Organisation to discuss political questions directly related to international security, as it would be inconsistent with its traditions and prejudicial to its usefulness in its own sphere.[1] While it will not refrain from examining an allegation because a government claims that it is political in character, the Commission nevertheless feels it necessary to make it clear that if unions call strikes with reference to such purely political issues lying entirely outside the trade union sphere they cannot expect the Fact-Finding and Conciliation Commission on Freedom of Association to find that they are entitled to relief.

2131. The issues of policy involved were most carefully considered by the International Labour Conference in 1952 when it adopted, on the motion of a number of workers' delegates, a resolution concerning the independence of the trade union movement which is in the following terms:

> Whereas the International Labour Conference at its recent session has formulated in international Conventions and Recommendations principles for the establishment of freedom of association and good industrial relations;
>
> Whereas a stable, free and independent trade union movement is an essential condition for good industrial relations and should contribute to the improvement of social conditions generally in each country;
>
> Whereas the relations between the trade union movement and political parties will inevitably vary for each country; and
>
> Whereas any political affiliation or political action by the trade unions depends on national conditions in each country;
>
> Considering nevertheless that there are certain principles which should be laid down in this regard which are essential to protect the freedom and independence of the trade union movement and its fundamental task of advancing the social and economic well-being of the workers,
>
> The International Labour Conference at its 35th Session adopts this twenty-sixth day of June 1952 the following resolution:
>
> 1. The fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers.
>
> 2. The trade unions also have an important role to perform in co-operation with other elements in promoting social and economic development and the advancement of the community as a whole in each country.
>
> 3. To these ends it is essential for the trade union movement in each country to preserve its freedom and independence so as to be in a position to carry forward its economic and social mission irrespective of political changes.
>
> 4. A condition for such freedom and independence is that trade unions be constituted as to membership without regard to race, national origin or political affiliations and pursue their trade union objectives on the basis of the solidarity and economic and social interests of all workers.

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[1] See First Report of the Committee on Freedom of Association, para. 29. The question as to whether a matter is one of a purely political character or relates to the exercise of trade union rights is, however, not one which can be determined by the government concerned but has to be appreciated by the appropriate international body in the light of the circumstances of the given case (see Committee on Freedom of Association: 27th Report, Case No. 143 (Spain), para. 106; 28th Report, Case No. 147 (Union of South Africa), para. 237; 44th Report, Case No. 200 (Union of South Africa), para. 162; 58th Report, Case No. 253 (Cuba), para. 632; 83rd Report, Case No. 303 (Ghana), para. 225).

5. When trade unions in accordance with national law and practice of their respective countries and at the decision of their members decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social and economic functions irrespective of political changes in the country.

6. Governments in seeking the co-operation of trade unions to carry out their economic and social policies should recognise that the value of this co-operation rests to a large extent on the freedom and independence of the trade union movement as an essential factor in promoting social advancement and should not attempt to transform the trade union movement into an instrument for the pursuance of political aims, nor should they attempt to interfere with the normal functions of a trade union movement because of its freely established relationship with a political party.[1]

2132. The Commission recommends the Government and the labour organisations concerned to be guided by the terms of the foregoing resolution in the conduct of their future relations; it reaffirms the view expressed by the Committee on Freedom of Association of the Governing Body in its 54th Report, and endorsed by the Governing Body, that subversion is not a trade union right.[2]

2133. The problems reviewed above arise in part from a failure by both the Government and the trade union organisations to distinguish between the Government as government and the Government as employer. The Government in its capacity as employer has been inclined to assert an authority which it can properly claim in its capacity as government but which is inconsistent with the establishment of harmonious labour-management relations. Conversely, the trade unions have sought to extend the practice of negotiation which is a proper basis for their relations with the Government as employer to matters which lie within its authority as the Government. There are, of course, matters within the industrial field, including the maintenance, efficiently and without interruption, of certain essential public services and the protection of public property, which involve the responsibility of the Government as government. A clearer understanding on the part of both sides of the distinction between the Government as government and the Government as employer is a necessary element in the establishment of satisfactory labour-management relations in the public sector.

Right to Strike in the Public Sector

2134. The fundamental divergence of view which continues to dominate labour relations in the public sector in Japan relates to the right to strike. The General Council of Trade Unions is pledged to continue to pursue its goal of the *total restoration* of the right to strike for public employees; the Government's view as expressed to the Commission during the hearings was that the *absolute prohibition* of the right to strike should be maintained indefinitely in the public sector.

2135. The Commission regards both these views as unduly rigid and unrealistic. It believes that in Japan as in other countries a reasonable compromise is both possible and necessary in the matter.

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[1] See *Record of Proceedings*, International Labour Conference, 35th Session, Geneva, 1952 (Geneva, I.L.O., 1953), Appendix XV, p. 583.

[2] See *Official Bulletin*, Vol. XLIV, No. 3, 54th Report of the Governing Body Committee on Freedom of Association, para. 157, p. 303.

2136. In those areas of the economy which are truly essential and in which strikes would disturb critically the normal life of the nation, special measures may be necessary to protect the public interest. The general public demands and expects this. In such cases strikes may be prohibited provided that adequate compensatory means of settlement or redress are established and function in practice in a satisfactory manner. On the other hand, it cannot be accepted that the activities of all public corporations and national and local enterprises are equally essential. In those which are less essential, the public interest does not require that all strikes be equally prohibited.

2137. Similarly, the policy hitherto followed of forbidding, in the public sector, not only strikes, but without distinction acts of dispute, calls for critical comment. Even in areas in which a given utility is so strongly affected with a public interest as to warrant the prohibition of strikes, this is not to say that all other types of concerted action by workers ought to be forbidden. It is this unyielding attitude which has contributed to the remarkably high number of workers in the public sector who have been prosecuted, dismissed, reprimanded or otherwise disciplined.

2138. While the Government has tended to treat all acts of dispute as illegal, the unions have adopted the converse attitude of assuming all such acts to be legal. This conception that all such acts are legal the Commission must utterly reject. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), specifically provides that " 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 ". While the Convention adds that " 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 therein, this qualification does not impair the obligation of respect for legality. In the view of the Commission acts of dispute do not become either legal or illegal because they are acts of dispute. Their legality or illegality depends on their nature.

2139. The future of labour relations in Japan will depend in large measure on the wholehearted acceptance of this principle by Government and trade unions alike. There is no Convention, Recommendation, or other decision of the International Labour Conference defining the extent of the right to strike in public services, but the Governing Body Committee on Freedom of Association has formulated [1] a series of principles on the matter which has won general acceptance. These principles are essentially—

(a) that it is not appropriate for all publicly owned undertakings to be treated on the same basis in respect of limitations of the right to strike without distinguishing in the relevant legislation between those that are genuinely essential because their interruption may cause serious public hardship and those which are not essential according to this criterion;

(b) that, where strikes by workers in essential services or occupations are restricted or prohibited, such restriction or prohibition should be accompanied by adequate guarantees to safeguard to the full the interest of the workers thus deprived of an essential means of defending occupational interests;

[1] See 12th Report of the Committee on Freedom of Association, Case No. 60 (Japan), paras. 45-55; 30th Report, Case No. 172 (Argentina), para. 178; 58th Report, Case No. 192 (Argentina), para. 447; 69th Report, Case No. 285 (Peru), para. 63; 74th Report, Case No. 363 (Colombia), para. 220; 76th Report, Case No. 294 (Spain), para. 284; 78th Report, Case No. 364 (Ecuador), para. 79; 79th Report, Case No. 346 (Argentina), para. 26.

(c) that impartial machinery should be established for this purpose, the decisions of which should be fully and promptly implemented once they have been made.

The Commission endorses these principles; they are not yet accepted in Japan.

Differentiation between Public Enterprises

2140. Strikes are absolutely prohibited in public corporations, national enterprises and local public enterprises. At present, no distinction is made in Japanese legislation between enterprises the interruption of the activities of which would impose real hardship on the community and those where such interruption would affect the public interest in a lesser degree (e.g. the tobacco monopoly). Only by recognising such a distinction can any progress be made towards bridging the fundamental divergence of view which at present exists between the Government and the General Council of Trade Unions. The Commission recommends that an appropriate line of demarcation should be established.

2141. If the absolute prohibition of strikes were to be relaxed in the case of those public services and enterprises whose interruption would impose a lesser degree of hardship on the community and replaced, as in many industrialised countries, by the requirement that a specified notice of intention to strike should be given and/or by a prohibition of the exercise of the right to strike pending recourse to impartial and effective conciliation and arbitration procedures, it would be essential that there be a radical change of attitude and a far greater sense of social restraint and responsibility on the part of the unions. At present, when strikes are absolutely prohibited, the unions seem to consider resort to strike, for which preparation is to be made long in advance, as an inevitable accompaniment of their demands, especially in the case of their " spring struggles ", even when these demands are of a purely economic nature. The unions of Japan would have to understand, as unions in some industrialised countries have learned by bitter experience, that even where strikes are lawful the strike weapon is one to be used sparingly and only in the last resort after all peaceful means of negotiation and established procedures for settlement have been exhausted. Even then it is a weapon which it is unwise to use in the case of any public service unless the claims of the unions are so manifestly justified that the strike will not antagonise the opinion of the public who must obviously suffer some inconvenience or privation as the result of a strike being called at all. In other words, the legal right to strike in public services and enterprises by no means implies that the strike weapon should be used except in rare and unusual cases.

Compensation Measures in Cases where Strikes Are Prohibited

2142. The Commission has considered with special care how far the prohibition of strikes is accompanied by satisfactory alternative arrangements for settling questions relating to conditions of work or redressing grievances. It is far from satisfied that the present arrangements for this purpose are adequate.

2143. The Commission proposes to consider separately the position in national and local public corporations and enterprises and in the local public service.

2144. The guarantees afforded by the Public Corporation and National Enterprise Labour Relations Commission (in the case of workers employed by public corporations and national enterprises) and the local labour relations commissions under the Trade Union Law (which deal with matters affecting local public enterprise workers

in the name of the Local Public Enterprise Labour Relations Law) are more substantial and appear to have given the workers concerned a greater degree of compensation than the allegations of the complainants suggest. These Commissions are tripartite in composition and it would appear, with relation to those functions which are performed by the public interest members only, that the necessary degree of impartiality has been present. This impression is reinforced by the testimony concerning the Public Corporation and National Enterprise Labour Relations Commission, which revealed that prior approval of the lists of names of public interest commissioners to be submitted to the Diet is regularly obtained from both the employers' and labour representatives on the Commission.

2145. The Commission observes that in this connection, therefore, effect appears to be given to the principle, the importance of which was stressed by the Governing Body Committee on Freedom of Association, of ensuring that the different interests are fairly reflected in the numerical composition of the Public Corporation and National Enterprise Labour Relations Commission, from among whom arbitrators are chosen, and that all the neutral or public members thereof are persons whose impartiality commands general confidence.[1]

2146. The arrangements nevertheless remain open to serious criticism in respect of the effect given to awards.

2147. The principle that awards and collective agreements should be binding on both sides and should be fully and promptly implemented is most imperfectly applied. Under both the Public Corporation and National Enterprise Labour Relations Law and the Local Public Enterprise Labour Relations Law collective agreements, and in certain cases, arbitration awards are voidable by action or lack of action on the part of either the Diet or local public bodies. Awards of the Public Corporation and National Enterprise Labour Relations Commission which call for the expenditure of funds not provided for in the current budget of the corporation or enterprise must be submitted to the Diet for the additional appropriation before they can be implemented. Collective agreements and arbitration awards under the Local Public Enterprise Labour Relations Law which contravene a local public body's by-laws or call for the expenditure of funds not available from the budget or funds of the local public enterprise are not implemented until the by-law is amended or the appropriation made. The complainants contend that many agreements are rejected on these grounds and that the mere existence of such provisions means that only disadvantageous agreements are concluded. The Government has not given any indication that it is willing to make substantial changes in the existing procedures.

2148. In the view of the Commission the existence of these legislative provisions and the practices which they have induced cannot help but undermine confidence in the equity and utility of collective bargaining and arbitration procedures; the Commission accordingly recommends early and thorough reconsideration of the position in this respect, in the light of the recommendations made by the Committee on Freedom of Association.[2]

2149. In the local public service strikes are absolutely prohibited. In this sector the machinery established has to compensate not only for the denial of the right to strike but also for the fact that collective agreements cannot be concluded and that the law contains less specific provisions for the protection of the right to organise.

[1] See 54th Report of the Committee on Freedom of Association, para. 188 *(e)* (v).

[2] Ibid., para. 188 *(e)* (iii).

2150. The conclusion of collective agreements is excluded on the ground that local public servants enjoy statutory terms and conditions of employment. In this connection the Commission has observed that in many cases the by-laws which should have served as compensation for the denial of the right to conclude collective agreements did not exist at all or existed only in inadequate and incomplete form. In particular there has been widespread failure to fix wage schedules by by-law as envisaged by the law.

2151. The compensatory machinery established consists of the personnel commission in the case of each prefecture and each of six cities, or the equity commission in the case of each other municipal body. Personnel commissions have three relevant functions. Firstly, they must submit annually on their own initiative to the local public body reports on existing wages and conditions with recommendations, where necessary. Secondly, if requested by the employees they may submit recommendations as they see fit. Thirdly, they are required to hand down decisions on appeals by employees against acts of adverse treatment, e.g. dismissal. It is solely in the third case that their decisions are binding. Equity commissions have the authority to exercise only the second and third of these functions.

2152. The commissions, with few exceptions, consist of three members each, and it would appear from the evidence that no substantive or practical safeguards have been provided to ensure that the members chosen for those commissions possess and are generally recognised to possess the requisite impartiality. As the Committee on Freedom of Association has pointed out, consideration should be given to providing that the composition of these commissions should be not merely impartial but such that their impartiality commands general confidence, and to ensuring that the workers' organisations should have some voice in their appointment.[1] The law provides that all members of each commission are appointed by the head of the local public body with the consent of the local assembly, but this arrangement can hardly be accepted as conforming to the recommendations of the Committee. The Commission suggests that it would be desirable to refer to the Advisory Council on the Public Service Personnel System the problem of ensuring the impartiality of these commissions.

2153. A union as such has no right to apply to a commission to take action on working conditions. The evidence brought to light an instance where 335 persons at the same time had to submit separate applications to a commission for action on working conditions, a duty which one would normally expect to be entrusted to a union in its capacity as collective representative. The position in this respect should be changed. The Commission therefore recommends that trade unions should have the right to submit applications on behalf of their members for action on wages and other working conditions.

2154. As there can be neither strike nor collective agreement under the Local Public Service Law the workers in this sector are dependent for compensatory guarantees on the full and prompt implementation of the recommendations of personnel and equity commissions. The evidence indicates that a high proportion of these recommendations have remained unimplemented or have not been implemented fully or promptly.

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[1] See 58th Report, para. 267 *(b)* and *(c)*.

2155. The Commission recommends that urgent consideration should be given to revising the whole system, including the arrangements for the adoption by local public bodies of by-laws relating to terms and conditions of employment and the method of functioning of personnel and equity commissions in the light of the foregoing considerations.

2156. So far as the functioning of the personnel and equity commissions in regard to the redress of individual grievances is concerned the Commission makes certain proposals at a later stage in these conclusions.

Manner of Enforcing Legislation

2157. Such reconsideration of these fundamental matters will necessarily take some time. Meanwhile the Commission considers it most unfortunate that the employing public authorities should have been so inflexible in their determination to pursue and punish, to the limits permitted by the legislation, every infraction of the law, however minor or even frivolous it might sometimes be, and to seek to have the words " act of dispute " interpreted so widely as to cover individual acts which in many cases appear unlikely to interfere to any appreciable extent with the performance of their work. The case of a railway conductor whose situation was discussed in Hiroshima when a member of the Commission met representatives of the National Railway Authority and of the National Railway Workers' Union is an illustration. In April 1959 the conductor was indicted on various charges arising in connection with acts of dispute committed by railway workers in 1958. He was thereupon suspended from duty until, over five years later, the Supreme Court, in November 1964, finally acquitted him of all charges except a very minor one of having posted union notices where he was not technically entitled to do so and in respect of which he was fined 1,000 yen ($2.78) for trespass. It was confirmed by representatives of the Railway Authority that under the regulations an employee " may " be suspended pending a prosecution for an offence but that in practice suspension was *always* imposed. The final conviction was on a charge which does not seem to have justified suspension. When he was eventually re-engaged, a further administrative sanction amounting to a deduction of 10 per cent. from his earnings for a period of six months was imposed upon him. It was emphasised at the meeting in Hiroshima by the National Railways Regional Manager, who himself fixed this penalty, that even a person committing a minor offence could be severely punished for " infringing the dignity of the workers ".

2158. This is but one of many possible illustrations. The evidence has shown a widespread tendency on the part of the authorities to reason that offences merit the most extreme penalty permitted, overlooking the extent to which the law of all advanced nations provides for varying penalties with circumstances. This approach reflects a basic suspicion of unions, leading the unions in turn to react in an extreme manner. This suspicion leads the unions to question not only the justice or equity of their treatment but also whether the " public interest " is in fact being properly represented.

2159. The Commission fully appreciates that reasonable discipline must be maintained to ensure the normal and safe functioning of essential services but considers that, in the interests of good labour relations, some human element should be taken into account when deciding whether or not to take disciplinary measures in the

case of every minor infraction and that, in any event, the punishment should not be disproportionate to the offence. Unless regulations are administered with due regard to human considerations, there can be little hope of a material improvement in the general climate of labour relations. The present complexity of the regulations is a further ground for the avoidance of excessive zeal in their application in cases in which no substantial offence has been committed. The Governing Body Committee on Freedom of Association suggested to the Government at one stage whether it might not, in effect, care to take steps to reduce somewhat the rigidity and severity with which disciplinary measures are applied.[1] The Commission endorses this approach.

Simplification of Legislation and Regulation

2160. While respect for law is fundamental, an unduly legalistic attitude on the part of either Government or workers and the development of harmonious labour relations are incompatible with, and indeed antithetical to, each other. The Commission regards excessive legalism as a major obstacle tending to frustrate the establishment of labour relations in Japan on a new foundation of mutual confidence. The general impression which the Commission has gained is one of intense regulation, and over-regulation, of the right to organise, of the internal administration of trade unions and of the carrying on of trade union activities, including collective bargaining or negotiation, as the case may be. Often, even when there is genuine willingness on both sides to co-operate and reach mutual understanding, the inflexible and detailed requirements of the law prevent real progress from being made.

2161. Generally speaking, in nearly all the highly industrialised democratic countries the legal regulation of freedom of association and labour relations has been reduced to an essential minimum. This makes it possible to establish, and also operate, mainly on the basis of voluntary agreement which has become permanently accepted practice, highly complex but highly flexible machinery for the promotion of constructive labour relations.

2162. With regard to the right to organise in Japan, the legal situation since 1948 has become so complicated that not only do the trade unions find it impossible in some cases to know how the law applies to them but even legal and administrative experts, to judge from some of the evidence given before the Commission in September 1964, are not always certain of the exact position.

2163. The organising rights of local public servants in the regular service, to give one instance, are governed, if they are employed in local government offices in general administrative duty, by the Local Public Service Law, the varying by-laws of 3,500 municipalities (many of them mere villages), interpretations by different personnel or equity commissions, conflicting court decisions and, if they are teachers, by the Education Law as well, or, if they are employees for simple labour, by the Local Public Enterprise Labour Relations Law as well. If the local public servant in the regular service is employed in a local public enterprise he and his union must have regard, at one and the same time, to the provisions of the Local Public Enterprise Labour Relations Law, the Enforcement Order pertaining to that Law, the by-laws of the municipalities and the relevant provisions, applied, *mutatis mutandis*, of the Trade Union Law, Enforcement Order of the Trade Union Law, Labour Relations Adjustment Law and Enforcement Order of that Law. All these people, again, are also gov-

[1] See 64th Report, para. 25 *(f)*.

erned by provisions flowing from ministerial or cabinet orders and decrees of the National Personnel Authority which, while not applying directly, are to serve as standards of comparison at the local level. National public servants and corporation employees are confronted by an equally intricate network of legal regulation.

2164. This complicated system of legal regulation of labour relations in Japan does not correspond to the needs of an advanced industrial society. The urgency of a general and comprehensive simplification is evident.

2165. One consequence of this excessive regulation of labour organisation in the public sector has been to impose horizontal and vertical subdivision, which has already led, at the local level, to the existence of very small unions. Any attempt to organise or federate beyond the small territorial and occupational subdivisions imposed at local level and the small departmental or occupational subdivisions imposed in the case of national employees has resulted either in the non-recognition or, at best, the variable recognition, which results from *de facto* status of the organisations which are so formed. The Japan Teachers' Union, the All-Japan Prefectural and Municipal Workers' Union and the Congress of Government Employees' Unions are all illustrative of this situation. The effect, in the judgment of the Commission, has been to accentuate irresponsibility on both sides.

2166. The modernisation of labour relations in Japan and the development of mutual trust and confidence between the parties will be gravely hindered unless far more freedom is left to them to work out their mutual relationships in practice between themselves. If the ratification by Japan of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the initiative of the Prime Minister in sponsoring regular high-level meetings between the Government and the labour organisations and the establishment of the Advisory Council on the Public Service Personnel System are to provide a point of departure for a new appraisal of and approach to the problem of labour relations in Japan, the deadwood of over-regulation must be ruthlessly cut away. A thorough re-examination of all of the existing laws and the replacement of the present jungle of legislative administrative rulings and judicial decisions by a much simpler Labour Code is highly desirable. The Commission recommends that the Government should give high priority to considering how this task can most appropriately be undertaken.

2167. In reviewing the legislation special consideration should be given to the desirability of facilitating a simpler and more rational pattern of trade union organisation, especially in respect of persons at present covered by the Local Public Service Law. There are 3,500 local public bodies in Japan, including 46 prefectures and hundreds of independent villages. Each local public body organises its own education department, gas and electricity services, water supply, employment office, local tax office, etc. These persons may be required to form ten different unions for ten different offices under the Local Public Service Law (the teachers being separate). In addition, there may be in each village only two or three persons employed for simple labour. Their right to organise is governed by the Local Public Enterprise Labour Relations Law and may result in a union of only two or three members. If the village also employs half-a-dozen water supply employees they also must, if they desire to organise, form a separate union under the same law. If the village school has four teachers they form their own union. The people in the ten different office unions can federate up to the village level, but their federation cannot include the two simple labour men

or the half-a-dozen water supply men or the four teachers. Apart from the teachers none of these persons can federate or form a joint union extending beyond the village. The result is that, if the union of two simple labour men of one village federates with the union of two or three simple labour men of another village, the federation cannot claim any legal right to negotiate with the authorities of either village. Thus, the situation arises in which 1,457,298 union members [1] under the Local Public Service Law are divided among something over 3,000 unions, which *alone* have the legal right to negotiate for each respective group. The result is that an average union has between 400 and 500 members, but in approximately 1,000 of the smaller municipalities the average is probably between 20 and 30 members. The most workable solution might be to allow the All-Japan Prefectural and Municipal Workers' Union, or at least its prefectural federations, to organise all the personnel of the local public service and local public enterprises, apart from teachers, and, if it so desires, negotiate with the municipality through a local branch of the national organisation. To encourage deliberately in this manner the formation of larger organisations would, of course, represent an important change of policy, but the Commission is satisfied that it would be a step in the right direction.

Allegations relating to Anti-Union Discrimination

2168. The Commission has given considerable thought to the question of the extent to which it would be profitable at this stage for it to consider in detail the large number of allegations of anti-union discrimination which have been submitted to it. These allegations are discussed at great length in the record of evidence contained in Chapters 22 to 41 of the report and in the account of visits by members of the Commission to provincial cities in Japan contained in Chapter 43. In many cases the record speaks for itself. The Commission finds that there have been widespread and repeated acts of anti-union discrimination affecting railway workers, postal workers and teachers, primarily by subordinate officials and local authorities, but constituting a consistent pattern to an extent which implies the approval or acquiescence of higher authority. In some cases the acts complained of were subsequently redressed, but only after long delay; many of the allegations relate to occurrences between five and ten years ago, and others to happenings in recent months. The new labour policy adopted by the Government will inevitably fail unless there is a decisive change of approach in the manner in which the many hundreds of local and individual grievances which have been submitted to the Commission are dealt with in the future. Such grievances should, in the view of the Commission, be submitted to an international procedure only in exceptional circumstances; it is of vital importance that there should be adequate machinery for dealing with them nationally in a manner accepted as fully satisfactory by all of the parties concerned.

2169. If the Fact-Finding and Conciliation Commission, which considers only cases referred to it by the Governing Body with the consent of the government concerned after preliminary examination by the Governing Body Committee on Freedom of Association, were to be regarded as a normal further stage in the handling of individual grievances arising in various countries, the effect would be to impair the sense of responsibility of the parties concerned for administering their own labour rules and regulating their own affairs. In these circumstances the Commission considers that it should regard the individual grievances submitted to it chiefly as an

[1] See *Japan Labour Bulletin*, New Series, Vol. 4, No. 3, Mar. 1965.

illustration of the need for a more effective national machinery and for additional measures to implement the provisions of the Conventions.

2170. A series of measures is, in the judgment of the Commission, of special importance from this point of view.

Need for a General Labour Policy Applicable at All Levels

2171. In the first place the Government as a whole must have a general labour policy applicable to all public employees irrespective of the department, local authority, or public or local corporation or enterprise by which they are employed. As a minimum this policy must provide immediately for the full application to all public employees of the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), both of which are now international obligations of Japan. It must also develop at all levels the habits of mutual consultation which the regular meetings between the Government and the labour organisations initiated by the Prime Minister are designed to foster. There must clearly be a central focal point at which the general labour policy for public employees is defined in an authoritative manner. The newly established Advisory Council on the Public Service Personnel System will presumably provide the required focal point. It is important that the Council should keep fully abreast of developments in personnel practice and that the Minister of Labour should have a recognised responsibility for keeping it abreast of such developments and giving it enlightened guidance based on a sympathetic understanding of both the problems involved in the management of the public services, corporations and enterprises and the aspirations of organised labour. The attachment of the Council to the Prime Minister's Office should give it the authority necessary to make its influence effective.

2172. It will, however, be vital, to ensure the usefulness of the Advisory Council, and to maintain continued public confidence in its effectiveness, that understandings reached through it should be promptly and faithfully implemented in practice by all the departments concerned and in particular by all of their local representatives throughout the country. A major educational effort within the government services will be necessary for this purpose. The Commission does not presume to suggest exactly what form this effort should take, as decisions in the matter must be taken by the Japanese authorities in the light of changing circumstances, but thinks it desirable to draw attention to the following possibilities.

2173. A determined initiative at the highest level to clarify the policy of the Government and ensure that it is effectively conveyed to, fully understood by, and faithfully applied by, its local representatives may well be necessary. A national conference at which the policy is fully expounded to those whose active co-operation will be required to make it effective may be advisable. An appropriate service manual explaining clearly the provisions of the Conventions and the law, and the issue of specific detailed instructions as required, will be indispensable. But the Government cannot accomplish the task alone. The educational effort required must extend to the membership of the trade unions as well as government officials. Neither can create a spirit of co-operation by unilateral action in the absence of a full response from the other. A parallel effort by the trade unions to secure the co-operation of their members in the new policy is therefore most essential.

Need for Effective Grievance Machinery

2174. In the second place, there must be expeditious, inexpensive and wholly impartial means of redress in all cases in which it is alleged that the general labour policy for public employees of the Government is not being respected. The Commission has grave doubts whether local personnel or equity commissions can ever be so composed in thousands of small communities as to afford satisfactory machinery for the exercise of discretionary powers or the granting of redress for grievances. It has, moreover, been unfavourably impressed by the long periods of time for which grievances, even those of individuals relating to matters of a comparatively minor character, continue to be pending. It has observed the same dilatoriness in the disposal of grievances submitted by national public servants to the National Personnel Authority. It considers delay in the redress of grievances to be the most serious weakness in labour-management relations in the public sector in Japan.

2175. The right to present grievances and to have them redressed is vital. A constructive and stable labour relationship demands that this right be clearly recognised. The process of determining grievances should not be treated as a form of litigation. It should be an examination in which both sides willingly participate.

2176. Delay in the handling of a grievance or complaint is in itself most harmful. The offended employee feels a growing sense of injustice, and this spreads to his co-workers. With the passage of time facts tend to become obscured and positions and attitudes more frozen and antagonistic. The willingness or ability to compose the differences is diminished and what may have started as a relatively minor dispute begins to resemble a cause, with adherents and opponents. An unsatisfactory grievance procedure becomes an element in the creation of greater tensions and suspicions.

2177. It has been suggested several times in this report that the representatives of the employing authority and the labour organisations must play responsible parts in a well-functioning labour relationship. In connection with the review and possible redress against employer actions referred to earlier, these representatives could play a most useful part by engaging jointly in an early examination and discussion of the disputed act. Most frequently there is involved the imposition of some form of disciplinary penalty. Approached in good faith and with an earnest desire to resolve the outstanding differences, these joint inquiries and discussions could dispose of a large percentage of such complaints. In any event, they would be most helpful in ascertaining the true facts and in giving the workers the assurance that their complaints are receiving prompt attention and that the managers or supervisors have acknowledged the right to have their actions or decisions questioned and are willing to try to justify them.

2178. In many disputes there will be honest differences of opinion or viewpoint. To settle these resort will have to be had to impartial tribunals or individuals, representing the final step in the grievance procedure. The observations above with respect to the avoidance of delays and the assurance to workers and their representatives that serious consideration is being given to their complaints apply equally to this final step.

2179. The Commission therefore recommends the Government to undertake as a matter of high priority a major re-examination of the whole of the present procedure for the redress of grievances with a view to the provision of expeditious, inexpensive and wholly impartial means of redress. In the course of examining how

to give effect to these general principles special consideration should be given to the following points.

2180. One cause for the delay in disposing of grievances by personnel and equity commissions has been the fact that many such commissions consist in whole or in part of part-time members who have other business to which they must attend. The testimony has indicated that 29 applications to the Kochi Personnel Commission submitted between November 1958 and November 1961 have not yet received even a first hearing, and that some cases elsewhere have remained unsettled for from four to seven years. It would seem desirable to consider a reduction in the number of commissions, each to cover a wider area than at present and to consist, where the workload so requires, of full-time members in order to avoid undue delay.

2181. In some cases the composition of a personnel commission has been such as to cast grave doubt on its impartiality in specific grievance cases. For example, in Saitama Prefecture a teacher had been arrested on suspicion of having committed an offence. The police chief who worked on the prosecution of the case on that occasion served subsequently as a member of the personnel commission which sat in judgment on the teacher's appeal against his disciplinary dismissal. The Commission recommends that the Advisory Council should define the circumstances in which persons who have been involved in a case should be disqualified from serving on a personnel commission during the hearing of that case.

2182. The fact that the appellant in proceedings before such commissions is not allowed to require the presence of the person who was responsible for the adverse decision being taken against him has been an important source of friction. The Government has stated that the presence of the persons so involved was not considered advisable because of the fear of undue " psychological pressure " being brought to bear on them. The Commission cannot accept this contention, which it regards as inconsistent with the requirements of natural justice. Disputed facts may often be best ascertained by having the disputants confront one another. The Commission accordingly recommends that the procedure should be modified to provide for the hearing of the two parties in the presence of each other.

2183. Another source of friction seems to be that, while the witnesses for the authorities attend the hearings as part of their official duties, the complainants' witnesses must utilise part of their statutory leave in order to do so. This is clearly unfair and the Commission recommends that reasonable facilities for special leave should be granted for this purpose.

2184. The Commission recommends that the procedures of personnel and equity commissions should be fixed by rules of the Ministry for Home Affairs after consultation with representatives of workers' and employers' organisations.

2185. Finally, although temporary employees may be employed on such a basis for a considerable time, they are excluded from the right to apply for a review of adverse action taken against them. The Commission considers it unfair that employees be treated in this harsh manner on the basis that they are still temporary, irrespective of the length of time they have been employed. This may readily reach the point of unfair discrimination incompatible with the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

2186. The Commission suggests that the situation of temporary employees might, with advantage, be considered by the Advisory Council on the Public Service Personnel System.

Disposal of Outstanding Grievances

2187. The adoption of such measures for the future will not in itself eliminate the sense of grievance which at present exists by reason of past practice. The Commission finds that such a sense of grievance is widespread and by no means unjustified, and believes it to have been a major contributory element in the tension which has characterised labour relations in the public sector in Japan in recent years. Without attempting to deal with individual cases in detail, the Commission must, in discharge of its accepted obligation to ascertain the facts, state its general impression.

2188. In the analogous cases of the National Railway Workers' Union and the Nihon National Railway Motive-Power Union, the Commission has before it not only the contentions of the unions, but also the independent judgment of the Public Corporation and National Enterprise Labour Relations Commission. Thus the conclusion appears to be justified that at seven different railway stations in two different operating divisions acts of anti-union interference occurred through the agency of senior supervisory railway personnel. In other cases the information submitted to the present Commission tends to support the major contentions of the complainants.

2189. No less convincing is the cumulative effect of the information submitted on behalf of the Japan Teachers' Union. The general impression formed by the Commission on the basis of this information was confirmed in the course of the visits paid by its members to the Ehime and Gifu Prefectures.

2190. The Commission is not concerned at this stage with the question as to what provocation or justification may have existed for such interference. It limits itself to recognising the fact that there is a widespread sense of grievance.

2191. Despite this general impression, and conscious as it is that there has certainly been much harshness and that many acts of grave injustice to individuals may have been committed, the Commission has refrained from formulating conclusions concerning individual complaints. It believes that any attempt to assess the rights and wrongs of a large number of individual grievances which arose out of complex and controversial issues prior to the ratification of the Convention, and which were not infrequently accompanied by arbitrary or unwise action on both sides, would tend to perpetuate or rekindle the distrust and bitterness which the Government and the trade unions are now endeavouring to eliminate by co-operative action.

2192. In these circumstances the Commission considers that both the Government and the trade unions would be wise to agree not to pursue further allegations, grievances, penalties or disqualifications arising out of occurrences prior to 14 June 1965, the date of registration of the instrument of ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Such an understanding would clearly not be possible without some arrangement for a global settlement of outstanding issues.

2193. Such a global settlement would be greatly facilitated if the Government thought it possible to take the initiative in making a generous gesture with respect

to administrative sanctions, such as dismissals, fines and reprimands imposed in the past, including the remission of any fines not yet paid and the reinstatement on appropriate terms of employees dismissed in circumstances in which the dismissals would be inconsistent with the requirements of the Convention or the law as now amended. Such a gesture would not imply any judgment upon the past; it would be an investment in good will for the future. The Commission is not in a position to judge how far exceptions to such a generous gesture might be necessary or appropriate in particular cases by reason of the serious character of the offences which have been committed. Such a gesture being made on the initiative of the Government, the Government must clearly determine how far its responsibilities as a government permit it to go. The Commission wishes to emphasise, however, that the unions must also be willing to accept such a settlement without pressing grievances which management could not reasonably be expected to regard as well founded. Penalties imposed by the courts for breaches of the law would, of course, represent a special case to which a measure of this kind would not necessarily apply; whether any further consideration of such penalties is possible or appropriate and if so, how it should be initiated, would call for careful examination by the appropriate authorities. A global settlement presupposes a spirit of reasonable compromise on both sides, but the gesture would fail of its purpose unless appropriate action was taken promptly and any exceptions were so limited and well founded as not to destroy the effect of the gesture.

2194. The Commission, at the same time, recommends that the trade unions make clear their willingness to adopt an attitude of restraint which would make such measures acceptable to public opinion generally and contribute to the mutual confidence without which no solid progress can be made. In particular, the unions should, as one of the elements of the discipline necessary to improve labour relations, restrain their members from resorting to strikes and manifestations liable to result in disturbance, for a reasonable period while negotiations are pending.

2195. The Commission is particularly concerned by the reports made to its Chairman and the Director-General of the International Labour Office on 12 June 1965 by the Minister of Labour and the General Secretary of the General Council of Trade Unions that there had been further large-scale labour disturbances entailing the violation of specific laws and that disciplinary measures involving a total of 195,000 workers had been taken.

2196. The Commission refrains from any comment in respect of the rights and wrongs of these unfortunate occurrences, concerning which it has not heard evidence and which happened after its departure from Japan; it must, however, stress with all the emphasis at its command that the regular high-level meetings in which such great hopes are rightly placed by both the Government and the trade unions cannot be expected to be successful against a background of such incidents. A special and equal responsibility rests upon the Government and the trade unions alike to adopt a new standard of statesmanship in their relations with each other. The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), will not come formally into force for Japan until 14 June 1966, but the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), is already in force, and any further disciplinary measures inconsistent with the requirements of either Convention would not, in the judgment of the Commission, be consistent with good faith. Conversely, arbitrary or disorderly action by the trade unions rather than industrial negotiations in a responsible manner, or preoccupation on their part with political objectives pursued by unconstitutional means, will inevitably jeopardise

the possibility of inaugurating a new era in labour relations between the Government and the labour organisations.

2197. In the light of these considerations the Commission refrains from formulating any detailed findings concerning the innumerable specific grievances submitted to it, but commends to the most earnest consideration of the Government and the complainants alike its recommendations for the disposal of outstanding and current grievances and for future policy.

RECOMMENDATIONS WITH RESPECT TO LEGISLATIVE AMENDMENTS NOT YET IN FORCE

2198. The Commission is also called upon to consider how far it can usefully formulate recommendations on the matters which, at the time of the approval by the Diet of ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), were referred to the Advisory Council on the Public Service Personnel System for further consideration.[1]

2199. The matters thus referred included the provisions of the amending legislation relating to the right to organise, the registration of employees' organisations, the acquisition of legal personality, negotiating rights and procedure and the full-time union officer system. Without anticipating the outcome of such further consideration by the Advisory Council, the Commission ventures to submit certain observations, recommendations and suggestions in the hope that they may facilitate the work of the Advisory Council.

The Right to Organise (Section 108-2 of the National Public Service Law and Section 52 of the Local Public Service Law, as Amended)

2200. The Laws, as amended, define an " employees' organisation " as an organisation or federation of organisations for the purpose of maintaining and improving conditions of work. Employees may organise or refrain from organising or may join or refrain from joining employees' organisations. Personnel holding managerial or supervisory positions or those whose duties involve the handling of confidential matters (referred to as " managerial personnel and the like "), on the one hand, and the remaining employees, on the other hand, may not form together a single employees' organisation within the meaning of the said Laws.

2201. By virtue of paragraph 4 of section 108-2 of the amended National Public Service Law the scope of managerial personnel and the like is to be prescribed by Rules of the National Personnel Authority. Under paragraph 4 of section 52 of the amended Local Public Service Law the scope of this category is to be determined by regulations of the personnel commission or equity commission.

2202. Having regard to the desirability of promoting strong and independent employees' organisations which can play an effective part in collective negotiation and the right of workers to join organisations of their own choosing [2], the Commission considers it important that the scope of managerial staff and the like should not be defined so widely as to weaken the organisations by depriving them of a substantial proportion of their present or potential membership. In order to avoid

[1] See Ch. 16 above.

[2] Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), Art. 2.

anomalies and resulting lack of confidence on the part of the employees, measures to ensure uniformity as between designations of personnel as managerial personnel and the like made by different personnel and equity commissions are also desirable. This is the more necessary in that the personnel and equity commissions are not and, by reason of their local character, cannot be so composed as to deal with the matter satisfactorily without a firm indication from the Government that its established policy is to promote a strong, stable and responsible trade union movement. The Commission therefore recommends that the matter should be considered by the Advisory Council on the Public Service Personnel System with a view to the formulation of appropriate and reasonably uniform standards.

Registration of Employees' Organisations (Section 108-3 of the National Public Service Law and Section 53 of the Local Public Service Law, as Amended)

2203. The National Public Service Law, as amended, provides that an employees' organisation may, as provided by Rules of the National Personnel Authority, apply for registration with the Authority by submitting an application setting forth the particulars specified by Rules of the Authority, as well as the names of its directors and its other officers, together with its constitution. The Local Public Service Law, as amended, contains a similar provision, but in this case registration is effected by the personnel or equity commission, the manner and details thereof being fixed by by-law.

2204. Both Laws require the constitution of employees' organisations to make provision for a number of specified matters (name, address and purposes of the organisation; scope, acquisition and loss of membership; regulations concerning directors and officers, meetings, voting, expenditure, accounts, federation, amendments to the constitution, and dissolution). These requirements do not appear to the Commission to be of such a nature as to compromise the independence of the employees' organisations.

2205. To qualify an employees' organisation for registration, its constitution must conform to certain requirements concerning voting. Adoption or alteration of the constitution, election of officers and " other similarly important actions " are to be decided by a majority of all the members, except that in the case of election of officers a majority of those voting will suffice, the votes being by direct secret ballot in which every member is given an equal opportunity to participate. The organisation is further required to ensure that these important actions are actually decided upon in accordance with the procedures so specified. In the case of an employees' organisation which is a federation or has nation-wide affiliation, it shall suffice to establish and actually observe procedures providing for the election of delegates by a majority vote by direct secret ballot held for each constituent organisation, or geographical or occupational area, in which every member is given an equal opportunity to participate; such procedures must also provide for decisions by a majority of all the delegates (or a majority of the delegates voting in the case of election of officers) by direct secret ballot in which each delegate is given an equal opportunity to participate.

2206. By virtue of these provisions a majority of the votes cast is now sufficient for the election of officers, instead of a majority of the total membership, as was previously required. The Commission considers that this amendment, which is in accordance with the principles most generally accepted elsewhere, will render it

possible for organisations to avail themselves more fully and effectively of the right to elect their officers in full freedom which is guaranteed by Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

2207. The requirement of a majority vote of the whole membership for changes in the constitution of an organisation is retained, but the Commission does not regard this as unreasonable, having regard to the most widely accepted practices in this respect. In many countries special majorities are required for decisions which relate to the basic form or existence of the organisation, such as adoption of and changes in the constitution, decisions to federate or leave federations or dissolution of the organisation, whereas only majorities of votes cast are required for decisions relating more to the administration and normal operation of the organisation, adoption of accounts, etc., which by their nature call for decisions to be taken more expeditiously if the activities of the organisation are not to be retarded. The Commission suggests, however, that consideration should be given to defining clearly what is meant by " other similarly important actions ", so that organisations shall be in no doubt before they take action as to which decisions are required to be taken by a majority of the membership and those for which a majority of votes cast will suffice.

2208. The Laws as amended relax the previous condition for registration that the organisation shall consist exclusively of employees.

2209. Firstly, an employees' organisation may now continue to include in its membership those who have been dismissed against their will or subjected to dismissal as a disciplinary action, where a period of one year has not elapsed since the measure was taken, or where an objection has been filed or a law-suit brought against the action before the expiration of such period and the decision or judgment thereon is still pending. Secondly, the organisation may include its officers in its membership and is no longer disqualified from registration because it allows persons other than employees to serve as its officers.

2210. The repeal of the restriction preventing persons other than employees from serving as officers of an employees' organisation has eliminated a limitation on the right of organisations to elect officers in full freedom which, as the Government has appreciated since the early stages of this case, was clearly incompatible with the principles embodied in Article 3 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Commission regards the repeal as a measure of fundamental importance.

2211. The Laws as amended provide that, when it has been found that a registered employees' organisation no longer meets the requirements of the Laws or has failed to report to the registering authority changes in its registered constitution or particulars, the registering authority may suspend the effect of its registration for a period of not more than 60 days or may cancel its registration. In the case of cancellation the authority shall hold hearings in advance and such hearings shall be held in public if so requested by the employees' organisation concerned. Cancellation of registration cannot give rise, according to the new amendments, to the filing of objections under the Law for the examination of objections against administrative acts. The Commission is not clear as to the precise consequences of this last provision. If its effect is that no appeal lies to the courts against cancellation of registration, the Commission must draw the attention of the Government to the fact that the I.L.O. Committee of Experts on the Application of Conventions and Recommendations has

pointed out on numerous occasions that, in order to ensure full compliance with the guarantees laid down in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), provision should be made for appeals to the courts in all cases against decisions of a registering authority refusing or cancelling the registration of an organisation of workers or employers. The Commission endorses this principle.

2212. The Commission appreciates that the Government intended, by transferring to the equity commissions the function of registering organisations previously performed, in the absence of a personnel commission, by the head of the local public body concerned, to ensure greater expedition and impartiality in the registration procedure. It is not, however, convinced that this object will be fully attained by the transfer of responsibility in the matter to the equity commission.

2213. In this connection the Commission draws attention to the fact that the Governing Body of the I.L.O., when adopting paragraph 431 *(h)* of the 58th Report [1] of the Committee on Freedom of Association, suggested to the Government of Japan that it might care to envisage the establishment of a system of registration of local public employees' organisations by a registrar or other agency entirely independent of the personnel commissions and of the local authorities and whose decisions would be subject to a right of appeal to the courts.

2214. The Commission endorses the above suggestion and recommends the Government to give consideration to it.

Acquisition of Legal Personality (Section 108-4 of the National Public Service Law and Section 54 of the Local Public Service Law, as Amended)

2215. The Laws as amended provide that a registered employees' organisation may become a legal person by giving notice of its incorporation to the National Personnel Authority in the case of organisations covered by the National Public Service Law or to the personnel or equity commission in the case of organisations covered by the Local Public Service Law. It is not required to apply for specific permission to acquire legal personality. The fact of registration is sufficient. Whereas other entities require a " document of permission " to constitute them as legal persons, a registered employees' organisation requires only a " certificate of receipt of notification of incorporation as a juridical person ".

2216. The new text makes it clear that only a " *registered* organisation " can acquire legal personality in this or indeed in any other manner.

2217. One of the complaints submitted to the Commission was that, by reason of the fact that an organisation which is not qualified to register cannot acquire legal personality, central organisations such as the General Council of Trade Unions of Japan, the Japan Teachers' Union and the All-Japan Prefectural and Municipal Workers' Union, and federations at the prefectural level affiliated to the last-named organisation, cannot legally own buildings and property and are placed at a disadvantage from the fiscal and other points of view.

2218. The organisations in question are still unable to register under the amended legislation and remain only *de facto* organisations because their membership is not

[1] See *Official Bulletin*, Vol. XLV, No. 1, Jan. 1962, Supplement, p. 75.

limited to one class of employees. Teachers who are national public servants and teachers who are local public servants are regarded as separate classes of employees.

2219. While the law and practice relating to the acquisition of legal personality by trade unions vary widely in different countries, the Commission draws attention to the fact that Article 7 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), provides that the acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 thereof.

2220. In these circumstances the Commission recommends that, during the discussion of these provisions by the Advisory Council on the Public Service Personnel System, or by some other appropriate and agreed procedure, consideration should be given to the amendment of the law in such a manner as to enable central trade union organisations to enjoy legal personality. The Commission emphasises that this question is entirely distinct from that of negotiating rights.

Negotiating Rights and Procedure (Section 108-5 of the National Public Service Law and Section 55 of the Local Public Service Law, as Amended)

2221. The Laws as amended provide that, when a registered employees' organisation lawfully proposes to negotiate with proper authorities (central government authority or authorities or a local public body, as the case may be) on compensation, work hours and other conditions of work of personnel and, in conjunction therewith, on matters concerning lawful activities, including social and welfare activities, the authorities concerned shall be " in the position to respond to the proposal ". This expression did not appear in the text of the law prior to its amendment in May 1965. The Government's interpretation of the previous provisions was, however, made perfectly clear during the hearings in Geneva in September 1964. It was then explained that under the law and practice subsisting at that time either a registered or a non-registered organisation was entitled to propose negotiation; the authority concerned was " in a position to respond positively " to the request in the case of a registered organisation but could refuse to respond, and therefore to negotiate, in the case of a non-registered organisation. It was also stated at that time by the then Deputy Director-General of the Cabinet Legislation Bureau that the situation in this respect would remain unchanged after the proposed legislative amendments had been enacted.

2222. There is therefore an essential difference in respect of negotiating rights between registered and non-registered organisations. This difference is of special importance in the case of those organisations or federations whose scope extends beyond the area of one local public body or beyond one separate category of employees. A union organising all the employees of one local public body—even if it excludes managerial personnel and the like—still cannot qualify for registration, nor can federations of such unions at the prefectural level (such as the prefectural organisations of the All-Japan Prefectural and Municipal Workers' Union). The practical outcome of the rules governing registration is therefore to perpetuate the horizontal and vertical subdivision of local public servants' organisations into small units.

2223. This position calls for examination in the light of the guarantees laid down in Article 2 of the Freedom of Association and Protection of the Right to Organise

Convention, 1948 (No. 87), which provides that workers, without distinction whatsoever, shall have the right to establish and join organisations " of their own choosing ", in Article 3, which provides that workers' and employers' organisations " shall have the right . . . to organise their administration and activities and to formulate their programmes ", Article 5, which provides that workers' and employers' organisations " shall have the right to establish and join federations and confederations ", Article 6, which provides that the provisions of the aforesaid Articles shall apply to federations and confederations of workers' and employers' organisations, and paragraph 2 of Article 8, which provides that 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 the Convention.

2224. In this connection the I.L.O. Committee of Experts on the Application of Conventions and Recommendations has observed[1], in the case of another country, that legislation requiring separate associations of government employees to be set up for each of the various categories into which goverment servants are broadly classified does not appear to be in harmony with the right of free choice of organisation guaranteed by Article 2 of the Convention.

2225. A situation in which a similar limitation had to be observed by workers in choosing their organisation in order to be sure of belonging to an organisation which could register and enjoy the " positive " right of negotiation would appear to be incompatible with the provisions of the Convention.

2226. In this connection the Commission recalls the view expressed by the Governing Body Committee on Freedom of Association in paragraph 188 *(f)* of its 54th Report [2] that " while the employing authorities have the right to decide whether they will negotiate at the regional or national level on their side, the workers, whether negotiating at the regional or national level, should . . . be entitled to choose as they wish the organisations which shall represent them in the negotiations ". The Commission endorses this view.

2227. The Commission therefore recommends that further consideration should be given in the pending discussions either to the scope of registration itself or, at least, to the elimination of the distinction between registered and non-registered organisations in respect of the extent of their negotiating rights, in their capacity as organisations representative of the interests of their members within the contemplation of Article 10 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

2228. The Commission is the first to appreciate that the effect of the adoption of this recommendation would be to promote the establishment of stronger organisations better able than hitherto to protect the interests of their members; it believes such a development to be not merely natural and desirable but also as much in the interest of the employer as in that of the employee; it represents a necessary stage in the development of stable relationships which permit workers and employers to negotiate mutually satisfactory arrangements in a responsible manner.

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[1] See *Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution)* Report III, Part IV, International Labour Conference, 37th Session, Geneva, 1954 (Geneva, I.L.O., 1954), p. 39.

[2] See *Official Bulletin*, Vol. XLIV, 1961, No. 3, p. 310.

2229. The law as amended provides that matters affecting the management and operation of government business shall be excluded from the scope of negotiation. The application of this provision may give rise to grave difficulty in practice. There are certain matters which clearly appertain primarily or essentially to the management and operation of government business; these can reasonably be regarded as outside the scope of negotiation. It is equally clear that certain other matters are primarily or essentially questions relating to conditions of employment. It must be recognised, however, that there are many questions which affect both management and operation and conditions of employment. To mention only two of several such matters which have been raised in the present case, there is the question of personnel strength or manning and the question of personnel transfers. Matters of this nature should not be regarded as outside the scope of collective bargaining conducted in an atmosphere of mutual good faith and trust.

2230. While agreeing that it would not be feasible to attempt to spell out the precise scope of the term " management and operation ", the Commission nevertheless recommends that during the pending discussions an attempt should be made to reach a better understanding as to where in practice the line of demarcation should be drawn.

2231. In particular, it is to be hoped that the authorities concerned will be guided in the future determination of the precise scope of matters properly appertaining to " management and operation " by principles of good faith and reasonableness. It is apparent to the Commission that its previous recommendations suggesting the removal of various restrictions on the right of organisations to negotiate could be rendered ineffective in practice by the systematic removal of subjects from the scope of bargaining on the grounds of being matters solely for the decision of the employer.

2232. The Laws as amended contain detailed provisions concerning the methods and procedures of negotiation. They provide, for instance, that negotiation shall be conducted between the persons designated by the employees' organisation from among its officers and the persons designated by the proper authority, within the number of such representatives agreed upon in advance between the two parties concerned; that in conducting a negotiation the employees' organisation and the proper authority shall agree in advance upon the agenda, time and place of the meeting and the other necessary matters concerning the negotiation; that if, in special circumstances, an employees' organisation designates persons other than its officers, the persons so designated shall be able to prove in writing that they have been duly authorised by the executive organ of the employees' organisation concerned to negotiate on specific matters that are the subject of the proposed negotiation; and that the negotiation may be terminated when it has failed to comply with the above provisions, or has obstructed the execution of duties by other employees, or has hampered the normal conduct of government business (or the normal operation of the services of the local public body, as the case may be).

2233. While recognising that these provisions may have been designed to introduce a necessary element of discipline and order into the process of negotiation, the Commission has grave doubts concerning their value for this purpose. In general, the most successful procedures of industrial negotiation are gradually evolved as wise practice by the parties concerned rather than determined in detail by legislative provisions. Such practice may be embodied in written agreements or understandings or may simply come to be accepted by both sides as harmonious and workable.

2234. The Commission considers it probable that the provisions relating to the designation of negotiating representatives would, if rigidly applied, tend to undermine or destroy the very flexibility which is the essence of voluntary negotiation. Suppose, for instance, that negotiation is proceeding and that an unforeseen issue upon which an organisation, or the authority, urgently needs technical advice arises. Or suppose that when an issue relating to a particular locality is under discussion, a matter of major importance is brought up, on which either of the negotiating parties finds it difficult to pronounce without consulting representatives at the prefectural level. In such cases is it reasonable that the negotiations should be broken off or abandoned and their possibly successful outcome jeopardised, on the formalistic ground that the person called in has not been designated in advance, or has not been armed with a letter of procuration ? It also does not appear reasonable to the Commission that a local union should not be accorded the right, whenever it so desires, to be assisted in its negotiations by officers of the prefectural or national organisation to which it is affiliated. The Commission therefore recommends that further consideration should be given to rendering more flexible the prescribed methods and procedure of negotiation. The question is one which it might be wise for the Advisory Council on the Public Service Personnel System to keep under continuous review.

Full-Time Union Officer System (Section 108-6 of the National Public Service Law, Section 55-2 of the Local Public Service Law, Section 7 of the Public Corporation and National Enterprise Labour Relations Law and Section 4 of the Local Public Enterprise Labour Relations Law, as Amended)

2235. The Laws as amended modify the full-time union officer system which has been so distinctive a characteristic of labour relations in Japan. The original rationale of the system was that, as only employees could be members of a registered organisation and only members could be officers, an organisation could not have full-time officers unless they were given special leave for the purpose by the employer. Under the law as amended, the restriction of officers to employees no longer exists; the full-time union officer system has nevertheless been retained, but the period for which leave to serve as such an officer may be granted has been limited to a maximum of three years throughout the term of his service as an employee including any period already served as an officer.

2236. The employee granted such leave is treated as a temporarily retired employee. The provisions of the Local Public Service Law, the Public Corporation and National Enterprise Labour Relations Law and the Local Public Enterprise Labour Relations Law—but not those of the National Public Service Law—contain the further stipulation that during such leave the employee shall not be paid any remuneration by his employer, and it is further specified in the Local Public Service Law and the Local Public Enterprise Labour Relations Law that the period of leave shall not be taken into account in calculating the length of service which forms the basis for computing retirement allowance.

2237. With the repeal of the requirement that only employees may serve as union officers, the special need and justification for the full-time union officer system has disappeared. It is no longer the position that only the granting of leave to certain employees makes it possible for the employees' organisations to have any full-time officers at all. On the other hand, it has been repeatedly represented to the Commission that the employees' organisations can only function effectively if some at

least of their full-time officers are persons who, as employees, possess sufficiently intimate knowledge of the conditions of service in the workplaces in which the members are employed.

2238. In the absence of any international standard or substantial body of national practice on the subject the Commission refrains from making any specific recommendation concerning the manner in which the problem should be dealt with, but it is not satisfied that the statutory restriction to a period of three years provided for in the law as amended is either wise or appropriate. A limitation to three years of statutory provision for such a privilege would not in itself appear to be unreasonable, but there does not seem to be any adequate or convincing reason for prohibiting by statute the extension of this period by an agreement of general application in any class of cases in which the parties concerned regard such extension as appropriate. The Commission therefore recommends that the Advisory Council on the Public Service Personnel System should consider the matter further with a view to reaching some satisfactory solution of this nature.

2239. In so doing, the Council should have regard to the dangers of a system whereby the granting of leave for full-time union officer service rests entirely within the discretion of the management. Such a system may result in practice in discrimination between unions and thereby be inconsistent with the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or may allow management to interfere in the selection of union officers in a manner inconsistent with the provisions of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

2240. The Laws as amended also provide that no employee shall, while receiving compensation, carry on the business of or act on behalf of an employees' organisation, except where rules of the National Personnel Authority or by-laws of the local public body prescribe otherwise. There appears to be some uncertainty as to the meaning of this provision. If it means that an employee, in the absence of rules or by-laws to the contrary, may not devote working hours for which he is paid by his employer to the business of an organisation, it does not appear to call for criticism. But if it means that during any period in which a person has the status of a paid employee he may not, in the absence of such rules or by-laws, give part-time service to his organisation in his own free time, this would not appear to be compatible with his right to engage in trade union activity outside working hours which is specifically guaranteed by Article 1 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and which flows implicitly from the provisions of Articles 1 and 2 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

Central Negotiating Rights for the Japan Teachers' Union

2241. There remains for consideration the question of central negotiating rights for the Japan Teachers' Union which has bulked so large in the claims put forward by the General Council of Trade Unions of Japan at every stage of the proceedings of the Commission. The views on this matter of the Japan Teachers' Union, the General Council of Trade Unions of Japan and the Government are set forth in full in the report [1] and it is unnecessary for the Commission to recapitulate them at this stage.

[1] See Ch. 42.

2242. The Commission accepts the contention of the Government that the matter is one which it is neither necessary nor appropriate to deal with by legislation at the present stage.

2243. The Commission endorses the view expressed by the Governing Body Committee on Freedom of Association in its 54th Report that " the determination of the broad lines of educational policy, although a matter on which it may be normal to consult teachers' organisations, is not one for collective bargaining between such organisations and education authorities " and that " activities of a subversive character can claim no sanction from the principle of freedom of association ".[1]

2244. The Commission likewise endorses the view expressed by the Governing Body Committee on Freedom of Association in the same report that " while the employing authorities have the right to decide whether they will negotiate at the regional or national level on their side, the workers, whether negotiating at the regional or national level, should . . . be entitled to choose as they wish the organisations which shall represent them in the negotiations ".[1] By virtue of the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the teachers are now legally entitled to designate the Japan Teachers' Union to represent them in such negotiations as may take place, irrespective of whether such negotiations are conducted at the regional or the national level. The Commission notes with satisfaction that this was implicitly conceded in the evidence given before it in September 1964 by the representative of the Minister of Education.

2245. The Commission finds that the kernel of the grievance of certain of the complaining organisations is that the Japan Teachers' Union cannot at present negotiate effectively on either a national or a local basis. Their case is that the Ministry of Education will not deal with the teachers on the ground that they are in the employment of the local authorities but that discussions with the local authorities are fruitless because they are subject to the directives and financial control of the Ministry of Education. The Commission, having examined the information submitted by the complainants and the Government and having reviewed the position in several localities which figure prominently in the complaints, finds this grievance to be well founded. The Commission therefore recommends the Government to decide as a matter of policy whether it prefers central or local negotiation in respect of the conditions of employment of teachers. In either event, the teachers are now entitled to be represented in the negotiations by the organisation of their choice, which can be expected to be the Japan Teachers' Union. If the Government prefers central negotiation, it will be necessary for it to take appropriate steps to make decisions resulting from such negotiations binding upon the local authorities. If the Government prefers local negotiation, it will be necessary for it to give the local authorities real freedom to negotiate. It may well be that the most appropriate solution would be to distinguish from time to time between matters appropriate for central negotiation and those more appropriate for local negotiation. The Commission is not in a position to estimate the relative importance of all the varied factors which will have to be taken into account in arriving at a decision, and which may have a bearing on the relationships in regard to other matters between the central Government and the local authorities in Japan.

[1] See *Official Bulletin*, Vol. XLIV, 1961, No. 3, para. 188 *(f)*, p. 310.

2246. The Commission has noted the contention of the representative of the International Federation of Free Teachers' Unions that there is a widespread practice of negotiation between central governments and national trade unions concerning salaries, qualifications and staff regulations of teachers. The information on the matter available to the International Labour Office has been placed at the disposal of the Commission and is annexed to this report. It shows that the practices in other countries have been extremely varied. While the problem as it arises in Japan is a Japanese problem which must be resolved in the light of conditions in Japan, the experience of other countries may be of assistance in reaching a solution.

2247. The Commission has noted with deep gratification the statement concerning talks between the Minister of Education and the Japan Teachers' Union made by the Prime Minister at the first regular meeting between the Government and the General Council of Trade Unions of Japan on 18 May 1965. It shares his view that it is important to foster favourable conditions for such talks, and ventures to emphasise that the responsibility for fostering such favourable conditions falls equally on both parties. It trusts that in the new situation which has been created by the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the initiation of the regular meetings between the Government and the General Council of Trade Unions of Japan a resolution of the present difficulties will be reached by agreement at no distant date.

Summary of Findings and Recommendations

2248. It may be convenient to have the Commission recapitulate its main findings and recommendations.

(1) The Commission notes with satisfaction that the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), was ratified by Japan on 14 June 1965 following a unanimous decision of both Houses of the Diet and that high-level exchanges of views between responsible representatives of Government and labour have been initiated to discuss conditions of employment and related matters. These developments are potentially of the utmost importance but neither yet represents more than a starting point (paragraphs 2086-2089).

(2) Far-reaching changes of attitude on the part of both Government and labour will continue to be necessary to give Japan a system of labour relations adequate to the needs of an advanced industrial society. The Commission has every confidence that Japan will evolve a synthesis of old tradition and modern practice in establishing labour relations on a new basis (paragraphs 2089-2090).

(3) The findings and recommendations of the Commission are designed to facilitate agreement on matters which both the Government and unions recognise as still in suspense. They qualify each other and must be read as a whole (paragraphs 2091-2093).

(4) More of the recommendations are addressed to the Government than to the unions because they relate to matters within the sphere of government responsibility, but the Commission wishes to place special emphasis on its recommendations concerning future policy of the trade unions (paragraph 2094).

(5) Any attempt to exploit particular recommendations out of context will do a great disservice to the future labour relations in Japan and the welfare of the whole Japanese people (paragraph 2096).

(6) The proposals for immediate action made by the Commission on 23 January 1965 were accepted promptly and without qualification by the Government of Japan, and have now been carried out in full by the Government and the Diet which have shown imagination and courage in adopting a wholly new approach to the problem of labour relations in the public sector. All of the findings and recommendations now made by the Commission on particular matters must be read in this context (paragraph 2097).

(7) The future now depends on two factors: whether the trade unions give the Government, on a non-political basis, the measure of co-operation necessary to enable it to make a reality of the new policy; and whether the Government then proceeds, on the basis of such co-operation, to resolve the innumerable questions still outstanding in the same spirit which has characterised its recent decisions on matters of major policy (paragraph 2098).

(8) The Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), both of which have now been ratified by Japan, provide Japan with a code of basic principles governing labour relations. The ratification of these Conventions constitutes an obligation of Japan towards the International Labour Organisation and creates at the same time mutual obligations between Japan and the other States Members of the I.L.O. which are parties to the Conventions (paragraph 2108).

(9) To ensure the effectiveness of this code of basic principles it is necessary that the law of Japan should—*(a)* be brought fully into accord with its provisions, and *(b)* be so applied in practice (paragraph 2109).

(10) The Commission notes that, according to assurances given in the Diet on behalf of the Government, the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), will operate as an implied repeal of all legislation inconsistent therewith at the time the Convention comes into force for Japan. In the Commission's view such an implied repeal of earlier legislation is not necessarily sufficient to give effect to all the obligations of the Convention or ensure their full application in practice (paragraphs 2111-2112).

(11) The Commission recommends that due regard should be had to the above considerations in the course of the discussion of the matters referred for further examination to the tripartite Advisory Council on the Public Service Personnel System (paragraph 2112).

(12) While the legal framework of labour relations reduces the area of disagreement between the parties to the extent to which it makes possible the adjustment of their conflicting interests in an orderly manner, satisfactory labour relations depend primarily on the attitudes of the parties towards each other and on their mutual confidence (paragraph 2113).

(13) The Commission observes that until 1948 the trade unions in Japan enjoyed complete freedom of action and that subsequently an absolute prohibition of the right to strike was introduced in all public services and public enterprises, national and local. The Commission is convinced that this outright prohibition of strikes has affected the atmosphere of labour relations ever since (paragraphs 2119-2121).

(14) The result of this measure has been a situation characterised by an attitude of undisguised and unremitting tenseness leading both the Government and the unions to adopt general concepts of labour relations which are equally open to serious

criticism. The authorities adopted toward collective bargaining in the public sector an attitude amounting to refusing or rendering ineffective or futile the negotiating process, while some of the trade unions in the same sector persistently engaged in political campaigns unrelated to the economic interests of their membership (paragraphs 2123-2126).

(15) The Commission recommends that both the Government and the General Council of Trade Unions of Japan should be guided in future by the terms of the resolution concerning the independence of the trade union movement adopted by the International Labour Conference in 1952; this resolution is designed to afford a basis on which the trade union movement can avoid its economic and social functions being prejudiced by political considerations (paragraph 2132).

(16) The Commission reaffirms that subversion is not a trade union right (paragraph 2132).

(17) The problems confronting the Government and the trade union organisations in the public sector in their mutual relations arise in part from a failure by both parties to distinguish between the Government as government and the Government as employer. A clearer understanding on the part of both sides of this distinction is a necessary element of the establishment of satisfactory labour-management relations in the public sector (paragraph 2133).

(18) The Commission notes that the right to strike continues to be the subject of a fundamental divergence of view in Japan. It believes that both the restoration of the unlimited right to strike and the maintenance of the absolute prohibition to strike are unrealistic and that a reasonable compromise is necessary (paragraphs 2134-2135).

(19) The prohibition without distinction of all acts of dispute as being illegal is highly questionable; the converse attitude of the trade unions that all acts of dispute are legal is equally unacceptable. In the view of the Commission, acts of dispute should not be considered as legal or illegal as such, but according to their nature (paragraphs 2137-2138).

(20) Noting that there is no decision of the International Labour Conference defining the extent of the right to strike in public services, the Commission endorses the principles established by the Governing Body Committee on Freedom of Association—

(a) that it is not appropriate for all publicly owned undertakings to be treated on the same basis in respect of limitations of the right to strike without distinguishing in the relevant legislation between those that are genuinely essential because their interruption may cause serious public hardship and those which are not essential according to this criterion;

(b) that, where strikes by workers in essential services or occupations are restricted or prohibited, such restriction or prohibition should be accompanied by adequate guarantees to safeguard to the full the interest of the workers thus deprived of an essential means of defending occupational interests;

(c) that impartial machinery should be established for this purpose, the decisions of which should be fully and promptly implemented once they have been made (paragraph 2139).

(21) The Commission notes that these principles are not yet accepted in Japan (paragraph 2139).

(22) Only the recognition of a distinction as to the essential or non-essential character of a public service can bridge the divergence existing between the views of the Government and the General Council of Trade Unions. The Commission recommends that an appropriate line of demarcation should be established (paragraph 2140).

(23) If the absolute prohibition of strikes were to be relaxed in cases where interruption of the work would impose a lesser degree of hardship and were replaced by the requirement of a specific notice of the intention to strike and/or by a prohibition of the exercise of the right to strike pending recourse to conciliation and arbitration procedures, it would be essential that there be a radical change of attitude and a far greater sense of social restraint and responsibility on the part of the trade unions. The unions of Japan would have to understand that, even where strikes are lawful, the strike weapon is one to be used sparingly and only in the last resort after all other means of settlement have been exhausted. Even then, the legal right to strike in public services and enterprises by no means implies that the strike weapon should be used except in rare and unusual cases (paragraph 2141).

(24) The Commission is of the opinion that the existing arrangements for settling questions relating to conditions of work or redressing grievances in cases where strikes are prohibited are on the whole far from adequate, and that the present system calls for thorough review (paragraphs 2142-2155).

(25) The Commission is satisfied that the guarantees afforded by the Public Corporation and National Enterprise Labour Relations Commission and the local labour relations commissions are more substantial and appear to have given the workers concerned a greater degree of compensation than the allegations of the complainants suggested; it would appear that in these commissions the requisite degree of impartiality has been present, in relation to those functions which are performed by the public interest members only (paragraph 2144).

(26) The Commission observes that the principle that awards and collective agreements should be fully and promptly implemented is most imperfectly applied; consequently, confidence in the equity and utility of collective bargaining cannot but be undermined (paragraphs 2147-2148).

(27) The Commission notes that, in the case of the local public services, the by-laws which should have served as compensation for the denial of the right to conclude collective agreements did not exist at all or existed only in inadequate or incomplete form. The Commission recommends that urgent consideration should be given to revising the arrangements for the adoption by local public bodies of by-laws relating to terms and conditions of employment (paragraphs 2150 and 2155).

(28) Regarding the personnel and equity commissions the Commission is of the opinion that these do not meet the requisite standard of impartiality. The Commission therefore recommends that it would be desirable to refer to the Advisory Council on the Public Service Personnel System the problem of ensuring that the members chosen possess and are generally recognised to possess the requisite impartiality (paragraphs 2151-2152).

(29) The Commission observes that unions as such have no right to apply to personnel or equity commissions to take action on working conditions. The Commission therefore recommends that trade unions should have the right to submit applications on behalf of their members for action on wages and other working conditions (paragraph 2153).

(30) Regarding disciplinary measures the Commission recommends that the regulations in the matter should be administered with due regard to human considerations with a view to improving the general climate of labour relations (paragraph 2159).

(31) The Commission has noted the complexity of the regulations governing labour relations in Japan. It regards excessive legalism as a major obstacle to developing mutual confidence in the conduct of labour relations and therefore recommends general and comprehensive simplification of the present legal labour relations system, leaving far more freedom to the interested parties to work out in practice between themselves their mutual relationships, within the framework of a simplified labour code (paragraphs 2160-2166).

(32) The Commission recommends that the Government should give high priority to considering how this task should most appropriately be undertaken. In this connection special consideration should be given to the desirability of facilitating a simpler and more rational pattern of trade union organisation, especially in respect of persons at present covered by the Local Public Service Law (paragraphs 2166-2167).

(33) The Commission recommends that the All-Japan Prefectural and Municipal Workers' Union—or at least its prefectural federations—should be allowed to organise all the personnel of the local public service and local public enterprises, apart from teachers, and, if it is so desired, to negotiate with the municipality through a local branch of the national organisation (paragraph 2167).

(34) Regarding allegations relating to acts of anti-union discrimination, the Commission finds that such acts have been widespread and have affected various categories of workers to an extent which implies approval or acquiescence of higher authority. The Commission considers that the new labour policy of the Government will fail unless there is a definite change of approach in the manner of dealing with grievances alleging anti-union discrimination (paragraph 2168).

(35) Such grievances should be submitted to an international procedure only in exceptional circumstances. There should be adequate machinery for dealing with them nationally (paragraph 2168).

(36) The Government as a whole should have a general labour policy, applicable to all public employees irrespective of the department, local authority, or public or local corporation or enterprise by which they are employed. As a minimum, this policy should provide immediately for the full application to all public employees of the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (paragraph 2171).

(37) The Government should also develop at all levels the habit of mutual consultation which the regular meetings between the Government and labour organisations initiated by the Prime Minister are designed to foster (paragraph 2171).

(38) There should be a central focal point at which the general labour policy for public employees is defined in an authoritative manner; the newly established Advisory Council on the Public Service Personnel System would presumably provide the required focal point (paragraph 2171).

(39) The Council should be kept fully abreast of developments in personnel practice, and the Minister of Labour should have a recognised responsibility for

keeping it abreast of such developments and giving it enlightened guidance based on a sympathetic understanding of both the problems involved in the management of the public services, corporations and enterprises and the aspirations of organised labour (paragraph 2171).

(40) To ensure the usefulness of the Advisory Council and to maintain continued public confidence in its effectiveness it is vital that understandings reached through it should be promptly and faithfully implemented in practice by all the departments concerned and in particular by all of their local representatives throughout the country. A determined initiative at the highest level to clarify the policy of the Government and ensure that it is effectively conveyed to, fully understood by, and faithfully applied by, its local representatives may well be necessary. A national conference at which the policy is fully expounded to those whose active co-operation would be required to make it effective may be advisable. An appropriate service manual explaining clearly the provisions of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and of the law, and the issue of such specific detailed instructions as required, will be indispensable (paragraphs 2172-2173).

(41) The educational effort required must extend to the membership of the trade unions as well as government officials, since neither can create a spirit of co-operation by unilateral action in the absence of a full response from the other. A parallel effort by the trade unions to secure the co-operation of their members in the new policy is therefore essential (paragraph 2173).

(42) There should be expeditious, inexpensive and wholly impartial means of redress in all cases in which it is alleged that the general labour policy for public employees of the Government is not being respected (paragraph 2174).

(43) The Commission finds delay in the redress of grievances to be the most serious weakness in labour-management relations in the public sector in Japan (paragraph 2174).

(44) The Commission recommends the Government to undertake as a matter of high priority a major re-examination of the whole of the present procedure for the redress of grievances with a view to the provision of expeditious, inexpensive and wholly impartial means of redress. The process of determining grievances should not be treated as a form of litigation; it should be an examination in which both sides willingly participate. Joint inquiries and discussion by representatives of the employing authority and labour organisations regarding disputed acts should be regarded as a means of disposing of many of the complaints against employer action; in cases where there will be honest differences of opinion or viewpoint resort should have to be had to impartial tribunals or individuals representing the final step of the grievance procedure (paragraphs 2175-2179).

(45) Regarding the composition of personnel commissions the Commission recommends that the Advisory Council should define the circumstances in which persons who have been involved in a case should be disqualified from serving on such a commission during the hearing of that case (paragraph 2181).

(46) The fact that the appellant in proceedings before personnel commissions is not allowed to require the presence of the person who was responsible for the adverse decision being taken against him has been an important source of friction. The Commission regards this practice as inconsistent with the requirements of natural

justice and recommends that the procedure should be modified to provide for the hearing of the two parties in the presence of each other (paragraph 2182).

(47) The Commission recommends that reasonable facilities for special leave should be granted to complainants' witnesses before personnel commissions (paragraph 2183).

(48) The Commission recommends that the procedure of personnel and equity commissions should be fixed by rules of the Ministry for Home Affairs after consultation with representatives of workers' and employers' organisations (paragraph 2184).

(49) The Commission recommends that the circumstances under which temporary employees should have the right to apply for a review of adverse action taken against them should be considered by the Advisory Council on the Public Service Personnel System (paragraphs 2185-2186).

(50) The widespread and by no means unjustified sense of grievance existing at present by reason of past practice appears to the Commission to have been a major contributory element in the tension which has characterised labour relations in Japan in the public sector in recent years (paragraph 2187).

(51) While refraining from formulating conclusions concerning individual complaints, the Commission considers that both the Government and the trade unions would be wise to agree not to pursue further allegations, grievances, penalties, or disqualification arising out of occurrences prior to 14 June 1965, the date of registration of the instrument of ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). Such an understanding would require some arrangement for a global settlement of outstanding issues (paragraphs 2191-2192).

(52) Such a global settlement would be greatly facilitated if the Government thought it possible to take the initiative in making a generous gesture with respect to administrative sanctions, such as dismissals, fines and reprimands imposed in the past, including the remission of any fine not yet paid and the reinstatement on appropriate terms of employees dismissed in circumstances in which the dismissals would be inconsistent with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), or the law as now amended; exceptions might be necessary in special cases (paragraph 2193).

(53) The trade unions should make it clear that they are willing to adopt an attitude of restraint which would make such measures acceptable to public opinion generally and contribute to the mutual confidence without which no solid progress can be made. They should also make it clear that they will accept such a settlement without pressing grievances which management cannot reasonably be expected to regard as well founded (paragraphs 2193-2194).

(54) The Commission recommends that the scope of managerial staff should not be defined so widely as to weaken the organisations by depriving them of a substantial portion of their present or potential membership and that a greater degree of uniformity should be achieved as between designations of personnel as managerial personnel and the like made by different personnel and equity commissions (paragraph 2202).

(55) The Commission does not consider that the various requirements under the law concerning the name, address and purposes of the organisation, scope,

acquisition and loss of membership, regulations concerning directors and officers, meetings, voting, expenditure, accounts, federation, amendments to the constitution and dissolution compromise the independence of the employees' organisations. The Commission regards the new provisions concerning voting as an improvement; but recommends that a clearer definition be given of the " other similarly important actions " which require a special majority (paragraphs 2204 and 2207).

(56) The Commission regards the repeal of the restriction preventing persons other than employees from serving as officers as a measure of fundamental importance (paragraph 2210).

(57) The Commission draws attention to the recommendations of the I.L.O. Committee of Experts on the Application of Conventions and Recommendations that provision should be made for appeals to the courts in all cases against decisions of a registering authority refusing or cancelling the registration of an organisation of workers or employers (paragraph 2211).

(58) The Commission recommends that consideration should be given to amending the law so as to enable central trade union organisations to enjoy legal personality (paragraph 2220).

(59) The Commission recommends that further consideration should be given to the scope of registration or at least to the elimination of the difference in respect of the extent of negotiating rights between registered and non-registered organisations (paragraph 2227).

(60) The Commission recommends that an attempt should be made to reach a better understanding as to where in practice the line of demarcation should be drawn between matters connected with " management and operation " and matters subject to collective bargaining (paragraph 2230).

(61) The Commission recommends that further consideration should be given to rendering more flexible the provisions governing the designation of negotiating representatives and the details of negotiation procedure (paragraph 2234).

(62) The Commission recommends that the statutory period of leave granted to full-time union officers, now limited to three years, should be subject to extension by general agreement and that the Advisory Council on the Public Service Personnel System should consider the matter with a view to reaching some satisfactory solution (paragraph 2238).

(63) The Commission recommends clarification of the provisions prohibiting employees receiving compensation to carry on business or to act on behalf of an employee organisation subject to certain exceptions laid down by the law (paragraph 2240).

(64) The Commission accepts the contention of the Government that the question of central negotiating rights for the Japan Teachers' Union is one which it is neither necessary nor appropriate to deal with by legislation at the present stage (paragraph 2242).

(65) The Commission endorses the view expressed by the Governing Body Committee on Freedom of Association that " the determination of the broad lines of educational policy, although a matter on which it may be normal to consult teachers' organisations, is not one for collective bargaining between such organisations and education authorities " and that " activities of a subversive character can claim no sanction from the principle of freedom of association " (paragraph 2243).

(66) By virtue of the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the teachers are now legally entitled to designate the Japan Teachers' Union to represent them in such negotiations as may take place, irrespective of whether such negotiations are conducted on a regional or national level (paragraph 2244).

(67) The Government should decide as a matter of policy whether it prefers central or local negotiations in respect of conditions of employment of teachers. If the Government prefers central negotiations, it should take appropriate steps to make decisions resulting from such negotiations binding upon the local authorities. If it prefers local negotiations it should give the local authorities real freedom to negotiate. It may be desirable to draw a distinction between matters appropriate for central negotiations and matters appropriate for local negotiations (paragraph 2245).

* * *

2249. The Commission cannot insist too strongly that the emphasis must now be upon the future rather than the past. A new departure has been made by the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the initiative of the Prime Minister of Japan in inaugurating the practice of regular high-level meetings between the Government and labour organisations. It is vital that the momentum of this new departure should not be lost.

2250. Japan is now an advanced industrial society. Her success in the industrial application of science and technology commands the admiring respect of the whole world. The Commission has been called upon to assist those charged with the responsibility for policy in Japan in developing a system of labour relations in the public sector appropriate to an advanced industrial society. It is not surprising that this should be a complex and, in some respects, a controversial task calling for important changes of attitude on the part of the trade unions no less than of the Government. All industrial societies have been wrestling with the problem for many years. It was only as recently as 1961 that the United States made its first comprehensive survey of labour relations in the federal public sector, and adopted significant changes of policy as the result of that survey.

2251. The Commission has no illusion that the labours of a few months can represent anything more than a stage in what inevitably will be a long process of development. But it believes that the steps which the Government of Japan has already taken in response to its proposals of 23 January 1965 can and will represent the decisive stage in the process if both sides so desire.

2252. Any responsibility for failure will clearly rest with anyone who now fails to rise to the challenge of this great opportunity. The Commission cannot believe that so great an opportunity will not be grasped by all concerned.

2253. In concluding its report the Commission wishes to place on record its gratitude to the Government of Japan and all of the complainant organisations for their co-operation in its proceedings and in particular to express to the Government its special appreciation of the excellence of the arrangements made for its visit to Japan. The willingness shown to take the utmost pains in responding promptly to its many requests for further information made an invaluable contribution to its work. The unfailing courtesy extended at every stage to the Commission, and to

all those associated with it, will remain a happy and treasured memory for all concerned. The Commission completes its task with profound admiration for the vitality and resourcefulness of the people of Japan. It has every confidence that this vitality and resourcefulness will resolve the problems which now confront them as an advanced industrial society and will initiate a new chapter in their age-long history.

Geneva, 16 July 1965. *(Signed)* Erik DREYER.
David L. COLE.
Arthur TYNDALL.

P.S. Having signed this report, the members of the Commission wish to express to Mr. David A. Morse, Director-General of the International Labour Office, and to his collaborators their warm thanks for all the help which they have received at all stages of the proceedings.

They thank in particular Mr. C. Wilfred Jenks, Deputy Director-General, who took part in all their sessions and in the visit to Japan. Their thanks go also to Mr. Nicolas Valticos, Chief of the International Labour Standards Department, and all officials of the I.L.O. who have assisted the Commission, particularly Mr. J. A. Hallsworth, Mr. K. T. Samson, Mr. J. C. Petitpierre and Mr. H. C. Carnegie, who constituted the Commission's secretariat.

They wish further to express their gratitude to Mr. Y. Sakurai, Director of the Tokyo Branch Office of the I.L.O., and his staff for the very valuable assistance rendered to them during their stay in Japan.

E. D.
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APPENDIX

Selected Examples of National Practice relating to the Recognition and Negotiating Rights of Public Employees' Organisations, with Special Emphasis on Educational Personnel [1]

1. In this Appendix it is proposed to describe several systems of labour-management consultation, co-operation and negotiation between employing governments and organisations of public employees, together with the systems for the settlement of collective disputes which exist to regulate the terms of employment of such employees. The text is based on information supplied from I.L.O. branch offices or correspondents and therefore does not rely on information or evidence acquired by the Commission in the course of its investigation of the case.

2. With reference to the first part, dealing with public employees generally, the subject countries have been chosen to present a wide spectrum of views of generally advanced industrial societies. They are Australia, Canada, France, Federal Republic of Germany, India, Italy, United Kingdom and United States. This choice of subjects also affords the opportunity to compare the methods adopted in federal States to regulate the labour-management relations with civil servants at the national, state and local levels.

3. In the second part, it is proposed to concentrate attention specifically on the right to organise and to bargain collectively of teachers. The information therein is derived in part from a 1963 report prepared by the International Labour Office in connection with a meeting of experts on social and economic conditions of teachers in primary and secondary schools. In addition the concluding paragraphs will attempt to describe in more detail several countries' approach to this problem.

A. Labour-Management Co-operation Machinery

Australia.

4. In Australia, at the federal level, that of the Commonwealth civil service, all civil servants, including teachers, are covered by the normal system of conciliation and compulsory arbitration. Once an organisation of public workers has secured registration under the Public Services Act, 1922-60, they acquire the right to use this machinery.

5. As a fundamental tenet of the Public Services Act the right to strike is specifically abrogated. Section 66 provides as follows:

> Any officer or officers of the Commonwealth Service directly fomenting or taking part in any strike which interferes with or prevents the carrying on of any part of the public services or utilities of the Commonwealth shall be deemed to have committed an illegal action against the peace and good order of the Commonwealth, and any such officers adjudged by the Board, after investigation and hearing, to be guilty of such action, shall therefor be summarily dismissed by the Board from the Service, without regard to the procedure in this Act for dealing with offences under the Act.

6. The positive contributions of the Act are to provide, in section 19 *(a)*, for joint consultation through a joint committee on which are represented the Public Services Board, the Commonwealth departments and organisations of employees. The scope of this organ embraces all aspects of conditions of work and terms of employment, except pay.

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[1] Compiled from information available to the International Labour Office.

7. Complementary to the Public Service Act is the Public Service Arbitration Act, 1920-60. The arbitrator appointed pursuant to this Act has the responsibility " to determine all matters submitted to him relating to conditions of employment of officers and employees of the public service " (section 12). Any organisation is entitled to submit to the arbitrator by " memorial " any claim relating to the conditions of employment of members of the organisation. Appeals are permitted but only if, in the opinion of the Commonwealth Conciliation and Arbitration Commission, the prior determination deals with a matter of such importance that appeal is necessary in the public interest. As there is no system of negotiation leading to collective agreements for national public servants in Australia, the importance of the methods discussed above is that they establish machinery for (1) discussion between labour and management; and (2) the settlement of disputes between the public servants and the minister of a department or the Public Service Board.

8. Among the Australian states two basic systems exist. In New South Wales, Victoria and South Australia there is a public service board system similar to that on the federal plane, with some important variations. In New South Wales, for instance, the three-man Board consists of, in addition to a government-appointed chairman, three members, one of whom is an " educationist ", as the Board determines the salaries and other conditions of work of teachers. No strikes are permitted. There is a system of negotiation provided between the Board and employees' organisations, although the Board remains more of a tribunal than a bargaining partner. If the " negotiations " with the Board fail to produce an agreement, employees' organisations may apply to an industrial commission. In Victoria, there exists a special Teachers' Tribunal specifically dealing with the problems presented by organisations of educational civil servants, although not amounting to negotiation, but rather recommendation.

9. Queensland, Western Australia and Tasmania each have a modified public service commission control system, in which the commissions perform functions similar to the public service boards except that decisions are subject to appeal by various industrial commissions on motion of employees' organisations. In Tasmania, a Public Service Tribunal, representing all types of state civil servants, is empowered to make awards, determine salaries or scales of salaries and examine working conditions. In addition, the Tribunal may include in its award any matter which it considers necessary in the interests of the public. None of these three states permits civil servants to strike.

10. As for local government employees in Australia, they exercise their rights to full association and negotiation, if at all, within the over-all framework of existing federal or state machinery. Compulsory arbitration obtains throughout the country. The means by which government employees further their interests are the same as those available to other employees in the state in which they happen to reside. Thus, if they are members of a federal union organisation, their terms and conditions of employment will most likely be regulated by an award of the Commonwealth Conciliation and Arbitration Commission regardless of their jobs.

Canada.

11. On a national level in Canada, section 7 of the Civil Service Act of 29 September 1961 provides for consultations with staff organisations at the request of either staff representatives or whenever in the opinion of either the Minister of Finance or the Civil Service Commission such consultation is necessary or desirable. The discussions may include questions of remuneration or terms and conditions of work.

12. The four provinces of Alberta, Manitoba, Ontario and New Brunswick have likewise set up such standing joint councils for administration staff, consultation and co-operation. But these organs, as well as the Federal Council, have the power to make only recommendations.

13. The province of Saskatchewan seems to be the only Canadian governmental authority which has set up permanent consultation machinery, the Clarification Joint Council, whose decisions are binding. Civil servants have full bargaining rights.

14. In Canada the federal Government has no procedure for handling collective disputes between occupational organisations of civil servants and the administrations. Two provinces, British Columbia and Saskatchewan, have established such procedures, however. In British Columbia the regulations provide for two types of procedure—one for handling disputes within established policy, i.e. grievances, and one for treating requests by the British Columbia Government Employees' Association for a change in existing wage levels or working conditions. In Saskatchewan, where civil servants have full bargaining rights, a distinction is made between a dispute as to rights and one as to interests. Wage rates and working conditions are subjects for negotiation, and if a deadlock occurs disputed points are referred to a board of conciliation. Disputes involving the application or interpretation of agreements are handled according to the grievance procedure provided for in the agreement.

France.

15. In France there is permanent machinery for public administration staff representation with several organs which in descending order of seniority are the Central Civil Service Council, joint administrative committees and joint technical committees. Civil servants are directly associated with the running of their service through their membership of the joint administrative committees; they are indirectly associated through the unions' membership of the Central Civil Service Council and the joint technical committees. In addition to the safeguards they derive from their participation in these bodies, particularly where promotion or disciplinary procedures are concerned, their opportunities of recourse to the administrative courts give them special protection and fundamental safeguards. There are special administrative features for educational personnel which will be outlined below.

Federal Republic of Germany.

16. In the Federal Republic of Germany civil servants, as opposed to wage-earning public employees, are denied the rights to strike and to bargain collectively. As a general rule, the regulation of working conditions, including the fixing of salary rates, is considered to be a matter for parliamentary determination. The right to strike of wage-earning public employees *(öffentliche Angestellte)* is controversial. The employees' organisation opines that the right to strike is possessed if 75 per cent. of the union members agree to strike. The settlement of labour disputes for these workers is effected by negotiation with the employing public authority, depending on the level—local, state or federal.

17. The Act of 5 August 1955 provides for the creation of councils to represent the staff in the service of the Federal Republic, composed solely of representatives elected by such staff. These councils exist on four levels: the staff council for each working unit of five or more persons; the district council at the level of the intermediate authorities; the principal staff council at the highest level of administrative authority; and a general staff council which can be created by joint resolutions of several staff councils to cover a larger geographical area. It is fair to say that these are discussion units only, and a grievance found by a staff council can be negotiated with the administrative authority but carries no other legal significance.

18. While the German Constitution, in article 9, guarantees to both employers and employees the rights to organise and bargain collectively, the Federal Republic has not yet enacted any statutory provision permitting the awards of arbitration or conciliation to be enforced. The constitutions of a majority of the federal states contain some provision on conciliation procedure, however; in only two states, South Baden and Rhineland-Palatinate, conciliation awards are unenforceable.

19. If a dispute cannot be settled by a staff council (see paragraph 17 above), the head of the administrative unit or the staff council itself may refer the issue through administrative channels to the top level of the administration. If agreement is still not reached, the decision will lie with a conciliation board, which is constituted at the highest level of administrative

authority and consists of three members appointed by the authority, three appointed by the body representing the staff, and a chairman acceptable to both sides. If both sides cannot agree on a chairman he is appointed by the President of the Federal Administrative Tribunal. The conciliation body reaches its decision by majority vote and in this case the award is binding on both parties.

India.

20. In India a system of staff councils exists for government employees, except those in the railways and the Posts and Telegrams Department and the civilian staff of the industrial establishment under the Ministry of Defence. In all other ministries these councils are composed of government nominees (number not designated) and staff representatives, elected directly by the staff, not nominated by staff associations. These councils are required to meet at least once every three months, but on demand of at least one-fifth of the staff representatives a special meeting must be convened.

21. The objects of these councils are to consider suggestions for improving standards of work, to provide to the members of the staff machinery for notifying the Government of their points of view on matters affecting their conditions of service and to provide means of personal contact between all concerned. The staff councils are advisory bodies only. The councils may make recommendations which are submitted to the minister; the minister decides what action, if any, should be taken on the recommendation.

22. At present the Indian Government is considering a scheme for establishing joint consultative machinery and compulsory arbitration for central government employees, which would supplement rather than replace the existing procedures. The scheme envisages joint councils at national, regional and enterprise levels whose scope would include all matters relating to conditions of service and work, welfare and improvement of efficiency and standards of work. One important innovation is that the government representation on the councils will henceforth be empowered to conclude certain designated matters at meetings and will not reserve them for later decision by the Government.

23. Agreements reached between the two sides on all other matters will become final only after final authority therefor by the Cabinet. If no agreement is reached, the matter may be transmitted to a committee of the council for further consideration. If a solution is still not forthcoming, the matter may then, at the motion of either side, be submitted to arbitration, provided that such compulsory arbitration shall be limited to questions of pay and allowances, weekly hours of work and leave. The Government, however, may refuse to refer a dispute to arbitration if, in its own opinion, it is not in the public interest to do so. In such a case Parliament must be informed in writing as to the Government's reasons. In a final provision it is declared that recommendations of the Board of Arbitration shall be binding, subject to the " overriding authority of Parliament ".

Italy.

24. In Italy, while civil servants are not denied the right to strike, the status as well as the conditions of employment of the entire civil service are determined by legislation, decrees of the President of the Republic and administrative regulations. Such provisions are also made specifically applicable to categories of public employees, teachers, firemen, railwaymen, employees of the postal service, etc., all of whom are employees of the central or national civil service.

25. The various branches of the civil service are organised in several trade union organisations and some of these are affiliated to national confederations. In each case these organisations represent their membership in consultations at the ministerial level on subjects connected with the determination of conditions of employment, prior to the adoption of legislation on that subject. While these consultations are not to be confused with collective bargaining and are not binding on either party, in practice their effects are the same.

26. The conditions of employment of employees of local public bodies (city councils, provinces, regions, hospitals, etc.) are determined in Italy by administrative regulations adopted by the bodies governing such administrations. These employees are largely organised and their trade union organisations are consulted at the local level as regards conditions of employment, much in the same manner as unions of employees in the central or national administration.

United Kingdom.

27. In the main, labour-management relations in the public services in the United Kingdom, particularly the non-industrial civil service, are entrusted to the National Whitley Council. It is the task of the National Whitley Council to ensure maximum co-operation between the Government and its employees with a view to increased efficiency in the public service combined with the well-being of those employed; to provide machinery for dealing with grievances; to bring together the experience and the different points of view of representatives of all branches of the civil service and to discuss proposed legislation so far as it has a bearing upon the position of civil servants in relation to their employment. The Council, composed of 54 members, half appointed by the Government, half by groups of staff associations, meets at least once every three months. While acceptance of the Whitley system by the Government as regards the civil service implies an intention to make the fullest possible use of the Whitley procedure, the Government has not surrendered its liberty of action in the exercise of its authority. In other words, the official side of the Council has no authority except that of the Government and the Government cannot be compelled to exercise its authority by way of the Whitley procedure.

28. Departmental Whitley councils attempt to secure the same aims as the national councils, and, in more detail, to provide the best means for utilising the ideas and experience of the staff; to secure for the staff a greater share in and responsibility for the determination and observance of the conditions under which their duties are carried out, and to determine general principles governing conditions of employment, namely recruitment, hours, tenure and pay, in so far as these matters are peculiar to members of the staff of the department. In addition, the departmental councils discuss cases of promotion and disciplinary action about which the staff may wish to raise questions, although it is understood that these last two functions are without prejudice to the responsibility of the head of the department for both promotion and discipline.

United States.

29. The position in the United States is more complex than in the previous countries used as examples, as the federal and state governments' civil service systems are widely divergent.

30. With respect to the federal Government, prior to 1962 federal agencies lacked any affirmative, government-wide policy on employee-management relations for federal employees. It has been federal personnel practice, since the Lloyd-La Follette Act of 1919, that government employees have the right to join or not to join any organisation which does not assert the right to strike against or advocate the overthrow of the Government.

31. A Presidential " Task Force " in 1961, established to review employee-management relations in the federal civil service, found that although 33 per cent. (or 762,000) of all federal employees belonged to employees' organisations, agency personnel policies varied widely with respect to labour-management relations matters. The recommendation of the " Task Force " stated that a constructive forward-looking programme of employee-management relations should be established within the federal civil service.

32. Accordingly, in January 1962, an executive order established an affirmative programme in this area, which, while preserving the public interest as the paramount consideration in the administration of employee-management relations and retaining certain management responsibilities, recognised the right of federal employees to participate with

management in developing improved personnel policies and working conditions. Under this order federal employees were permitted to join or refrain from joining employee organisations. Any organisation which does not (1) assert the right to strike against the Government of the United States, (2) advocate the overthrow of the constitutional Government in the United States, and (3) discriminate with regard to the terms and conditions of membership because of race, colour, creed or national origin, could be granted informal (the right to be heard), formal (consultation rights) or exclusive (negotiation rights) recognition, depending on the representative strength of the organisation. Exclusive recognition, if the organisation has 10 per cent. membership and represents the majority of the employees in a given unit, entitles an organisation to act for and to negotiate agreements with respect to personnel policy and practices, and matters affecting working conditions so far as might be appropriate. Any such agreement covers *all* employees in a given unit.

33. The obligation to bargain is not construed to extend to such areas as the mission of an agency, its budget, its organisation, the assignment of its personnel, or the technology of performing its work.

34. The implementation of policies which are within the administrative discretion and authority of the management officials of a given unit are considered to be negotiable.

35. On the state, municipal and other local levels, the nature of negotiations ranges from the mere submission of union proposals without further discussion to full-scale collective bargaining. Because most of these public bodies claim to have a sovereign nature, the final settlement of the terms is often unilaterally promulgated by the public agency and not incorporated in joint agreements. These unilateral statements often appear as resolutions, policy statements, ordinances, or in the form of other rules and regulations. However, there are many negotiations which result in bilateral agreements signed by both the public authority and the union, and these resemble agreements negotiated in the private sector.

36. State, county and municipal authorities are considered, in most cases, as separate entities. In general, agreements negotiated with state authorities would not apply to employees of community or municipal bodies. At each level of government the terms and conditions of employment usually have to be established independently.

37. The jurisdiction for defining the negotiating rights of public employees of state and local governments belongs to the states themselves and their subdivisions. It appears that no state has a comprehensive labour Act for its public employees. Laws governing public servants are typically a collection of statutes, court decisions, executive orders and opinions of Attorneys-General. Under many systems the authority to negotiate is drafted in broad language, allowing employee representatives to meet and discuss and allowing the public authority to consider the views of employees, or to participate with them in the formulation of personnel policies and in the solution of other problems of common concern. Some other rulings of state and municipal bodies have permitted public agencies to negotiate with their employees, if both parties desired, but they were not required to reach written agreements.

B. Organisation and Collective Bargaining of Educational Personnel

38. Generally, in countries with a decentralised structure, the exercise of the right to organise by teachers depends not on general legislation alone, but also on territorial provisions which are of varying scope and nature. In Canada, for instance, the coverage of the various provincial laws sometimes excludes schoolteachers, together with other categories of employees. Such exclusion does not restrict the freedom of association of the persons involved, but it carries with it the denial of the privilege of compulsory collective bargaining.

39. Regardless of the constitutional framework of the particular country, the exercise of the teacher's right to organise is, to a considerable extent, determined by his status as public or private employee. In some countries, the U.S.S.R., Poland, Czechoslovakia and Israel, no particular problems are presented because all employees are covered by the same provisions. Neither does it give rise to difficulties in such countries as the United Kingdom, Canada, New Zealand or the United States, where, with a few exceptions, teachers in official

schools are not civil servants. There are some municipalities in the United States in which teachers are not called civil servants but are given the rights and benefits of civil servants in practice. In the United Kingdom members of the Inspectorate of Schools are civil servants but they are not regarded as members of the teaching profession. In Canada and New Zealand very few teachers have the status of civil servants: in Canada those in vocational schools operated directly by a provincial government, and in New Zealand those in some special schools run by the Department of Education. In a considerable number of other countries, including Belgium, France, the Netherlands, the Federal Republic of Germany, Switzerland and India, teachers in official schools have the status of civil servants. Such status often entails special registration rules for employee associations, membership in organisations confined to particular categories of employees, and limitation of the right to strike.

40. There are also countries where teachers have no right to organise such as El Salvador, China (Taiwan) and Sudan.

41. In industrialised countries with a strong trade union movement teachers' organisations are usually set up on a nation-wide basis, irrespective of their coverage, which may extend to either all or some categories of teachers. The Israel Teachers' Union is an example of a national union covering the great majority of teachers in all categories. On the other hand, teachers' organisations in the United Kingdom, with the exception of the National Union of Teachers, are confined to particular categories of teachers, but as the various organisations maintain close co-operation in all matters of common interest, unity of action is maintained. In New Zealand the main teachers' organisations are the New Zealand Educational Institute, with membership open to all teachers in primary and secondary schools and teachers' colleges, and the Post-Primary Teachers' Association, whose membership is confined to teachers in secondary schools.

42. In countries which have adopted a decentralised administration of education the pattern of teachers' organisations varies. In Switzerland organisations of teachers are primarily set up on a cantonal basis. In the Canton of Zürich, for instance, there are two organisations of secondary-school teachers, covering the cantonal and the city schools respectively. The canton laws and regulations do not affect the teachers' basic right to organise and be represented by their organisations, but the influence and extent of such representation varies from canton to canton. Canada provides an example of a combination of a regional and nation-wide organisation. Most teachers in Canada automatically become members of provincial teachers' associations which are accepted as representative in matters of provincial concern. The Canadian Teachers' Federation, to which all but one of the provincial associations belong, is acknowledged as the representative of teachers in matters of national and international concern. The decentralised system of education in the United States has had little effect on the organisational pattern. Where bargaining takes place, two national organisations take part in the determination of teachers' terms and conditions of employment: the National Education Association, which covers all categories of teaching staff, and the American Federation of Teachers.

43. Generally speaking, teachers' salaries and other conditions of employment are fixed either by collective bargaining or by statutory machinery with which teachers' organisations are associated, or by law, issued in a number of countries after consultation with the organisations concerned, or, finally, by individual contracts.

44. There appear to be only a few countries where collective bargaining is the principal method used in determining teachers' salaries and working conditions in official schools. Canada is one such country and collective bargaining there is carried out at the local level between school boards and local teachers' organisations, with the exception of certain rural areas where salaries are either established at the discretion of the local school board or based on negotiation between individual teachers and the board. In one province, Newfoundland, teachers are paid according to a provincial scale established through direct negotiations between the provincial Department of Education and the provincial teachers' association.

45. Local negotiations also take place in the United States between the local boards of education and the local unit of the teachers' organisation. These are usually confined

to the annual determination of the salary scale within the limits imposed by the local budget which, in turn, may be controlled by the state legislature. Many of the calculations for employment are determined by state statutory provisions and local regulations. The use of the strike has not become a factor in teacher-board of education negotiations. It is considered that with a very few exceptions the practice of collective bargaining is too limited in scope and therefore both of the national teachers' organisations, while having had in the past separate policies on the subject, now urge that collective bargaining over the whole field of conditions of employment be introduced in official schools.

46. In New Zealand, Denmark, Norway and Sweden salaries and other conditions of service are negotiated at the national level between the central authorities and the recognised teachers' organisations. The outcome of bargaining is subject to government and, in some cases, legislative approval. It has also become customary in Israel for teachers' terms of employment to be negotiated by the Israel Teachers' Union with the Ministry of Education and the Treasury. It is further customary for teachers not to resort to strike before the Ministry of Education has been warned and before consultation has taken place.

47. In the United Kingdom new machinery is being set up through the Remuneration of Teachers Bill. This Bill establishes machinery for the determination by negotiation, or in default of agreement by arbitration, of the remuneration to be paid to teachers by local education authorities. The Bill provides for the setting-up of one or more committees to consider the remuneration payable to teachers, which will consist of an independent chairman, a representative of the Secretary of State, a representative of the local education authority and representatives of teachers. Agreed recommendations of these committees are to be transmitted to the Secretary of State, who is then required to give effect to them. Matters in respect of which a committee has been unable to reach agreement are to be referred to arbitration. Effect is to be given to the recommendations of the arbitrators, unless each House of Parliament resolves that national economic circumstances otherwise require.

48. In other countries consultation with teachers' organisations takes place before the terms of employment are fixed by law. This is the case in both Belgium and the Netherlands, although the Governments are not bound by recommendations emanating from these consultations.

49. Regular consultation is also carried out in Austria and the Federal Republic of Germany. National consultation takes place in countries such as Italy, Luxembourg and Argentina.

50. In a number of other countries the part played by teachers in the determination of their terms of employment is often limited to submitting recommendations to the relevant authorities. Such is, for instance, the case in Costa Rica, Turkey, the United Arab Republic, India and Pakistan.

51. Consultation with teachers and their organisations in matters of education seems to be a more common practice in many countries. In the United Kingdom teachers are usually able to express views about the conduct of the school in which they work, and they are usually consulted through their organisations which pass on opinions on the need to amend legislation. Such consultation is also an established practice, for example in Austria, Denmark, the Federal Republic of Germany, Italy, Luxembourg, the Netherlands, Norway and Sweden.

52. In Canada and New Zealand teachers' contribution to the development of education includes consultation on amendments of legislation, submission of briefs to royal commissions of education, revision of curricula and problems of in-service training. In the United States teachers' organisations are not involved directly in the development of the educational system either of the individual states or of the country as a whole. However, teachers' influence on school curricula, training of teachers and school legislation appears to be increasing.

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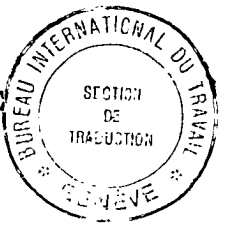
[1] The numbers following the items in the index are *paragraph* numbers.

INTERNATIONAL LABOUR OFFICE



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Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning the Trade Union Situation in Greece

PART I

CHAPTER 1

INTRODUCTION

1. The Fact-Finding and Conciliation Commission on Freedom of Association was established by the International Labour Organisation in agreement with the United Nations in 1950.

2. The procedure for the examination of allegations of infringements of trade union rights has already been described in the Report of the Fact-Finding and Conciliation Commission on Freedom of Association concerning Persons Employed in the Public Sector in Japan.[1] It has also been set out in detail in a series of I.L.O. official documents, in particular in a number of reports of the Committee on Freedom of Association of the Governing Body.[2] It does not, therefore, appear necessary to give an explanation of that procedure in this report.

[1] See *Official Bulletin*, Vol. XLIX, No. 1, Jan. 1966, Special Supplement, Ch. 2, pp. 5-7.

[2] See *Fourth Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1950), Appendix VI, pp. 324-326 (procedure for the examination of allegations of infringements of the right to freedom of association established under an agreement between the United Nations and the I.L.O., as set out in the letter of 19 January 1950 from the Director-General of the I.L.O. to the Secretary-General of the United Nations). Reports by the Committee on Freedom of Association dealing with complaint procedure: First and Third Reports (*Sixth Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1952), Appendix V, pp. 169-196 and pp. 225-237); Sixth Report (*Seventh Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1953), Appendix V, pp. 229-396); Ninth Report (*Eighth Report of the International Labour Organisation to the United Nations* (Geneva, I.L.O., 1954), Appendix II, pp. 166-173); 19th Report, in *Official Bulletin*, Vol. XXXIX, 1956, No. 4, pp. 101-142; 29th, 33rd and 43rd Reports (ibid., Vol. XLIII, 1960, No. 3, pp. 77-81, 147-169 and 264-265).

3. It is the function of the Commission to examine such cases of infringements or alleged infringements of trade union rights as may be referred to it, to ascertain the facts, and to discuss the situation with the government concerned with a view to securing the adjustment of difficulties by agreement.

4. In principle, no case may be referred to the Fact-Finding and Conciliation Commission without the consent of the government concerned.[1]

5. The case dealt with in the present report is the second case in which a government concerned has given the required consent.[2] It should be pointed out that in this instance the government itself suggested that the question be referred to the Fact-Finding and Conciliation Commission.

6. Allegations of infringements of trade union rights are examined in the first instance by the Committee on Freedom of Association of the Governing Body of the International Labour Office, which has considered some 480 cases since 1951. The case concerning alleged infringement of freedom of association in Greece through the intermediary of certain legislative enactments and by means of the system of financing Greek workers' organisations (Case No. 413) was submitted to the Governing Body Committee in September 1964, and was the subject of two reports submitted by that Committee to the Governing Body in November 1964 and February 1965 respectively.[3]

7. The Government of Greece spontaneously consented to the referral of the case to the Fact-Finding and Conciliation Commission on Freedom of Association on 28 January 1965; it declared that an I.L.O. mission would be welcome.

8. The Panel of three members of the Commission [4] designated by the Governing Body to examine the case consisted of Mr. Erik DREYER (Denmark), former Permanent Secretary, Danish Ministry of Social Affairs, former President of the State Mediation Board and former President of the International Labour Conference (Chairman); Mr. César CHARLONE (Uruguay), former Vice-President of the Republic, former Minister of Labour and Social Welfare, former Minister of Foreign Affairs, former Minister of Finance, Uruguayan Government delegate at a number of sessions of the International Labour Conference, former member of the I.L.O. Committee of Experts on the Application of Conventions and Recommendations, member of the Uruguayan delegation to the United Nations Conference on International Organisation (San Francisco, 1945), and member of the Uruguayan delegation to the Economic and Social Council of the United Nations (member); and Mr. Henri FRIOL (France), Counsellor to the Court of Appeal, former Chief of Cabinet to the President of the National Assembly, former Chief of Cabinet to Mr. René Coty,

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[1] The only exception is in respect of any complaint relating to the application of a ratified Convention in the case of which the Governing Body may designate the Fact-Finding and Conciliation Commission as a commission of inquiry under article 26 of the Constitution of the International Labour Organisation.

[2] The first case concerned the Government of Japan (see *Official Bulletin*, Vol. XLIX, No. 1, Jan. 1966, Special Supplement).

[3] See 78th Report, paras. 331-333 (*Official Bulletin*, Vol. XLVIII, No. 1, Jan. 1965, Supplement, pp. 60-61) and 80th Report (ibid., No. 2, Apr. 1965, Supplement, pp. 30-36). Some of the questions dealt with in the complaint were also examined by the Committee on Freedom of Association on other occasions.

[4] The present members of the Commission are Mr. Rafael CALDERA (Venezuela), Mr. César CHARLONE (Uruguay), Mr. David COLE (United States), Mr. Erik DREYER (Denmark), Lord FORSTER of HARRABY, K.B.E., Q.C. (United Kingdom), Mr. Jacques DUCOUX (France), Mr. Zuheir GARANA (United Arab Republic), Mr. Lamine GUEYE (Senegal), Mr. P. V. RAJAMANNAR (India) and Sir Arthur TYNDALL, C.M.G. (New Zealand).

President of the Republic (1954-58) (member). Following the death of Mr. Friol in December 1965 he was replaced by Mr. Jacques DUCOUX (France), Councillor of State. The Director-General designated Mr. C. Wilfred JENKS, Deputy Director-General, to act as his representative in the proceedings of the Commission.

9. The Commission met for the first time in Geneva from 22 to 26 July 1965 to determine its procedure. It was planned at that time that the Commission should meet for a second time to hear witnesses, visit Greece and then meet again to prepare its report. The date of the Second Session had been set for 6 January 1966, but for the reasons indicated below [1], at the request of the Government and with the assent of the complainant, it was postponed to July 1966. However, owing to the special circumstances created by the request made by the complainant on 6 June 1966 that the dispute that gave rise to the complaint be regarded as ended, the Commission met only once more, from 1 to 14 July 1966, to hear certain statements, formulate its conclusions and adopt its report.

10. The description of the procedure followed by the Commission, an analysis of the information available to it and evidence received, and an explanation of the special circumstances arising out of the withdrawal of the complaint are contained in Chapters 2 to 11 of this report. Chapter 12 consists of the findings of the Commission.

11. In response to a request from the Commission the Director-General has deposited in the library of the International Labour Office the documents constituting the evidence submitted to the Commission.[2]

[1] See paras. 138-140.

[2] These documents comprise all of the communications from the complainants and the Government of Greece to the Governing Body Committee on Freedom of Association (Case No. 413); the further statements made by the complainants and the Government at the request of the Commission; the comments of the complainants on the further statements made by the opposing party; communications from non-complaining employers' and workers' organisations; six decisions of the President of the Athens Court of First Instance appointing provisional executives of the Greek General Confederation of Labour; and the Record of Hearings.

CHAPTER 2

REFERRAL OF THE CASE RELATING TO GREECE TO THE FACT-FINDING AND CONCILIATION COMMISSION ON FREEDOM OF ASSOCIATION AND APPOINTMENT OF A PANEL OF THE COMMISSION TO EXAMINE THE CASE

12. On 4 September, 15 September and 30 October 1964, in conformity with the procedure in force, the executive of the Greek General Confederation of Labour (G.G.C.L.) then in office formulated allegations claiming that there had been interference with the exercise of trade union rights in Greece. This complaint was submitted in the name of the executive of G.G.C.L. and was signed by the following persons: Mr. F. Makris, General Secretary of G.G.C.L.; Mr. J. Patsantzis, General Secretary of the Federation of Private Employees; Mr. M. Petroulis, General Secretary of the Federation of Seamen; Mr. M. Panigyrakis, Secretary-Treasurer of G.G.C.L.; Mr. P. Papadimitriou, General Secretary of the Federation of Chemical Industry Employees; Mr. G. Dimitrakopoulos, General Secretary of the Federation of Railwaymen; Mr. E. Sioutis, President, Federation of Bakers; Mr. D. Makris, President of the Volos Workers' Centre; and Mr. J. Cassimatis, President of the Piraeus Workers' Centre.

13. The case was referred to the Committee on Freedom of Association, set up by the Governing Body of the International Labour Office, for preliminary examination at its 38th Session, held in Geneva in November 1964. The Committee made certain observations, contained in paragraphs 331 to 333 of its 78th Report, which was approved by the Governing Body at its 160th Session (November 1964). These paragraphs read as follows:

> 331. The original complaint of the Greek General Confederation of Labour was contained in a telegram dated 4 September 1964 addressed directly to the I.L.O. This was supplemented by a communication dated 15 September 1964. The texts of these two communications were transmitted to the Government for its observations by two letters dated respectively 9 and 30 September 1964. By a communication dated 23 September 1964 the Government furnished certain preliminary observations on the complaint and stated that full observations would be forwarded subsequently. By a communication dated 30 October 1964 the complainants submitted additional information in support of their complaint, which was transmitted to the Government for its observations. By a communication dated 6 November 1964 the Government forwarded the observations referred to in its letter dated 23 September 1964.
>
> 332. This communication, which is the Government's reply to the allegations made by the Greek General Confederation of Labour with reference to the new trade union legislation in Greece, was received by the Office on the same day as that on which the Committee met. The Committee, therefore, has not been able to examine it in detail. In view of the importance of the matter the Committee proposes to undertake at its next session an urgent examination of the legislative provisions and of the allegations relating to the financing of trade union organisations in the light of the principles embodied in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by Greece, and, in particular, the principles enunciated in Article 3 of that Convention, which provides that workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their repre-

sentatives in full freedom, to organise their administration and activities and to formulate their programmes, and that the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof. In the meantime, the Committee trusts that, in putting the new system into effect, the Government will take care to ensure that the principles of the Convention referred to above are not infringed.

333. The Committee recommends the Governing Body to take note of the preliminary observations made in the preceding paragraph.

14. The case was again referred to the Committee at its 39th Session, held in February 1965, when it proceeded to analyse the allegations and the observations made on them by the Government.

15. The Committee also recalled the Government's statement contained in its communication of 28 January 1965 wherein it was stated that—

> . . . the best procedure for permitting a more systematic examination of the complex matters raised by the complaint against the Greek Government would be to refer the case of the complaint of the Greek General Confederation of Labour to the Fact-Finding and Conciliation Commission on Freedom of Association set up in 1950 by the Governing Body of the I.L.O. for the purpose of investigating complaints addressed to the I.L.O. The Government, being very anxious that a complete and objective examination of the trade union situation should be made and desiring at the same time to establish the conditions necessary for the reorganisation of the trade union movement by the workers themselves, would consent with pleasure to the said Commission visiting Greece in order to examine the matter.

16. After making a study of the case and noting the importance of the questions raised, the Committee on Freedom of Association, having regard to the fact that the Greek Government had, on its own initiative, expressed its consent that the matter should be brought before the Fact-Finding and Conciliation Commission, recommended the Governing Body to decide to refer the case to the Commission. This recommendation was approved by the Governing Body when it adopted the 80th Report of the Committee on Freedom of Association at its 161st Session (March 1965).

17. In conformity with this decision taken by the Governing Body, the Director-General submitted certain proposals to it at its 162nd Session (May-June 1965).

18. The Director-General first drew attention to the fact that the Governing Body, in appointing the members of the Fact-Finding and Conciliation Commission at its 111th and 112th Sessions (March and June 1950), had provided for the possibility of arranging for its work to be done by panels of from three to five members.[1]

19. Pursuant to that principle, and having regard to the nature of the case, the Director-General suggested to the Governing Body that in the circumstances a panel comprising three members of the Commission would be most appropriate for accomplishing effectively and in a relatively short time the task which it was proposed to entrust to the Commission.

20. The Director-General therefore proposed to the Governing Body that the panel in question be composed as follows [2]:

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[1] See First Report (*Sixth Report of the I.L.O. to the United Nations*, op. cit.), para. 12.

[2] This proposal was adopted by the Governing Body at its 162nd Session (May-June 1965).

Chairman :

Mr. Erik DREYER (Denmark), former Permanent Secretary, Danish Ministry of Social Affairs; former President, State Mediation Board; former President of the International Labour Conference.

Members :

Mr. César CHARLONE (Uruguay), former Vice-President of the Republic; former Minister of Labour and Social Welfare; former Minister of Foreign Affairs; former Minister of Finance; Government delegate of Uruguay at a number of sessions of the International Labour Conference; former member of the I.L.O. Committee of Experts on the Application of Conventions and Recommendations; member of the Uruguayan delegation to the United Nations Conference for International Organisation (San Francisco, 1945); member of the Uruguayan delegation to the Economic and Social Council of the United Nations.

Mr. Henri FRIOL (France), Counsellor to the Court of Appeal; former Chief of Cabinet to the President of the National Assembly; former Chief of Cabinet to Mr. René Coty, President of the Republic (1954-58).

21. Following the death of Mr. Friol in December 1965, the Director-General proposed to the Governing Body that Mr. Jacques DUCOUX (France), Councillor of State, should be appointed a member of the Fact-Finding and Conciliation Commission and a member of the panel of that Commission charged with the examination of the case of Greece, as a replacement for Mr. Friol.[1]

22. In view of the nature of the functions which they would be called upon to perform, it was suggested that it would be appropriate that the members of the panel should undertake by solemn declaration to perform their duties and exercise their powers " honourably, faithfully, impartially and conscientiously ". A solemn declaration in such terms would be in accordance with the undertaking which Judges of the International Court of Justice must give and with that given by members of commissions appointed pursuant to article 26 of the Constitution of the I.L.O.

23. It was pointed out in the proposals that the procedure in force [2] provides that the Commission " is essentially a fact-finding body, but is authorised to discuss situations referred to it for investigation with the government concerned with a view to securing the adjustment of difficulties by agreement ".

24. It followed from these terms of reference, which were agreed between the Governing Body and the Economic and Social Council in 1949, that, while the Commission would be free to hear evidence from all concerned, any discussions which it might have " with a view to securing the adjustment of difficulties by agreement " would be discussions with the Government; it would not be authorised to undertake any discussions in the nature of negotiation with political parties or industrial organisations.

25. The above proposals were approved by the Governing Body at its 162nd Session (May-June 1965).

26. The decisions of the Governing Body, as described above, were brought to the notice of the Greek Government by a letter from the Director-General dated 7 June 1965.

[1] Proposals approved by the Governing Body at its 164th Session (February-March 1966).

[2] See First Report, para. 13.

CHAPTER 3

SUMMARY OF THE CASE BROUGHT BEFORE THE COMMISSION

27. Before describing the way in which the Commission set about its duties and determined the working methods which it would adopt, it appears desirable to show the position as it was at the time when the matter came before the Commission. The purpose of this chapter is to provide such an account.

28. In its various communications the complainant alleged that, by a series of measures, culminating in the entry into force on 2 September 1964 of Legislative Decree No. 4361, around which most of G.G.C.L.'s grievances are centred, the Greek Government elected on 16 February 1964 had sought to place the trade union movement under government control, and to this end had interfered in a high-handed manner in trade union affairs, in complete disregard of the obligations imposed on it by Greece's ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

29. Various provisions of Legislative Decree No. 4361 were reviewed successively by the complainant and by the Government—the first to criticise them, the second to justify them. However, both parties made a certain number of preliminary observations, which will be analysed below before proceeding further.

30. According to the complainant, during the period when the Prime Minister in office at the time of the submission of the complaint was leader of the parliamentary opposition, he repeatedly urged the General Secretary of G.G.C.L. to join forces with the opposition in its struggle against the Government. His advances, declared the complainant, were rejected by G.G.C.L. on the ground that such action would have been " contrary to its policy of political impartiality ". This refusal led the then leader of the opposition to set about forming the " Independent Trade Union Association of the Centre Union ", with a view to splitting the Greek trade union movement. When the opposition party, the Centre Union Party, came to power after winning the general election of February 1964, the attacks on G.G.C.L. began to take a more direct form.

31. In the first place, stated the complainant, G.G.C.L., was deprived, by governmental order, of all the funds to which it had hitherto been entitled by law. Financial sanctions were then imposed on those trade union organisations which had remained faithful to G.G.C.L., while at the same time the Government increased its financial aid to those organisations which made common cause politically with the new régime.

32. Specific information concerning the amounts thus allocated was furnished by the complainant in support of this argument. According to the complainant, the monthly subsidy of 250,000 drachmas which had previously been allocated to G.G.C.L. had been completely abolished, those of the Workers' Centres of Athens, Piraeus, Chania, Iraklion, Egion and Salonica had been reduced respectively from 70,000 to 40,000 drachmas, 60,000 to 30,000 drachmas, 8,000 to 4,000 drachmas, 11,000 to 6,000 drachmas, 5,000 to 3,000 drachmas and 60,000 to 30,000 drachmas.

When the Salonica Centre went over to the government side, its subsidy was restored to 60,000 drachmas. The Workers' Centre of Mytilene which, according to the complainant, was " controlled by the Government ", had its subsidy increased from 11,000 to 16,000 drachmas. As regards the federations, the following reductions were alleged to have been made: bakers: 7,000 instead of 11,000 drachmas; food suppliers: 5,000 instead of 8,000 drachmas; private salaried employees: 8,000 instead of 11,000 drachmas; fishermen: 4,000 instead of 5,000 drachmas; chemical industry: 5,000 instead of 8,000 drachmas; local government personnel: 3,000 instead of 4,000 drachmas; personnel of bus companies: 4,000 instead of 6,000 drachmas; fruit and vegetables: 3,000 instead of 5,000 drachmas. Moreover, the complainant stated that federations which it termed " under government control " had received increased subsidies: textiles: from 7,000 to 10,000 drachmas; brick industry: 6,000 to 10,000 drachmas; electro-technical workers: 7,000 to 9,000 drachmas; flour milling: 6,000 to 8,000 drachmas; cement industry: 5,000 to 8,000 drachmas; caretakers: 3,000 to 6,000 drachmas; cigarette industry: 7,000 to 8,000 drachmas; bank personnel: 7,000 to 10,000 drachmas.

33. Next, by Legislative Decree No. 4361, said the complainant, the Government had sought to ban the holding of the 15th National Congress of G.G.C.L. in order to prevent the submission to the Congress of a report on the activities of the outgoing executive and the free election of a new executive.

34. Finally, still making use of the provisions of Legislative Decree No. 4361, the complainant alleged, the Government had endeavoured to oust the G.G.C.L. executive from office and appoint a new executive composed of persons favourable to the party in power.

35. All these measures, concluded the complainant, were designed to bring about the " establishment of a régime of governmental trade unionism in order to subject the trade union organisations to the will of the Government and to oblige them to serve the interests of the government party ".

36. In the preliminary remarks made by way of a preamble to its reply the Government first of all reviewed briefly the historical background to the Greek trade union movement. It attributed the unsatisfactory trade union situation to the vicissitudes of national political life during the past 30 years: dictatorship from 1936 to 1941, enemy occupation from 1941 to 1944, civil war from 1945 to 1950 and the abnormal situation resulting from the latter, the effects of which were still being felt.

37. The Government then went to great pains to demonstrate that the G.G.C.L. leaders at the time of the submission of the complaint and prior to it were neither authentic nor representative. According to the Government, the leaders of this organisation, in return for a pretence of fanatical anti-communism, had obtained the financial and political backing of previous governments, and were thus able to entrench themselves in their positions of power in the trade union movement.

38. The leaders of G.G.C.L., declared the Government, " had been installed and maintained in office not by democratic methods but through the use of psychological violence towards delegates, and they were aided and abetted by unlawful by-laws which discriminated against organisations with a large membership. These same provisions of the Confederation's by-laws swelled the Congress representation of the weaker organisations in a scandalous manner because these were the organisations

where it was easy for the G.G.C.L. leaders to gain command. This state of affairs made it possible for these leaders always to be re-elected with comfortable majorities despite the innumerable protests of the large unions which suffered thereby and of public opinion ".

39. Contrary to the practice in democratic countries, G.G.C.L. had therefore been characterised, in the view of the Government, by the arbitrary manner in which it had been managed, the irregular procurement of privileges, the absence of any independent action truly in the interests of the trade union movement, and a marked indifference to the real problems confronting the working class. Such a situation, declared the Government, could hardly fail to engender keen conflict within G.G.C.L. itself, culminating in the founding of an opposition movement known as the " Movement for the Restoration of Democratic Functioning within G.G.C.L.", which in its turn had led to the forming of a number of splinter groups. This chaotic situation, continued the Government, had led to a loss of interest by the workers in trade unionism, as evidenced by a considerable falling off in membership and by the refusal of nearly all members to pay their union dues.

40. The Government declared that it had been elected to office by a large majority after two years of campaigning for the restoration of political and trade union freedom, and that it could not shirk what it considered to be its duty. The Government was fully aware of the role which could be played by an authentic trade union movement in the democratic, economic and social development of the country and of its responsibility to those who had placed in its hands the leadership of the nation; it had to do away with injustices which had lasted all too long, and was determined to help the workers to lay the foundations of a healthy trade union movement.

41. With this end in view—and this, it said, was what lay behind Legislative Decree No. 4361—the Government had introduced certain legal measures designed firstly to rid the country's legislation of all provisions which were in contradiction with the concept of free trade unionism, and secondly to create conditions in which the workers could elect their union executives without hindrance and in full freedom.

42. Such were the preliminary remarks made by the complainant and by the Government concerning the case. It is now proposed to pass on to the examination of the text of Legislative Decree No. 4361, in the light of the comments made thereon by both sides.

Examination of the Provisions of Legislative Decree No. 4361 of 2 September 1964

43. Legislative Decree No. 4361 of 2 September 1964 amends and supplements certain provisions of the Greek legislation relating to occupational associations. It has 12 sections dealing with matters of substance. Of these 12 sections only five had been criticised by the complainant. However, in order to form a general picture of the criticised text, it will be examined in its entirety, beginning with those sections which are not called in question by the complainant, namely sections 1, 2, 3, 4, 7, 9 and 12.

44. Under section 1, prefects no longer have power, as before, to intervene in matters concerning the structure of trade unions; similarly, they are no longer competent to depose members of the executive of a trade union. This section also repeals the provisions of the previous legislation containing severe restrictions on the fees and allowances payable to trade union officers for the exercise of their duties.

45. Section 2 brings back into force section 21 of the Royal Decree of 15-20 May 1920, whereby the quorum at a general meeting of a union may be fixed by the by-laws of that union at a level higher than that previously prescribed by Act No. 281.

46. In order to shorten the time taken to settle trade union disputes, section 3 provides that the magistrate is now the only agency competent to decide on complaints against the validity of decisions of general meetings of trade unions.

47. Section 4 removes the previous ban on the acquisition of real estate by trade unions without the authorisation of the Minister of Labour.

48. Section 7 abolishes supervision of the financial administration of trade unions by the public authorities and ensures that unions are administered freely, decisions reached and resources employed in conformity with union by-laws and by bodies appointed by the unions themselves, without any intervention by the public authorities. Section 7 also authorises indemnification of militants or officers entrusted with union administration (see also under section 1 above).

49. Section 9 lists the information which a trade union is required to give to the public authorities. This information, which relates to the by-laws, the number of members, the names of the officers and the budget, is considerably reduced by comparison with the information which the unions were previously required to submit in writing to the prefects.

50. Finally, section 12 extends to the two vice-presidents and the treasurer the protection against dismissal afforded under Act No. 1803 of 1951 to presidents and general secretaries of trade unions only.

51. The sections of the legislative decree which have been specifically referred to by the complainant will now be examined. They are sections 5, 6, 8, 10 and 11. It will be indicated how the complainant considers them to affect freedom of association, and the arguments advanced by the Government in defence of them will be reproduced.

52. Section 5 lays down that all trade unions and associations of trade unions must, in conformity with their by-laws (which must be amended to that effect), be represented at the general assemblies of associations of all degrees (federations, confederations), and must have a number of votes proportional to the number of voters among their members who have fulfilled their obligations. This proportion of the number of votes, to be established by the by-laws of each association, must be the same for all the trade unions belonging to a particular association and applicable to the total number of voting members. The number of votes of a trade union or association of trade unions may in no case exceed one-tenth of the total number of votes.

53. In the complainant's view this provision, which uses legislative channels to oblige trade unions to amend their by-laws, violates the principles set forth in Article 3 of Convention No. 87 to the effect that workers' organisations shall have the right to draw up their constitutions and rules in full freedom.

54. The Government, for its part, declared that it was convinced that the provisions of this section, far from constituting an infringement of freedom of association, in fact paved the way for the development of a free and democratic trade union move-

ment. Hitherto, according to the Government, the executives of trade union organisations, in their anxiety to cling to power, had amended their by-laws to suit the circumstances and falsified the representation, increasing it in the case of small associations favourable to the executive in office and limiting it in the case of large associations considered hostile. According to the Government, the sole purpose of the provisions contained in section 5 of the legislative decree is to introduce fairer and more objective criteria for determining representativeness. " By the adoption of a measure allowing for representation on a numerical basis subject to a ceiling of one-tenth, the workers' demands are met in that, while the views of the majority are not misrepresented, those of the smaller unions are not disregarded." The Government further stated that the limit of one-tenth on the representation of associations as provided for in this section was nothing new. It had existed under the legislation previously in force, which had even fixed it at one-fifth, and yet never before had the unions considered it to be an infringement of freedom of association.

55. Section 6 of the legislative decree provides that trade union elections must be held under the supervision of scrutinising committees as prescribed by the by-laws. It also stipulates that a representative of the judiciary must be present at elections and ensure that the by-laws and the law are complied with. As regards the precise role of the representative of the judiciary, section 6 states that before the vote, in collaboration with the executive of the union, he must verify that all those intending to vote have paid their dues in full. After the vote it is his task to record the results in the union's register.

56. In the complainant's view this section grants powers to judicial representatives whose scope is so wide that they impede the work of the general meetings of trade unions and " deprive the workers' representatives of the sovereign rights which are theirs by virtue of the rules and of their status as delegates ".

57. In its observations the Government declares that, by making it incumbent upon the representative of the judiciary to verify certain data clearly specified in the text of the decree, section 6 is designed to prevent the holding of elections based on falsified figures for the number of representatives legally allowed or the membership of organisations, as has happened in the past. The Government points out that long before the promulgation of the new decree a representative of the judiciary was present at union elections without G.G.C.L. ever raising a protest.

58. Section 8 of the legislative decree allows the length of the term of office of a union's executive to be determined by the union's by-laws; it stipulates, however, that once it has expired the term of office may not be extended by more than one month.

59. The complainant mentioned section 8 among those which it considered open to criticism but did not specify in what way the provisions of this section were regarded as incompatible with the free exercise of trade union rights.

60. The Government, in its observations, stated that the proviso contained in section 8 was felt to be necessary " since the by-laws provided for a different extension period—three months or less—or sometimes no extension at all. There was not even a definite provision as to who should run the union at the end of a term of office ". In the past, the Government added, several trade union officers had extended their terms of office without justification and in their own interests. The provisions of section 8 were designed to prevent any repetition of such situations.

61. Section 10 provides that any trade union election taking place in accordance with statutory provisions conflicting with the provisions of the new legislation shall be null and void, and prescribes penalties to be imposed on any person organising such elections or standing as a candidate.

62. In its observations the Government asserted that the provisions of section 10 were necessary for the implementation of section 5 and of the guarantees afforded by section 6.

63. The complainant, for its part, declared that section 10, taken in conjunction with the ban imposed by section 8 on extending the term of office of trade union executives by more than one month, had had the effect of prohibiting the holding of the National Congress of G.G.C.L., planned for September 1964. In fact, the complainant continued, since it had been practically impossible for G.G.C.L. to amend its by-laws to bring them into line with the new legislation, any congress held by it would fail to conform with the provisions of section 5 of Legislative Decree No. 4361 and would, therefore, under the terms of section 10, be null and void.

64. Moreover, the complainant stated that the entry into force of Legislative Decree No. 4361 had had the following consequences for G.G.C.L. Unable to hold its Congress because of section 10, and prevented by section 8 from extending the term of office of its executive by more than one month, G.G.C.L. could not help but find itself, at the end of its executive's term of office, in November 1964, in the position provided for by section 69 of the Civil Code, in virtue of which, on the expiry of the term of office of the executive of a trade union, it is open to any union to request the courts to take cognisance of the expiry of the said term of office and to appoint a new executive.

65. The Government did not refute this interpretation, acknowledging that under section 69 of the Civil Code, in the event that the members of the managing council of a body corporate are not appointed by a meeting, the chairman of the court of first instance may appoint an acting council.

66. The Government pointed out, however, that under the Constitution the chairman of the court of first instance, as a member of the judiciary, is not subject to influence by the executive power. " Consequently ", it went on, " the Government cannot bring any pressure to bear on the said chairman at the time of such an appointment ".

67. The last section of Legislative Decree No. 4361 to be called in question by the complainant is section 11, which provides in substance that to participate in the general assemblies of a trade union or an association of trade unions a member must have previously fulfilled all the financial obligations laid down in the by-laws.

68. The complainant did not say what it found wrong with this section. The Government, for its part, had the following observations to make.

69. During the 15 years or so in which the G.G.C.L. leaders had held office, they had not succeeded in doing away with the system of financing, despite the fact that it had long been the subject of complaint both by the national occupational organisations and by the international trade union movement and international bodies. The truth was, according to the Government, that these leaders made no attempt to clean up a situation which was substantially to G.G.C.L.'s advantage in view of the influence it had had with preceding governments.

70. The Government stated that it was aware of the defects in this system of financing inherited from its predecessors, and was planning to do away with it. Section 11 of Legislative Decree No. 4361 should be looked upon as the first step towards a system of free and independent financing of organisations by their own members in that it laid down the principle that no member might lawfully take part in the general meetings of a union unless he had discharged his financial responsibilities towards that union.

71. In its observations, however, the Government went on to say that it was not felt to be possible or opportune at the present time to do away completely with the system whereby workers' organisations are financed through the Workers' Club, the reason being that if the system were abolished before the workers' organisations had reached a point where they were able to meet all their financial needs out of the contributions of their members they would be deprived of their resources, and the effects of this would be felt the more heavily in that it would occur at a time when the unions were being called upon to convene general meetings in order to amend their by-laws or elect their executives in accordance with the law.

72. The Government concluded its remarks on this point by stating that it had not the slightest intention of maintaining the present system for the financing of workers' organisations, which it considered to be " destructive of freedom of association ". It gave the assurance that " very shortly, along with other measures to be taken for the benefit of the workers, the question will come up of placing the financing of occupational organisations on a new and healthier footing ".

73. By a communication addressed to the Director-General of the I.L.O. for the attention of the Committee on Freedom of Association and dated 28 January 1965, the Greek Government furnished certain information concerning developments since it forwarded its observations on 6 November 1964, which have been discussed above.

74. Firstly, the Government stated that, having regard to the wish expressed by the Committee on Freedom of Association in paragraph 332 of its 78th Report (see Chapter 2 above), and expressed by the Governing Body itself when adopting that report, it had not since that time permitted anything to be done which might be regarded as an infringement of freedom of association.

75. The Government went on to say that since its observations were forwarded on 6 November 1964 the executive of G.G.C.L. had been appointed. However, added the Government, as numerous appeals had been made to the courts by representatives of the different trade union trends with regard to the composition of the executive, its appointment was not yet definitive.

PART II

PROCEDURE ADOPTED BY THE FACT-FINDING AND CONCILIATION COMMISSION

CHAPTER 4

FIRST SESSION OF THE COMMISSION

76. The Fact-Finding and Conciliation Commission held its First Session in Geneva from 22 to 26 July 1965; the purpose was to determine the working methods and procedure which it would adopt in examining the case before it. In the course of this session, the members made a solemn declaration in the presence of Mr. David A. Morse, Director-General of the International Labour Office. In calling upon the members of the Commission to make this declaration, the Director-General made the following statement:

Gentlemen, you have been appointed by the Governing Body of the International Labour Office as the Panel of the Fact-Finding and Conciliation Commission on Freedom of Association to which the Governing Body has referred for examination, with the spontaneous consent of the Government of Greece, the case of alleged infringements of trade union rights in Greece.

The task entrusted to you is that of ascertaining the facts without fear or favour. You are responsible to your own conscience alone.

The Governing Body has approved a form of solemn declaration whereby members of the Panel undertake to perform their duties and exercise their powers as members of the Panel honourably, faithfully, impartially and conscientiously. This solemn declaration corresponds in its terms to that made by the Judges of the International Court of Justice.

I shall therefore call upon you to make in turn this solemn declaration.

77. The members of the Commission thereupon made the following declaration:

I solemnly declare that I will honourably, faithfully, impartially and conscientiously perform my duties and exercise my powers as a member of the Panel of the Fact-Finding and Conciliation Commission on Freedom of Association appointed by the Governing Body of the International Labour Office, in accordance with the procedure in force for the examination of complaints of alleged infringements of freedom of association, to examine the trade union situation in Greece following the complaint presented by the Greek General Confederation of Labour against the Government of Greece on 4 September 1964.

78. The same declaration was made on 1 July 1966 by Mr. Ducoux on the occasion of the Second Session of the Commission.

79. In the course of its First Session, the Commission took cognisance of the case and determined the procedure which it would follow in the initial stages of its examination of the case.

Submission of Written Statements

80. The Commission decided to offer to the Government of Greece and to the complainant, that is the administration of the Greek General Confederation of Labour as it existed on the date on which the complaint was filed, the opportunity to submit any further written statement which they might wish the Commission to consider, not later than 10 September 1965.

81. The Commission further decided to admit as a participant at each successive stage of its proceedings, on an equal footing with the Government of Greece and the complainant, the current administration of G.G.C.L. As a consequence, the current administration of the G.G.C.L. was invited to submit to the Commission, not later than 10 September 1965, any written statement which it might wish the Commission to consider.

82. The Commission reserved the right to invite and accept statements from representatives of Greek trade union organisations in the event that such statements were necessary to its examination of the case. To this end the Commission requested that the Government, in particular, should take the necessary steps to see that the decision of the Commission in this regard was made known to any organisation which might wish to submit such statements, not later than 5 October 1965.

83. The Commission decided to give an opportunity to Mr. G. Dimitrakopoulos, General Secretary of the Federation of Railwaymen, who had previously sent to the International Labour Organisation a statement involving some of the questions raised in the case, to submit a further written statement, in his capacity as General Secretary of a former provisional administration of G.G.C.L., not later than 5 October 1965.

84. The Commission decided to give to the Federation of Greek Industrialists an opportunity to submit, not later than 5 October 1965, any written statement that it would wish to make relative to the issues of the case.

85. The Commission also decided to give an opportunity to the international organisations of workers and employers having consultative status with the International Labour Organisation, that is the International Confederation of Free Trade Unions, the International Federation of Christian Trade Unions, the International Organisation of Employers and the World Federation of Trade Unions, to submit, not later than 5 October 1965, any written statement which they might wish to make relative to the issues of the case.

86. The Commission informed the complainant, the current administration of G.G.C.L. and the other organisations which were afforded the opportunity to submit information to it that the function of the Commission was to ascertain facts which were relevant to its inquiry, that it followed from this that political matters were outside its scope and that the opportunity to furnish statements was given for the purpose of supplying factual information bearing on the matters referred to it. The Commission indicated that it would give those invited to present statements all reasonable latitude to furnish such information, but that it would not be prepared to receive written or oral statements relating to matters not relevant to the issues referred to it.

87. The Commission further decided that any additional information submitted in accordance with the above-mentioned decisions should be communicated to the

Government of Greece, the complainant and the current administration of G.G.C.L. and that they should be afforded the opportunity to present their comments thereon not later than 25 October 1965.

88. The Commission decided to communicate to the Government of Greece the draft analysis of pertinent Greek legislation in force which had been prepared for the use of the Commission and requested the Government to communicate, not later than 5 October 1965, any comments it might wish to make concerning the accuracy or completeness of this analysis.

Arrangements for the Hearing of Witnesses

89. The Commission decided to hold its Second Session in Geneva in January 1966 and, beginning 10 January, to hear the testimony of a certain number of persons. In accordance with this decision the Commission requested the Government of Greece, the complainant and the current administration of G.G.C.L. to designate representatives to act on their behalf before the Commission at that session, to be responsible for the general presentation of the case and for their respective witnesses.

90. The Commission informed the Government of Greece, the complainant and the current administration of G.G.C.L. that it would be glad to consider applications from them to hear, in the course of the Second Session, any person who might have important evidence to furnish relevant to the matters at issue. The Commission indicated that the names and descriptions of such witnesses, together in each case with a brief indication as to the matters on which it was desired that they be heard, should be furnished to it not later than 5 October 1965.

91. The Commission informed the Government of Greece that it would appreciate being able to hear from the Minister of Labour an exposition of the general policy of the Government in trade union matters, particularly the legislation concerning trade union organisations and the practice and legislation concerning the financing of such organisations.

92. The Commission further expressed the wish that the Government would take measures to assure the presence of certain other persons whose evidence the Commission wished to hear. These witnesses were—

(1) one or more representatives of the Ministry of Labour having full knowledge of the development of the events which had occurred since the filing of the complaint in September 1964, or concerning the application of Legislative Decree No. 4361 of 1964 to the trade union organisations, and particularly to the executive leadership of G.G.C.L.; the amendment of the by-laws of G.G.C.L. and other trade union organisations, the meeting of the Congress of G.G.C.L., its composition, the way in which each organisation which belongs to it is represented in it and the election of its leaders; such representatives should also be fully acquainted with the trade union movement in Greece, its structure and the consequences on it of the introduction of Legislative Decree No. 4361 of 1964;

(2) a representative of the Ministry of Justice having full knowledge of the effect and application to workers' organisations of the general provisions of the Civil Code concerning associations and legislation on professional associations; as well as the role of the courts in designating the provisional administrations of workers' organisations, and the principles and procedure applicable in such cases;

(3) an executive official of the " Workers' Club " *(Ergatiki Estia)* having full knowledge of the mechanics of the financing of organisations of workers through the Workers' Club, the rules and procedures followed therein and the role of the Government in the decisions taken, as well as the funds paid by the Workers' Club to some of the trade union organisations (G.G.C.L., workers' centres, federations, etc.) during the past three years.

93. In addition, the Commission decided that it would be useful to hear some other specific persons, who were notified directly and requested to testify before it at the Second Session: Mr. F. Makris, General Secretary of G.G.C.L. at the time of the filing of the complaint, as well as any other member of the administration of G.G.C.L. at that time; Mr. N. Papageorgiou, General Secretary of the provisional administration of G.G.C.L. at the time of the Commission's First Session, and, if necessary, the General Secretary of G.G.C.L. serving at the time of the Second Session; and Mr. G. Dimitrakopoulos, General Secretary of the Federation of Railwaymen and former General Secretary of a provisional administration of G.G.C.L.

94. The Commission adopted rules of procedure for the hearing of witnesses at its Second Session [1] and communicated them to the Government of Greece, to the complainant and to the current administration of G.G.C.L. The Commission also notified the Federation of Greek Industrialists that it would grant it appropriate facilities at the hearings should a request to this effect be made.

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[1] These rules are the following:

" 1. The Commission will hear all witnesses in private sittings and the information and evidence presented to the Commission therein is to be treated as fully confidential by all persons whom the Commission permits to be present.

" 2. The Government of Greece, the executive of the Greek General Confederation of Labour which submitted the original complaint in this case and the present executive of the Greek General Confederation of Labour will be requested to designate representatives to act on their behalf before the Commission. The representatives will be expected to be present throughout the hearing of witnesses and will be responsible for the general presentation of their witnesses and evidence.

" 3. Witnesses may not be present except when giving evidence.

" 4. The Commission reserves the right to consult the representatives in the course of or upon the completion of the hearings in respect of any matter on which it considers their special co-operation to be necessary.

" 5. The function of the Commission is to ascertain facts which are relevant to its inquiry into the issues which have been referred to it by the Governing Body of the International Labour Office. Political matters are outside its scope, and the opportunity to furnish evidence is given for the purpose of supplying factual information bearing on the case before the Commission. The Commission will give witnesses all reasonable latitude to furnish such information, but it will not permit statements relating to matters not relevant to the issues referred to it.

" 6. The Commission will require each witness to make a solemn declaration identical to that provided for in the Rules of Court of the International Court of Justice. This declaration reads: ' I solemnly declare upon my honour and conscience that I will speak the truth, the whole truth and nothing but the truth.'

" 7. Each witness will be given an opportunity to make a statement before questions are put to him. If a witness reads a statement, the Commission would appreciate six copies being supplied in English or French.

" 8. The Commission or any member of the Commission may put questions to witnesses at any stage.

" 9. The representatives present in accordance with the rules laid down in paragraph 2 above will be permitted to put questions to the witness, in an order to be determined by the Commission.

" 10. All questioning of witnesses will be subject to control by the Commission. The Chairman will not allow political questions outside the terms of reference of the Commission to be put or answered.

" 11. Any failure on the part of a witness to reply satisfactorily to a question put will be noted by the Commission.

" 12. The Commission reserves the right to recall witnesses, if necessary."

95. The Commission requested the Government of Greece to make appropriate arrangements to ensure that no obstacles were placed in the way of the attendance before the Commission of the representative or witnesses of the complainant, the representative or witnesses of G.G.C.L., or any any other person the Commission might wish to hear, and that all such persons would enjoy full protection against any kind of discrimination on account thereof, and also to satisfy itself that such attendance would not be prevented by financial difficulties and that leave of absence would be granted, where necessary, to enable witnesses to appear before the Commission. The Commission requested the Government to inform it of the arrangements made to these ends.

96. The Commission stressed that it was highly important for the further consideration of the case for it to be able to hear the evidence of the persons it had requested to attend. In this connection the Commission mentioned that in the preparation of its report it would take full account of the extent to which the persons concerned had co-operated in the elucidation of the facts by responding to its request for evidence.

97. The Commission, while noting that the Government of Greece had, on its own initiative, declared itself ready to receive a visit by the Commission in Greece, deferred until its Second Session any further decisions concerning the subsequent stages of its proceedings, including a decision concerning such a visit. It informed the Government of Greece, the complainant and G.G.C.L. accordingly.

98. The Commission authorised its Chairman between sessions to deal on its behalf with any procedural matters that might arise, consulting the other members whenever he might consider this necessary.

99. The Commission's first report was signed on 26 July 1965 and presented to the Governing Body at its 163rd Session (November 1965). The report read as follows:

1. Following the complaint alleging infringements of trade union rights submitted by the Greek General Confederation of Labour against the Government of Greece on 4 September 1964 and the spontaneous acceptance by the Government that the case be referred to the Fact-Finding and Conciliation Commission on Freedom of Association, the Governing Body of the International Labour Office decided at its 162nd Session (May 1965) that the panel of the Commission should be composed as follows:

Chairman :

Mr. Erik DREYER (Denmark), former Permanent Secretary, Danish Ministry of Social Affairs; former President, State Mediation Board; former President of the International Labour Conference.

Members :

Mr. César CHARLONE (Uruguay), former Vice-President of the Republic; former Minister of Labour and Social Welfare; former Minister of Foreign Affairs; former Minister of Finance; Government delegate of Uruguay at a number of sessions of the International Labour Conference; former member of the I.L.O. Committee of Experts on the Application of Conventions and Recommendations; member of the Uruguayan delegation to the United Nations Conference on International Organisation (San Francisco, 1945); member of the Uruguayan delegation to the Economic and Social Council of the United Nations.

Mr. Henri FRIOL (France), Counsellor to the Court of Appeal; former Chief of Cabinet to the President of the National Assembly; former Chief of Cabinet to Mr. René Coty, President of the Republic (1954-58).

2. The Commission held its First Session at the International Labour Office, Geneva, from 22 to 26 July 1965. During the course of this session the Commission made a solemn declaration before the Director-General of the International Labour Office.

3. At this session the Commission took cognisance of the case and determined the procedure which it will follow in the initial stages of its examination of the case. It has afforded to the Government of Greece and the organisations concerned the opportunity to submit further statements, and it has made arrangements for the hearing of evidence at its next session, which it has decided to hold in Geneva in January 1966.

4. The Commission will consider at its next session, in the light of the information and evidence then available to it, the further measures which appear to be called for to enable it to discharge the duties entrusted to it, and will report thereon to the Governing Body in due course.

Geneva, 26 July 1965.

(Signed) Erik DREYER,
Chairman.

César CHARLONE.
Henri FRIOL.

CHAPTER 5

IMPLEMENTATION OF THE PROCEDURE ADOPTED BY THE COMMISSION AT ITS FIRST SESSION

SECTION 1

Further Information Submitted by the Complainant Organisation and the Government of Greece

100. In its letters addressed to the parties and to the provisional administration of G.G.C.L. on 26 July 1965 the Commission gave them the opportunity of submitting before 10 September 1965 any additional information which they would wish the Commission to receive.

101. In response, the complainant sent the Commission a letter in which it presented various observations, some of which repeated allegations presented earlier. The complainant challenged the Government to mention in support of some of its allegations a single legal decision denying the validity of trade union elections carried out in the past. The letter added that the Government had admitted before the Committee on Freedom of Association that it had interfered in the drafting of the constitution of various trade unions and acted in such a way that the G.G.C.L. Congress could not be held at the date fixed, in September 1964, thus putting the elected administration of G.G.C.L. out of office. After recalling that in its opinion the Government had infringed the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), for political reasons, the complainant observed that, on three of the four occasions since the removal of the elected executive from G.G.C.L. when provisional administrations had been appointed, members favourable to the government in power had been in the majority, and that on two occasions Mr. N. Papageorgiou, leader of the pro-government trade union movement, had been appointed General Secretary of G.G.C.L. Going on next to the recommendations that the Governing Body of the I.L.O. had made to the Greek Government after receiving the 80th Report of the Committee on Freedom of Association, the complainant accused the Government of not having acted on them any more than on the measures that it had itself undertaken to implement, particularly those relating to the financing of trade union organisations. Lastly, the complainant expressed the belief that Legislative Decree No. 4361 had wiped out the Greek trade union movement, left G.G.C.L. for a whole year without an elected administration, created chaos through the appointment of four provisional administrations, turned the Greek trade union movement into an instrument of the political parties and left the claims of the workers unanswered.

102. The Government, after recalling the circumstances surrounding the departure of Mr. F. Makris from the post of General Secretary of G.G.C.L. in November 1964, set forth the reasons that had, in its view, prevented the provisional administration of G.G.C.L. appointed by the judge on 14 December 1964 from making the

necessary preparations for the 15th Congress of G.G.C.L. The Minister of Labour, though he regretted that the existence of several tendencies in Greek trade unionism and the legislation on court procedure had caused frequent changes in the composition of the executive bodies of G.G.C.L., terminated his communication by stressing that it had never been the intention of the Government to influence the course of events within the trade union movement.

103. The administration in office of G.G.C.L. informed the Commission, through its General Secretary, Mr. J. Galatis, that the decisions of the Athens Court of First Instance following the various appeals relating to the appointment of provisional administrations of G.G.C.L. seemed to it to be the most valid basis for forming an opinion on the case

104. The Commission had given the parties and the provisional administration of G.G.C.L. the opportunity to submit before 25 October 1965 observations on the further information submitted by the other participants in the procedure.

105. The complainant submitted to the Commission various observations regarding the further information submitted to the Commission by the Greek Government. The complainant claimed that the elected administration of G.G.C.L. had been put out of office through a subterfuge whereby the Congress of G.G.C.L., planned to be held in September 1964, was unable to meet owing to the coming into effect three days earlier of Legislative Decree No. 4361. The complainant therefore considered that the Government was fully responsible for the fact that G.G.C.L. was unable to convene its 15th Congress. The complainant added that in its further information the Government had omitted to mention that the appointment of various provisional administrations for G.G.C.L. had been prepared behind the scenes by the machinery of the party in power and in each case in accordance with the tendencies prevailing within the Government. It was the view of the complainant that the Government had, moreover, tried to make the trade union leaders responsible for the confusion which prevailed within the trade union movement following the adoption of Legislative Decree No. 4361.

106. In March 1966, following the postponement at the request of the Greek Government of the Second Session of the Commission, which had been arranged for January 1966 [1], the latter gave the parties and the administration in office of G.G.C.L. the opportunity of making further observations on events that had occurred since September 1965, when the parties and the administration of G.G.C.L. had submitted initial additional information to it.

107. In response, the complainant mentioned Act No. 4504 of 13 March 1966, under which occupational associations of industrialists, merchants and employers in general were exempted from the scope of Legislative Decree No. 4361 of 2 September 1964. The complainant regarded this as one more proof that the protest that it had made against the adoption of this legislative decree, which, it added, was directed only against workers' organisations, was well founded.

108. The Government recalled the enacting clauses of the decision of the Athens Court of First Instance replacing, in November 1965, 18 members of the provisional administration of G.G.C.L. It stated that the administration of G.G.C.L. had arranged for the Congress to open on 27 February 1966. The Congress had later

[1] See paras. 138-140.

been postponed to 15 May of the same year. The reasons for the postponement, added the Government, were that the preparations were proceeding very slowly. The Government then mentioned various appeals to the Athens Court of First Instance against the composition of the provisional administration of G.G.C.L. in April 1966 and stated that at the time of writing the results were still unknown. " The Government ", the communication continued, " faithful to its principle of non-interference, can do nothing. It has, however, continuously appealed to all trade unionists to put no difficulties in the way of the preparation of the Congress ". Referring next to the application of Legislative Decree No. 4361, the Government stated that it was generally maintained in the trade union organisations that had already convened their general assemblies that this legislative decree had not created any difficulties; on the contrary, the trade unionists that had taken part in these general assemblies had all observed that section 6 of the legislative decree prevented all attempts at fraud in the elections and guaranteed the development of a truly representative trade union movement. The Government added that the application of the legislative decree did not appear to have prevented collective bargaining. The government communication accordingly ended with the observation that Legislative Decree No. 4361 had in no way been an impediment to the development of trade union activities.

SECTION 2

Communications from Non-Complaining Organisations

International Organisations.

109. At the end of its First Session the Commission sent the international organisations of workers and employers having consultative status with the I.L.O., i.e. the International Confederation of Free Trade Unions, the International Federation of Christian Trade Unions, the International Organisation of Employers and the World Federation of Trade Unions, communications in which it gave these organisations the opportunity of submitting, before 5 October 1965, observations on the case before it.

110. Some of these organisations responded by sending communications to the Commission.

111. I.C.F.T.U. recalled the most important points of the joint mission of I.C.F.T.U. and certain international trade secretariats, sent to Greece in July 1964 to collect information on the trade union situation, present G.G.C.L. with proposals relating to certain structural reforms, and obtain information from the Greek Government on its intentions regarding the organisation of the statutory Congress of G.G.C.L. and the new trade union legislation that it was considering.

112. During the time that the joint mission was in Athens Legislative Decree No. 4361 had been submitted to Parliament, and in view of the many unexpected and rapid developments the joint mission felt it necessary to draw certain conclusions while it was on the spot by making positive suggestions to both G.G.C.L. and the Government. These aimed at finding ways and means to make the trade union movement independent of any outside financing, reforming the structure of the trade union movement, and counteracting the charges of undemocratic procedures within G.G.C.L.

113. The joint mission, *inter alia*, asked the Government to see that the financial support given by the Workers' Club to G.G.C.L., which had been cut off since 1 March 1964, was resumed, and it proposed the creation of a control commission under an independent chairman. The object of the control commission should be to see that the composition of the 15th Congress of G.G.C.L. was fair and equitable and its functioning normal, to submit to the Congress proposals for the structural reorganisation of the Greek labour movement, and to make proposals aimed at substituting for the financing of workers' organisations through the Workers' Club a system of workers' contributions through the medium of collective agreements.

114. Finally, the joint mission favoured a revision of Legislative Decree No. 4361, particularly sections 5, 6 and 10.

115. In its letter, the European Organisation of I.F.C.T.U. made various allegations relating to repeated interference by the Greek Government in matters relating to the statutes of trade union organisations, to police supervision, which had, it stated, developed within G.G.C.L. and other trade union organisations and gone as far as levying a compulsory contribution on members, and to repeated external interference in the internal affairs of the trade union movement, adding that the management of trade union affairs was falling gradually into the hands of the Government. This letter ended with a statement that the lack of independence and freedom had made all genuinely occupational and social activity by the trade unions practically impossible and meaningless in Greece.

116. I.O.E. wrote that it had no information likely to interest the Commission and that it did not therefore feel called on to make any statement on the complaint before the Commission.

117. The Commission had also given Mr. G. Dimitrakopoulos, General Secretary of the second provisional administration of G.G.C.L., the opportunity of submitting before 5 October 1965 observations on the case. Mr. Dimitrakopoulos replied by mentioning the protest that he had addressed to the International Labour Conference at its 49th Session against the credentials of G.G.C.L. representatives. He then recalled the circumstances in which he had decided to appeal to the Athens Court of First Instance against the composition of the third provisional administration of G.G.C.L. Lastly, he recalled the circumstances of his attending the World Congress of I.C.F.T.U. in 1965 as observer.

Greek Organisations.

118. In the communication through which the Commission had informed the Greek Government at the end of its First Session of the procedure that it had adopted for the subsequent stages of the case, it asked the Government to be good enough to acquaint the Greek trade union organisations with the opportunity afforded them of submitting observations on the case to the Commission. In response to this request the Greek Government informed the trade union organisations, through means including the publication of notices in the press, that they were entitled to address communications on the case to the Commission before 5 October 1965.

119. In this connection it must be pointed out that in July 1965, at the close of the Commission's First Session in Geneva, the Pan-Hellenic Federation of Workers in Electricity and Public Utility Undertakings addressed to the I.L.O. a request that its representative should be invited to give evidence before the Commission and that

the Commission, if it visited Greece, should get in touch with this Federation. The Federation also maintained that the adoption of Legislative Decree No. 4361 had eliminated certain anti-democratic and anti-trade union legislative provisions relating to trade union elections, although some of its provisions conflicted with the international labour Conventions. The Pan-Hellenic Federation of Workers in Electricity and Public Utility Undertakings then sent the Commission a second communication, which arrived after the date of 5 October set by the latter, in which it repeated its request to be allowed to appear before the Commission at its Second Session. The Commission informed this Federation that it did not intend to hear at its Second Session evidence from representatives of Greek trade union organisations other than the representatives of the past and present administrations of G.G.C.L.

120. The Commission received three communications, one from the Federation of Greek Leather Workers, one from the Pan-Hellenic Federation of Operators, Engineers and Mechanics of Steam Rollers, Drills and Heavy Construction and Agricultural Machinery, and one from the Federation of Workers in Greek Mining Undertakings.

121. The Commission also received a communication from an organisation known as the " Greater Athens Christian Trade Union Federation ".

Transmission to the Parties and the Provisional Administration of the Greek General Confederation of Labour of Communications Received.

122. All communications received by the Commission from non-complaining organisations were transmitted to the parties and the provisional administration of G.G.C.L. for their observations.

123. With regard to the communication of I.F.C.T.U. the complainant informed the Commission that in its view only one Confederation exists in Greece and is recognised in that country, namely G.G.C.L., which is affiliated to I.C.F.T.U., and that, consequently, only the latter organisation has precise information and can express a valid opinion regarding the trade union situation in Greece.

124. The Government stated that generally the allegations contained in the communication of I.F.C.T.U. did not refer to concrete cases of infringement of trade union freedom or of government interference in trade union affairs. The information received by I.F.C.T.U. on which its allegations were based did not, therefore, in the view of the Government, appear to originate from impartial and objective sources, particularly with respect to the allegations against the Government concerning so-called government interference in the internal activities of trade unions. The Government then proceeded to refute various specific allegations submitted by I.F.C.T.U.

125. The current administration of G.G.C.L., like the complainant, stated that in its view only I.C.F.T.U. was qualified to express an opinion on the trade union situation in Greece.

126. With regard to the second communication of the Pan-Hellenic Federation of Workers in Electricity and Public Utility Undertakings [1] the complainant informed the Commission that in its view this organisation, which is not affiliated to G.G.C.L., had no right to intervene in the proceedings relating to the complaint which it had

[1] See para. 119.

filed with the I.L.O. It added that this organisation was primarily a political organisation and secondarily a trade union. It lacked, therefore, in the complainant's view, the necessary objectivity and had no moral right to be heard on an equal footing with the other Greek organisations of workers on a matter such as that which was dealt with in the complaint and which had been and continued to be used by the Pan-Hellenic Federation of Workers in Electricity and Public Utility Undertakings for political ends. The complainant stated in conclusion that this organisation could not be regarded as having any status since it was not a genuine trade union organisation, and expressed the view that it was not possible for the Commission to accede to the request of this organisation that it participate in the proceedings of the Commission.

127. The Greek Government expressed the view that the communication in question did not call for any observation on its part.

128. The provisional administration of G.G.C.L. felt for its part that the request of the Pan-Hellenic Federation of Workers in Electricity and Public Utility Undertakings was not acceptable by reason of the political character of the organisation, which had never been affiliated to G.G.C.L. and was not, as it wrongly stated, an important organisation.

SECTION 3

Communications regarding the Witnesses Whom the Commission Had Wished to Hear at Its Second Session

129. At its First Session the Commission had decided to hear the evidence of the parties and the administration in office of G.G.C.L. as well as that of Mr. Dimitrakopoulos, former General Secretary of G.G.C.L. When Mr. Papageorgiou was removed from the office of General Secretary of G.G.C.L. in August 1965 by a decision of the Athens Court of First Instance, the Commission decided to give him, as former General Secretary, the same opportunity as Mr. Dimitrakopoulos.

130. With regard to the evidence that it wished to receive from the Government, the Commission addressed to the latter a first request [1] that the following persons should appear before it: one or more representatives of the Ministry of Labour, a representative of the Ministry of Justice, and an executive official of the Workers' Club, and subsequently a second request that a representative of the Athens Court of First Instance, which had given a decision relating to the composition of the provisional administration of G.G.C.L., explain to it the procedure followed in the designation of provisional administrations of workers' organisations.

131. In response to the request of the Commission the Greek Government submitted the following list of witnesses: Mr. S. Kladas, Special Adviser to the Ministry of Labour; Mr. E. Flokos, Director in the Ministry of Labour; Mr. J. Lekas, Director of the Workers' Club; and Mr. P. Theodoropoulos, a President of the Athens Court of First Instance, who was also called on to give evidence as representative of the Ministry of Justice.

132. The Government also proposed that the Commission should hear the following witnesses on various aspects of the case: Mr. N. Kostis, former member of the G.G.C.L. administration and Director in G.G.C.L.; Mr. A. Kyriakopoulos,

[1] See para. 92.

former member of the G.G.C.L. administration and Assistant Governor of the Central Organisation of Social Insurance (I.K.A.); Mr. S. Tatas, former member of the G.G.C.L. administration and President of the Mytilene Island Workers' Centre; and Mr. A. Voyiatzis, barrister-at-law, former Legal Adviser to G.G.C.L.

133. The complainant invited the Commission to hear the following witnesses: Mr. C. Fotiadis, former Legal Adviser to G.G.C.L.; Mr. C. Myrianthis, barrister-at-law, former General Secretary in the Ministry of Labour, and Mr. G. Trimis, former Director in the Ministry of Labour. The administration of G.G.C.L. submitted the names of Mr. A. Voyiatzis, Mr. A. Kyriakopoulos and Mr. M. Korakas, journalist.

134. The Commission observed that two witnesses had been proposed by both the Government and G.G.C.L., and since the list of witnesses proposed by the Government had reached it earlier than that of G.G.C.L. it decided that the persons in question should appear before it as witnesses of the Government alone. The Commission agreed to hear all the other witnesses who had been proposed and, following the postponement in November 1965 of its Second Session [1], to offer the parties and G.G.C.L. the opportunity of submitting to it before 1 May 1966 proposed amendments to the list of witnesses that it had approved, provided that such amendments were justified by events occurring after the approval by the Commission of the original list of witnesses in October 1965.

135. In January 1966 G.G.C.L. announced its wish to replace the witnesses that it had proposed by others, and by a letter of 20 April 1966 it submitted a new list of six persons for approval by the Commission. In view of the request of the complainant [2], arriving shortly after, that the Commission should consider the case closed, the latter has taken no decision concerning the new list of G.G.C.L.

136. In a cable dated 28 April 1966 the Greek Government requested the Commission to include in the list of witnesses at the Commission's Second Session Mr. G. Mantellos, General Secretary of the Federation of Bank Employees, Mr. D. Papadopoulos, General Secretary of the Federation of Industrial and Agricultural Mechanics, and Mr. G. Seretis, General Secretary of the Union of Railwaymen of Northern Greece, and to delete the name of Mr. A. Kyriakopoulos as the latter was prevented by his functions as Assistant Governor of the Central Organisation of Social Insurance from travelling to Geneva. The Commission acceded to the request of the Government.

SECTION 4

Information Requested by the Commission on Specific Matters

137. Following a request made by the Commission, the Greek Government sent it the full text of six sentences of the Athens Court of First Instance relating to the appointment of provisional administrations for G.G.C.L.[3] as well as the legislation relating to the Workers' Club, a list of grants made by the latter to various Greek trade union organisations during the period from 1962 to 1965 and other information on the Workers' Club.

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[1] See paras. 138-140.

[2] See para. 354.

[3] These sentences are the following: Sentences Nos. 22397/1964 of 14 December 1964; 2953/1965 of 22 February 1965; 7184/1965 of 21 April 1965; 11169/1965 of 17 June 1965; 14882/1965 of 19 August 1965; and 20108/1965 of 9 November 1965.

SECTION 5

Postponement of the Second Session of the Commission

138. At its First Session the Commission had decided to hold its Second Session in Geneva in January 1966.

139. In November 1965 the Greek Government requested the Commission to postpone its Second Session by a few months in view of the fact that the Greek Government had not been able to complete its preparation of the case and of the documentation relating to it. Following this request, the Chairman of the Commission sought the views of the complainant on the matter. The latter agreed to the postponement. Having regard to the importance of the Greek Government's request, the Chairman of the Commission also felt it necessary to consult the other members of the Commission, in accordance with the procedure adopted at the First Session.[1] The Commission then decided to postpone its Second Session to a later date. The month of July 1966 was subsequently selected for this purpose.

140. The Commission informed the G.G.C.L. administration and Mr. Dimitrakopoulos and Mr. Papageorgiou, former General Secretaries of G.G.C.L., of the postponement of its session.

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[1] See para. 98.

PART III

GENERAL BACKGROUND OF THE CASE REFERRED TO THE COMMISSION

CHAPTER 6

PRINCIPAL ASPECTS OF THE ECONOMIC SITUATION IN MODERN GREECE

141. The evolution of trade unionism, industrial relations and labour legislation in Greece have been profoundly influenced by the history and economy of the country.

142. The most striking geographic characteristics of Greece are its many islands, its ragged coastline and the tortuous mountain ranges which cover a large part of its surface; its short valleys and narrow coastal plains (except in the north) provide the only good agricultural land; its stormy seas have bred a race of hardy sailors who have had to turn to the waters for much of the subsistence which the often ungenerous and uncultivable earth is reluctant to yield. This means that Greece, except for its ores, is not a country rich in natural resources. If we add to all this the political and social upheavals in Greece throughout the nineteenth century, we can very easily understand the extent of its problems.

143. Two factors have left their stamp on the Greek economy ever since early antiquity: a coastline approximately five times as long as that of France, and a relatively poorly developed agriculture owing to the fact that valleys and plains cover only one-fifth of the territory and most of the rivers are fast-flowing torrents. These natural conditions have led Greece to turn to the sea as a path of communication for an important merchant marine, and to countries overseas, both near and far, as an outlet for a constantly emigrating population.

144. A few figures will make it possible to situate the problems in their general context.

145. The population of Greece in 1962 amounted to 8,500,000 inhabitants—an increase of 0.58 per cent. in comparison with the 1961 census—the density being that of 64 inhabitants per square kilometre. In 1961 the urban population constituted 43.3 per cent. of the total population; the semi-urban population (centres comprising 2,000 to 10,000 inhabitants) 12.9 per cent., and the rural population 43.8 per cent. The above-indicated proportions have only slightly altered since the 1928 census, the urban population showing a 12 per cent. increase and the semi-urban population a 3 per cent. decrease.

146. The active population represented approximately 43 per cent. in 1961 and was distributed in the following manner: agriculture, forestry, hunting and fishing: 1,960,446; mining industries: 21,510; manufacturing industries: 488,577; construction: 167,364; electricity, gas, water and sanitary services: 19,804; commerce, banks, insurance, real estate: 266,070; transport, storage and communication: 153,867; services: 439,471; activities not adequately described: 27,266; persons seeking work for the first time: 94,226; total: 3,638,601.

147. When Greek independence was proclaimed in the nineteenth century, the economy of the country was still relatively undeveloped. Agriculture continued to be the essential basis of economic activity until the war (1939). Agricultural yield and productivity have been improved through the distribution of lands at different periods and through land reclamation schemes undertaken by the Government (for soil improvement, flood protection, irrigation, drainage and the construction and improvement of roads in the rural areas, etc.). Although agricultural production has made progress, it is, nevertheless, today still far from satisfying the needs of the country in food and basic products. Moreover, this production is closely dependent upon the disposal abroad of a large part of its production, such as wines, olives and their by-products, tobacco or raisins. Almost all these export products fall into the category of luxury or semi-luxury products, which are very closely affected by economic fluctuations in the importing countries.

148. The results obtained in agriculture, though often very favourable, should not mask the persistence of certain structural weaknesses; the over-all growth rate continues to depend closely on good or bad harvests. Furthermore, underemployment is still heavy in the countryside and agricultural incomes remain low. Nevertheless, the share of agriculture in the formation of the gross national product, which in 1963 amounted to approximately 29 per cent., was the factor which influenced to the greatest extent the growth of Greek economy.

149. Industrialisation began around the years 1880-90, the period which witnessed the launching of the first systematic programmes of public works, an influx of foreign capital and the establishment of a protective tariff (which then chiefly concerned the consumer goods industries such as textiles, for which a large part of the raw materials were imported). While remaining at the level of small productive units (approximately 90 per cent. of the establishments employed up to five persons and little power) industry developed at a faster rate between the two wars. The situation in the metal trades, however, constituted a major obstacle to expansion. After the cessation of hostilities industry surpassed its pre-war level around 1950, in spite of the fact that although it had suffered less than agriculture, its production had nevertheless decreased more than a half. During the last ten years, the index of industrial production evolved as follows:

1956= 83
1958=*100*
1963=139 (an increase of 7.4 per cent. compared to 1962).

150. Greece possesses deposits of iron and other ores but has no coal. This is undoubtedly one of the reasons why the country today has no heavy industry. Progress in industrial production was chiefly due to three industries: food, textiles and tobacco, which account for 47 per cent. of the index. The tobacco industry, which includes preparation of the raw material, is directly affected by the size of the crops. Advance has also been made in metalwork, and there has been fairly intense

activity in the construction industry. Finally, the curve of the production of electricity has also climbed more rapidly. Industry is today still oriented principally towards immediate or local consumption.

151. In absolute figures the size of the industrial labour force is relatively small. In 1961 about 488,000 persons were working in the manufacturing industries; 132,000 of these persons were self-employed. Small undertakings thus continue to play a major role in the economy. In undertakings employing ten or more persons the number of workers amounted to some 188,800, of whom 108,400 were in Athens. The population of continental Greece is virtually unaffected by industrial activity. High employment rates in industry are generally noted on the east coast of the country.

152. Information on industrial wages is fragmentary. Average hourly earnings, which in November 1961 were 7.63 drachmas, increased to 9.45 drachmas in August 1964. The consumer price index (1959=100) was 103 in 1961, 107 in 1964 and 110 in April 1965.

153. Greece has always been a nation of seafarers engaged in particular in commerce. Its remarkable aptitude for entering the trade circuit seems to have resulted in neglect of the industrial production sector over a long period. From there stems the fact that today the country's commercial sector is comparatively more developed than the production sectors. The participation of Greece in world sea trade during the last century was considerable and rapidly increased after the Second World War. Although 15 years ago a considerable part of the Greek merchant marine sailed under foreign flags, mass repatriation has since taken place and Greece today occupies the sixth place in the world with over 7 million tons.

154. During the last few years the economic policy of Greece has rested mainly on the search for a rapid progression in incomes and employment. The latter remains the fundamental problem. According to the census returns of 1961 there were 230,000 unemployed persons in the towns and 600,000 underemployed in the countryside. The latter figure has since decreased considerably, falling to 473,000 in 1963. Between 1958 and the beginning of 1964 the number of emigrants was 339,000, i.e. more than the whole of the population growth for the period. In 1963 departures from the country exceeded this growth by some 18 per cent.

155. Without a serious speeding up of the growth of industrial production, however, the problem of employment shows danger of becoming more serious in the years to come. Agriculture can increase its volume of production but cannot offer additional employment possibilities. There remains the services sector, which, although still to a relatively small extent, has nevertheless contributed some 40 per cent. to the formation of the gross national product over the last few years and already employs almost one-quarter of the active population. As regards emigration, this has serious disadvantages; it draws away mainly the young and dynamic elements of the population and a considerable number of skilled workers who receive better wages abroad. The long-term disadvantages seem to exceed the short-term advantages (the reduction of unemployment and underemployment, and the bringing into the country of incomes obtained abroad).[1]

156. State revenue is largely insufficient, and Greece continues to borrow heavily from abroad to finance investments. This policy involves heavy obligations in the

[1] See *Economic Surveys by the Organisation for Economic Co-operation and Development: Greece* (Paris, 1964).

matter of interest and considerable dependence on other countries. In 1964 it was estimated that the State would need a loan of 4,700 million drachmas to cover its financial requirements; of this sum 1,700 million drachmas were to be provided by foreign sources.[1]

157. In concluding its economic survey of August 1964 on Greece, the Organisation for Economic Co-operation and Development made the following remarks:

In an endeavour to solve the structural problems that remain—considerable underemployment, the low incomes of a large section of the population, the worsening of the trade balance and the slowness of industrialisation—the Greek Government has already taken a number of steps and is currently considering further measures in the economic and social fields. The main objects of its action are to speed up economic development and to distribute the national income more equitably, and the official policy in this respect has already taken concrete form in an increase of public investment in 1964 and in action to lighten the financial burden on farmers. The Government also intends to make a shift of emphasis in its planning of economic development, and to attach priority to infrastructure, education and research.... Great vigilance will be needed, however, to ensure that the problems—which are always difficult—of balancing objectives and reconciling means are satisfactorily solved. To redistribute, for example, national income more equitably, to the benefit of less favoured sections of the community, is socially and even economically desirable since it enlarges the domestic market for Greek industry. But, in the last analysis, only the growth of investment and production can bring about a substantial and steady improvement in the standard of living. Similarly, the way in which this redistribution is effected is by no means indifferent and raises delicate problems. To cite a particular example, it seems that the Government's action to help the farmers should mainly take the form of stepping up efforts to increase yields and productivity.

Fundamentally, however, the problems of the Greek economy can clearly only be solved by faster industrialisation, which would make it possible to absorb the surplus of unemployed or underemployed labour, raise average productivity and average incomes, and reduce the size of the trade deficit through the creation of new industries. There are already signs that this is happening, but the process is a slow one. The reasons are many and well known: the insufficiency of national saving, the movement of some of this saving into non-productive investment, a shortage of industrial entrepreneurs, and so on. Faced with these facts, the Government is by no means powerless, and the last O.E.C.D. survey of Greece (1963) described and analysed the steps which have been taken in recent years to encourage and speed up industrialisation. So far the effects of these measures, without being negligible, seem insufficient. In addition, the economic programming undertaken in recent years does not, so far, seem to have had a decisive influence on the course of the economy. It may be hoped that the current reorganisation of the planning services will be such as to make government action —especially with regard to investment—more consistent with the achievement of medium-term development objectives, and to associate the private sector closely with both the formulation and fulfilment of these objectives.

In any event, and despite the results which may be expected from better economic programming, it will be some years before industrial development will lead to an equilibrium of current transactions with foreign countries. Even if the inflow of private capital evolves favourably, a considerable amount of external aid—both technical and economic—will still be needed in view of Greece's requirements as a developing country. Close international co-operation should therefore be continued so that the Greek economy may pursue in the years ahead the progress that has already begun.[2]

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[1] See *Economic Surveys by the Organisation for Economic Co-operation and Development: Greece* (Paris, 1964).

[2] See *Year Book of Labour Statistics, 1964* (Geneva, I.L.O., 1964); *Atlas économique et social de Grèce* (Athens, 1964); EVELPIDIS, C.: " Some economic and social problems in Greece ", in *International Labour Review* (Geneva, I.L.O.), Vol. LXVIII, No. 2, Aug. 1953; KAYSER, B.: *Géographie humaine de la Grèce* (Paris, 1964); MEYNAUD, J.: *Les forces politiques en Grèce* (Lausanne, 1965); *Economic Surveys by the Organisation for Economic Co-operation and Development: Greece*, op. cit.: SMOTHERS: *Report on the Greeks* (New York, McNeill & McNeill, 1948); SOPHOCLES, S. M.: *A History of Greece* (Salonica, 1961); *Statistical Year Book of Greece, 1963.*

CHAPTER 7

AN OUTLINE OF THE HISTORY OF THE TRADE UNION MOVEMENT IN GREECE [1]

SECTION 1

Development of the Trade Unions up to 1914

158. The origins of trade unionism in Greece date from the period 1880-90. From 1880 to 1895 the policy of the two governments of Charilaos Trikoupis, together with the introduction of industrialisation, led to a profound change in the social structure.

159. Economic expansion had the natural result of increasing the migration of the inhabitants of rural areas towards the urban centres and, consequently, of leading to an increase in the number of employees. In 1907 there were 140,000 workers and employees in industry compared with a total figure of 735,000 workers employed in the various branches of agriculture.

160. Economic development gave rise to important social problems whose urgency became steadily greater; a political change was soon to be needed.

161. Although the trade unions were limited in size and badly organised, they considered themselves at that time sufficiently powerful to play a part in the political orientation of the country. They gave their support to the Liberal middle class in the hope that it would pursue the political and social reforms on which the future of the working class movement and the improvement of living conditions of the working masses as a whole depended.

162. For their part, the middle and lower middle classes welcomed the position adopted by the workers and the trade unions: in fact, apart from the reinforcement which this brought, it removed for the time being the danger of a class war from which the middle class stood to lose rather than to gain.

163. The new Liberal party, led by Eleftherios Venizelos, sought to change the course of modern Greek history by making material progress and social and cultural development advance side by side. This continued during a long period of democratic administration, which began on 18 October 1910, the date on which Venizelos was invited to form his first government.

164. Between 1910 and 1912 in particular, the Liberal majority in the Greek Parliament was responsible for the adoption of a series of important measures in the labour field, and laid the basis of a social policy comparable with that of the most

[1] The events and facts referred to in this chapter are drawn from various sources available to the Commission, in particular from the study made by the I.L.O. in 1949 following the mission to Greece organised by the Office, and entitled *Labour Problems in Greece*, Studies and Reports, New Series, No. 12 (Geneva, 1949).

advanced countries in western Europe. There was set up, under the Ministry of National Economy established in 1911, a Labour and Social Insurance Service to which numerous tasks aiming at accelerating the pace of social progress were entrusted.

165. The Government also made a point of supervising, to a certain extent, labour-management relations and the trade unions.

166. The Liberal party soon realised that this supervision was not sufficient to safeguard social and political peace, and sought to make the trade unions, if not an instrument in the hands of the Government, at least a docile spokesman. With this object, the desire of the workers to see more powerful and more efficient trade unions set up was directed towards the formation of a central organisation which would possibly serve as a negotiating agent at national level, but which could at the same time be the subject of indirect supervision by the Government. The person entrusted with running such an organisation would therefore have to enjoy both the respect of the workers and the confidence of the Liberal party.

167. Venizelos thought that he had found these conditions combined in the person of Spyros Theodoropoulos, a lawyer with progressive views, who was chairman of the Typesetters' Trade Union of Athens and an active member of the Liberal party. He was entrusted with the task of setting up and running the first association of trade unions. As a result of his initiative the existing trade unions in Athens adopted basic principles contained in the constitution of his own trade union and formed a central organisation where each of them was represented. On 21 March 1910 the delegates of the trade unions which were grouped in this way officially inaugurated the trade union centre in Athens, which was to become the Workers' Centre in that city.

168. The setting up of the Workers' Centre in Athens marks an important date in the development of the Greek trade union movement, as it created a precedent which was soon followed by the trade unions in other towns in the country. It is noteworthy that the method followed in setting up such centres was copied from that used by French trade unions.

169. A series of local branches was thus formed, whose delegates represented all the workers in the area. In view of the political system in force, under which all solutions to labour problems depended, in the last resort, on the Government, it was essential—and it was to this that the trade unions attached importance—that the local centres should have as many members as possible so as to be in a position to put the necessary pressure on the local representative of the Government, who in his turn could influence the Government to act in the interests of the workers.

170. Nevertheless, the Greek trade union movement for many years lacked co-ordination at the national level and had only a limited number of members. The shortage of members prevented the trade unions from exerting sufficient pressure to ensure that the social legislation adopted in 1910-12—which was advanced for the times—was fully applied. However, with the establishment of the Venizelos régime, the workers' sense of class consciousness emerged and their feeling of solidarity was strengthened. In 1911 an organisation entitled Defence circulated the text of its constitution, in the form of a political manifesto, among the trade unions in Athens. Defence appears to have been the first Greek organisation to proclaim the need for the class struggle and to set objectives for the working-class movement which went

further than the immediate concerns of the workers. In this constitution there is to be found the first expression of solidarity with workers in other countries. Several trade unions soon adopted this ideology and a new ideological orientation for the Greek trade union movement started on this basis. A more militant spirit was developed amongst organised workers. From 1911 to 1916 numerous strikes, of revolutionary inspiration, took place and received the support and the effective help of trade unions other than those which were responsible for the strike.

171. These movements, intended in the first place to support claims against the employers, brought about a reaction by the authorities which often took very violent forms. However, far from breaking the trade union movement, this repressive action encouraged the workers to press their claims even more strongly, as a matter of principle based on the idea of freedom of association.

SECTION 2

Development of the Trade Union Movement from 1914 to 1936

172. The authorities realised that a paternalistic attitude by the Government would not be enough, as such, to turn the working class into an ally, and they decided to grant the trade unions, by legislative means, the rights which would be necessary for their democratic development. For this reason Act No. 281 of 21 June-4 July 1914, concerning associations, was promulgated; it recognised occupational organisations, granted them a formal legal status, and included a special chapter on them (Chapter III, sections 19 to 23).

173. Apart from the opportunity which it provided of consolidating the trade union movement, the Act of 1914 contributed greatly to raising the morale of the trade unionists, who from that date enlarged the field of their activities and developed a more comprehensive organisation. The existing trade unions grew larger and many new trade unions were formed.

174. In 1917 the Labour and Social Insurance Service of the Ministry of National Economy was raised to the status of a Department.

175. The policy of the Liberal régime, as expressed by these measures, was described as *philergatiki* (pro-workers), and to a certain extent retained the good will of the workers towards the Liberal party. On the other hand, it certainly delayed the establishment of an independent trade union movement.

176. The First World War did not slow down trade union expansion; in fact the rapid economic development of the country in the industrial, commercial and banking fields, and in that of the merchant navy, contributed towards its acceleration. In 1917 there were 206 trade unions with 44,200 members; in 1918 there were 319 unions with 70,570 members and in 1919 389 unions with 86,290 members.

177. The end of the First World War showed the need for the Greek trade union movement to set up a national centre to guide labour policy and to fix its objectives. This was not only a requirement dictated by the new economic and social situation; it also meant unification, which the workers themselves longed to achieve. Both

internal development and the Russian Revolution combined to bring about this state of affairs.

178. It was one of the workers' centres (employment exchanges), that of Salonica, supported by the trade union leaders in Athens and Piraeus, which took the initiative in convening a Pan-Hellenic trade union conference with a view to deciding upon the establishment of a national centre. At a congress held in October 1918 in Athens 165 delegates representing 60,000 out of a total of 75,000 organised workers founded the Greek General Confederation of Labour, made up of trade unions, workers' centres and federations.

179. The First Congress of G.G.C.L. had decided that, apart from the trade unions and the workers' centres, the workers should form occupational or industrial federations consisting of the trade unions of workers of the same trade or the same industry (until then, only tobacco workers had been federated). Ten federations were set up at once.

180. The constitution of such federations and their direct affiliation to G.G.C.L. might be said to have marked the beginning of the development of powerful industrial organisations. However, for reasons which at the time were geographical, historical, social, economic and political, the local outlook of Greek trade unionism remained one of its profound characteristics, the workers' centres being the link between this local spirit and the central organisation. Furthermore, the setting up of the federations on the initiative of G.G.C.L. gave a certain artificial character to these new organisations. They were not the result of a spontaneous movement by the workers deciding to form groups on an occupational basis at the national level (transport workers were the exception to the rule; the feeling of national solidarity appeared stronger in their case than in that of sedentary workers). Finally the lack of collective bargaining at the national level made the existence of federations rather pointless, and they were therefore not, in the following years, influential organisations.

181. From its foundation, G.G.C.L. became the scene of conflict between various factions reflecting existing political tendencies. A first split took place between the Socialists, who wanted G.G.C.L. to pursue political activities, and the Reformists (Yannios's group, associated with the Liberal party), who considered that activities in furtherance of economic objectives and those directed at political objectives should be separated. When the matter was voted, the Socialist group was in the majority, and the first constitution of G.G.C.L. gave a distinctive political role to the Confederation. Next, the left and the right wings of the Socialist group split. Despite this dissension, G.G.C.L.'s first administration contained representatives of all three elements. This precarious balance did not last, however. Fresh divisions arose and the Second Congress of G.G.C.L. was convened in September 1920 in two different places; in Athens for the Socialists and in Piraeus for the Liberals. One hundred and thirty-seven trade unions representing 32,000 workers took part in the Congress in Athens. Affiliation to the Third International was voted and the establishment of a policy of co-operation with the Socialist party. At the Congress in Piraeus the Liberal party attempted to rally the participants to its own policy. Its efforts appeared, nevertheless, to fail and the influence of the Liberal party on the working class declined rapidly.

182. In 1920 there were in Greece about 150,000 workers (with the exception of the agricultural sector); industrial workers numbered about 40,000, seafarers 12,000 and employees in large commercial and banking institutions and civil servants made

up the remainder. Two hundred and eighty trade unions existed, of which 137 were affiliated to G.G.C.L.

183. In the legislative field the year 1920 was marked by an important event, namely the adoption of Act No. 2151 of 21 March-3 April concerning trade unions.

184. The period which had begun in 1920 with the Second Congress of G.G.C.L. and which finished with the general strike in August 1923, the bloody struggles in Piraeus and the dissolution of the trade unions by the military revolutionary movement of General Plastiras, was a period of social strife and agitation caused, in particular, by military mobilisation, the campaign in Asia Minor and the economic difficulties which were the consequence of this.

185. The defeat in Asia Minor, the signing of the Treaty of Lausanne of 1923 and the arrival in Greece of 1,200,000 Greek immigrants profoundly changed the composition of the population. These refugees constituted an enormous labour supply, the effect of which was to break up not only the Greek trade union movement but also the unity of the working class as a whole. Dissensions in the trade union movement became still more numerous from that time onwards, and the trade union movement made hardly any progress during the following 12 years.

186. The Third Congress of G.G.C.L. took place in 1926 and the Reformers were in the majority. It was decided at this Congress that G.G.C.L. should support the Amsterdam Trade Union International. The Fourth Congress was convened in 1928. That year the Communists set up a new trade union confederation and launched a programme based on political strikes and mass demonstrations. The Fifth Congress met in 1930. At that time one group withdrew from G.G.C.L. and declared itself in favour of independent trade unionism. In 1934 the Sixth Congress was held. That year, a third confederation consisting of trade unions declaring themselves independent was set up on the initiative of railway workers and workers' centres in Athens, Patras and Salonica. In 1934 three central bodies thus dominated the trade union movement, namely G.G.C.L., the Communist Trade Union Confederation and the Confederation of Independent Trade Unions. Only G.G.C.L. was recognised by the State.

187. In 1935 the Department of Labour was made a Ministry and in 1936 the three trade union confederations united to form a single organisation which took the name of the Greek General Confederation of Labour.

SECTION 3

The Position of the Trade Union Movement under the Dictatorship (1936-41)

188. From 4 August 1936, when General Metaxas seized power, freedom of association suffered an eclipse. Certain measures taken during that period were to leave their mark on the history of the trade union movement for a long time to come. Firstly, there was a strengthening of a concept of centralisation and control of the movement and secondly there was the introduction of compulsory contributions by all workers to G.G.C.L.—a logical consequence, in the financial field, of trade union centralisation. The Seventh Congress of G.G.C.L. was held during this period.

SECTION 4

Foreign Occupation (1941-44)

189. The period of foreign occupation completed the process of paralysing all trade union activities. The existing structures served as a framework for a resistance movement against the occupying power. Economic disorganisation, inflation and poverty were responsible for extensive unemployment, while the apparatus of the State and certain commercial and banking establishments continued to operate on a limited scale. Many office employees held their jobs and kept up their connections with the trade union organisations. As a result, in the post-war period this group of organised workers played a dominant role in Greek trade union life.

190. From 1942 onwards the Government in exile took measures for the re-establishment of freedom of association. Section 1 of Act No. 3127, which it adopted in October 1942, repealed most of the provisions adopted under the dictatorship. By section 2 of the same Act, the Act of 1914 concerning associations and that of 1920 concerning trade unions were again brought into force. However, Act No. 3127 did not come into force until March 1945, when it was published in the Government Gazette.

SECTION 5

The Position at the Time of the Liberation

191. When the country was liberated in October 1944 the situation was not at all favourable to the reconstruction of the trade union movement. Politically the workers were profoundly divided among themselves. The problem of reconstituting the movement was thus not so much a legal problem—since the legislation enacted prior to the dictatorship period provided an appropriate foundation for this purpose—as a practical problem, which might be defined as the problem of restarting a free, unified trade union movement, truly representative of the working classes, competent to defend the occupational interests of its members and to play its part in the reconstruction of the war-devastated country.

192. The main obstacle to a rapid reconstruction of the trade union movement in Greece was the extreme division existing in the movement itself, as expressed in rival tendencies which had been exacerbated by the insurrection. At the time of the liberation there were a large number of trends, both right-wing and left-wing. The actual scale of these could not be determined in the absence of elections, but all had their origin as much in personal ambition as in ideological differences. A desperate struggle to control the trade union movement was the natural consequence. The result was that the mere question of appointing a provisional executive to undertake as soon as possible genuine elections among the organised workers, for the purpose of setting up the ordinary executive and administrative bodies, assumed a political importance of the first order. All the parties concerned were quite convinced that an executive, even a caretaker one for the purpose of holding elections, would always be able to influence those elections in such a way that its own group would inevitably come out victorious. The problem, therefore, was to find a place in the provisional executive committee for representatives of all tendencies, to induce them to co-operate honestly in organising elections, and finally to make them accept the results of such elections with a good grace.

193. An event which occurred immediately after the liberation complicated the situation still further. The representatives of the left wing of the trade union movement had obtained possession of the G.G.C.L. headquarters in Athens, and of the provincial headquarters of workers' centres of trade union federations and of local unions. This action led to protests from the remaining tendencies, which were thus expelled from the leadership of the trade union movement. The Minister of Labour then in office represented the extreme left, and appointed, by a decision of 28 November 1944, a provisional executive committee, of which all the members belonged to E.A.M.—the name of the left-wing resistance movement set up under the occupation —and instructed this committee to proceed at once to hold elections. The legality of this decision was contested on the grounds that the Act of 31 October 1942 passed by the Government in exile, on which the Minister of Labour had based his decision, had not yet been published in the Government Gazette and that such publication was considered indispensable for its validity.

194. However that may be, the date fixed for the elections (early December 1944) saw the outbreak of the insurrection. After the failure of this, the provisional executive of G.G.C.L., which was accused not only of being illegal but also of having taken part in the revolt, was divested of its functions by the Government and replaced, on 15 January 1945, by a new provisional executive composed exclusively of members of the Reformist trade union tendency. It was clear that, in the political atmosphere of the time, it would be impossible to reconstruct a united trade union movement without the intervention of some conciliatory body which was in a position to take a disinterested view of the conflict.

195. It was at this time that representatives of the United Kingdom Trades Union Congress (T.U.C.) and of the World Federation of Trade Unions (W.F.T.U.) and the labour attachés of Great Britain and of the United States gave assistance to successive Greek governments and to the judicial authorities in seeking to solve the problem.

Section 6

Intervention by the United Kingdom Trades Union Congress and the World Federation of Trade Unions

196. A delegation of T.U.C., and later of W.F.T.U., undertook this work of conciliation, and a whole series of agreements were in fact concluded under their auspices.

197. The first of these agreements—known as the Citrine Agreement—was concluded on 29 January 1945 between the provisional executive (Reformist) of G.G.C.L. and the representatives of the former executive.

198. A second agreement—known as the Tewson Agreement—concluded on 25 February 1945 between the same parties, while confirming the preceding agreement, supplemented it by several further clauses concerning elections and the reorganisation of the provisional executive.

199. Under the third agreement, dated 29 April 1945, and known as the Feather Agreement, the parties agreed to the composition of the new provisional executive of the Confederation, which had been established in the meantime, comprising

21 members, of whom 11 belonged to the Reformist group, four to the Socialist group, four to the Communist group and two to the Trade Union (Revolutionary) group.

200. The parties also agreed to ask the Minister of Labour to introduce by legislative means a system of proportional representation in the trade union organisations and to amend the rules of the trade unions to this effect.

201. The fourth agreement—also known as the Feather Agreement—concluded on 26 June 1945, provided that the provisional executive, as reconstructed, should take all necessary measures to enable the trade union congress to meet on 10 September 1945 at the latest. The Congress was not in fact held at this time.

202. On 2 December 1945 all the various tendencies in the Greek trade union movement met in conference under the chairmanship of Mr. Louis Saillant, General Secretary of the World Federation of Trade Unions, assisted by Mr. V. Feather, representing the British Trades Union Congress, and Mr. A. Verret, Head of the Office of the Secretary-General of W.F.T.U., and concluded an agreement by which they undertook, *inter alia*, to accept and respect the results of the elections undertaken in order to reconstruct the unity of G.G.C.L., and to enable each of the organisations constituting G.G.C.L. to exist on the basis of a democratic régime ensuring free representation, free discussion, freely agreed discipline, and the responsibility of the leaders of the trade union movement to their meetings and congresses.

203. As a result of this series of preliminary agreements, freely entered into between the various trade union tendencies, all possible guarantees seemed to exist for ensuring the reconstruction of the Greek trade union movement on a really democratic basis.

204. It then became necessary to ensure that these agreements would be implemented by legislation.

SECTION 7

Action by Public Authorities

205. Along with these attempts at reconciling the various parties through the intermediary of T.U.C. and W.F.T.U. there was an attempt to reconstruct the trade union movement by legislative means.

206. The first measure taken was the Varkiza Agreement (from the name of the place where it was signed), which was concluded between the Government and the leaders of the rebellion with a view to putting an end to the civil war in the country.

207. This Agreement was ratified by a Constitutional Act of 20 March 1945, section 5 of which deals with the question of freedom of association and of assembly. Thus the agreements concluded between the various trade union tendencies in Greece were reinforced by an agreement between the Government and the leaders of the rebellion.

208. The second legislative measure which had to be taken was the bringing into force, by publication in the Government Gazette, of Act No. 3127 of 31 October 1942 concerning the re-establishment of trade union freedoms.

209. By virtue of the entry into force of Act No. 3127 the Government acquired the necessary powers to settle all practical matters which might be raised as a result of the re-establishment of trade union freedoms. Under the extensive powers granted to it by section 4 of the Act the Government took a whole series of measures for the purpose of giving effect to the agreements concluded between the various trade union tendencies, and hence reconstituting a free trade union movement.

210. Legislative Decree No. 393 of 9 June 1945 issued in application of the Act concerning the re-establishment of trade union freedoms authorised the Ministry of Labour to reconstruct, by ministerial decision alone, the provisional executive of G.G.C.L. and to define its competence with a view to establishing orderly administration within the Confederation, the trade unions and the federations of trade unions. The same ministerial decision was to fix the time limit—six months at most—within which the provisional executive must complete its work or, if this proved impossible, was to consider what measures should be taken. Under the terms of the Act the Minister was not entitled to exercise this power more than once.

211. The ministerial decision issued in virtue of this legislative decree, dated 3 July 1945, re-established a provisional executive. If by 20 September 1945 it had been found impossible to elect a permanent executive of G.G.C.L., the provisional executive was to cease to exist from 21 September, unless, by decision taken by five-sevenths of the members and communicated to the Minister of Labour, it considered it imperative to prolong its existence with a view to finishing its work within a maximum time limit of 40 days.

212. Thus the law fully confirmed the agreements entered into between the parties directly concerned.

213. However, the time limit fixed by the ministerial decision (20 September 1945) expired before orderly administration had been re-established in the trade unions.

214. A further Ministerial Decision, dated 23 October 1945, set up a new provisional executive of G.G.C.L. to organise regular elections as soon as possible.

215. The Ministerial Decision of 23 October 1945 (which was to be the subject of an appeal to the Council of State) was followed by the Legislative Decree of 8 December 1945, containing an " authentic interpretation " of the Legislative Decree of 9 June 1945. This decree gave legal sanction to the method of appointing the members of the new provisional executive of G.G.C.L., again by means of elections.

216. Finally, a Legislative Decree of 16 January 1946 laid down that the ministerial decisions published after the expiry of the time limits fixed in the legislative decrees issued in 1945 were legally valid.

SECTION 8

Eighth Pan-Hellenic Trade Union Congress

217. New elections were to take place in all the workers' centres where the previous elections had been denounced as invalid or so found by the supervisory commission under the chairmanship of Mr. Feather.

218. The bona fides of these new elections was again challenged by a large section of the trade union movement, but apparently without the legislative provisions concerning the invalidity of elections being invoked, and without any appeal to the courts to pronounce on the validity of the elections.

219. The Eighth Pan-Hellenic Trade Union Congress met in Athens from 1 to 7 March 1946. According to the organisers of the Congress, the delegates taking part in it represented 258,000 trade union members.

220. A permanent executive committee of G.G.C.L. was elected on the system of proportional representation, and several seats were reserved for the Reformist tendency.

221. At the end of the Congress a declaration, signed by the Officers of the Congress and by the representatives of the French, United Kingdom and U.S.S.R. trade union movements who had attended, was adopted as follows:

The undersigned, being the officers of the Eighth Congress of the Greek General Confederation of Labour and the delegation of the W.F.T.U. which came to Greece with the special mission of considering the legality of the composition and conduct of the Congress, declare as follows:

The composition and conduct of the Eighth Congress of the Greek General Confederation of Labour, held at Athens from 1 to 7 March 1946, have been entirely in accordance with the laws in force and with the rules of the Greek General Confederation of Labour, and according to the directives given by the World Federation of Trade Unions. Consequently, the decisions of this Congress are such as to express the will of the working class in Greece, and the Executive of the Greek General Confederation of Labour elected by this Congress is considered to be the only legal Executive.

SECTION 9

Intervention by the Council of State

222. At that time section 101 of the Civil Code provided, *inter alia*, that any decision of a general meeting contrary to the law or to the rules of the association was null and void. Nevertheless, ts annulment could be pronounced only by a court of law as a result of an action brought either by a dissenting member or by any other person legitimately concerned.

223. Section 101 of the Civil Code fixed a six months' time limit within which a decision taken by a general meeting could be contested. A verdict of invalidity was valid against all opposition.

224. The effect of these provisions was that only the regular courts, and not the executive power, could invalidate either elections or the decisions of a general meeting.

225. Various trade unionists considered that they had a legitimate interest in asking for the elections to the executive held at the time of the Eighth Congress to be declared invalid. However, they did not have recourse to normal judicial procedure but preferred to approach the Council of State in order to try and obtain annulment of the ministerial decisions in virtue of which the elections had been held. In their view, the invalidation of these decisions would automatically involve the nullity of all the elections and hence the removal of the executive recently elected by the Pan-Hellenic Trade Union Congress.

226. The decision of the Council of State was published on 29 May 1946 (No. 885/1946) and was arrived at as the result of long discussions, in the course of which the whole *de facto* and *de jure* situation of the trade union movement was examined in great detail. The decision is not only of great importance in itself, since it led to the dismissal of the executive elected by the Congress, but, as will be seen later, it also had a very considerable bearing on the future of the trade union movement in Greece.

227. The appeal against the decisions of the Minister of Labour dated 23 October and 8 December 1945, summarised above [1], was based mainly on the following grounds: (1) violation of article 11 of the Constitution; (2) exceeding of legislative authorisation; (3) improper use of such authorisation; and (4) abuse of authority.

228. After rejecting the incidental pleas raised by the defence, the Council of State gave judgment on the merits of the case. It first gave an authentic interpretation of article 11 of the Constitution.

229. According to the decision of the Council of State " this article gives complete freedom to the legislature to settle all problems concerning the organisation and activities of associations, on condition, however, that the provisions of the laws on this subject do not violate the two explicit guarantees contained in the Constitution, namely—(1) that the establishment and dissolution of associations shall never be made dependent on previous authorisation by the executive power; and (2) that the legislature is bound by the tacit but clearly implied restriction in article 11 of the Constitution not to limit freedom of association in such a way as to diminish or neutralise it ".

230. The Council of State conceded, however, that, in exceptional circumstances, the executive power might intervene to settle questions concerning the administration and activities of associations if their influence, and particularly that of trade union organisations, on the economic and social situation was such that the State could not remain indifferent to exceptional events likely substantially to prejudice the normal functioning of the organisations in question.

231. " Nevertheless ", continued the decision, " such intervention on the part of the State may not exceed the requirements of the state of emergency and may not exceed what is necessary to maintain the union in existence. In particular, government intervention may not go so far as to influence the appointment of executives of the unions since these must, in accordance with their rules, be the expression of the free will of their members."

232. Particular interest attaches to the passage in the decision of the Council of State which defined the extreme limits of any government intervention:

> The only intervention which might be considered as justified by exceptional circumstances would be the appointment of a provisional executive of the Greek General Confederation of Labour to deal with urgent financial and administrative questions, with a view to safeguarding trade union interests, until such time as a permanent executive could be elected in accordance with the relevant laws and rules.

233. The last part of the decision enumerated the arguments formulated by the Council of State against the ministerial decisions under dispute and concluded that these decisions were invalid.

[1] See paras. 214-215.

SECTION 10

Second Attempt to Reconstruct the Trade Union Movement

Removal of the Executive of the Greek General Confederation of Labour from Office

234. The decision of the Council of State confined itself to invalidating the ministerial decisions under which the elections had been organised, but abstained from pronouncing on the validity of these elections and, in addition, from pronouncing on the validity of decisions taken by the Pan-Hellenic Trade Union Congress.

235. In these circumstances, it is not surprising that diametrically opposed views were taken on the real meaning of the decision of the Council of State.

236. The executive of G.G.C.L. elected at the Congress of March 1946 maintained the view that, under the existing legislation on trade unions, only the regular judges had the power either to invalidate elections or to annul any decisions which might be deemed to be contrary to the laws and rules in force.

237. Now, no appeal for the invalidation of the elections or for the annulment of the decisions of the Congress had been brought before the ordinary courts within the prescribed time limits, and therefore the elected executive considered itself the sole legal representative of the Confederation.

238. The opposite view was taken by the Legal Council of the Government, which had been consulted by the then Minister of Labour.

239. As a result of this consultation the Minister of Labour took a series of decisions which, in their turn, were to form the subject of a further appeal to the Council of State.

240. By a decision of 25 July 1946 the Minister of Labour invited the General Secretary of G.G.C.L. and the other members of the executive elected by the Pan-Hellenic Trade Union Congress to resign, within 48 hours, in accordance with the decision of the Council of State. When the elected executive refused to resign within the time limit prescribed in the order, the Minister, by a decision of 29 July 1946, ordered various officials of the Ministry of Labour to take possession of the offices and files of G.G.C.L. By a decision of 30 July 1946 the Minister, acting under sections 32 and 33 of the 1914 Act concerning associations, under the decision of the Council of State and under section 50 of the 1928 Act concerning the Council of State, appointed a new provisional executive committee and entrusted this executive with the duty of proceeding as soon as possible to hold elections in accordance with the rules and laws in force.

241. At this juncture W.F.T.U. delegated its Vice-Chairman, Mr. Léon Jouhaux, to Athens on 26 July 1946, to investigate the trade union situation and, if possible, to bring the parties to an agreement. With this end in view, Mr. Jouhaux had a number of interviews with the President of the Council, who was also Minister of Foreign Affairs, and with the Ministers of Labour and Justice, the administrative and judicial authorities and the representatives of various trade union tendencies. However, this attempt to find a last-minute settlement was doomed to failure in the face of the accomplished facts.

SECTION 11

Second Intervention by the Council of State

242. The General Secretary of the elected executive of G.G.C.L. which had been divested of its functions by the decisions referred to above appealed to the Council of State against the three ministerial decisions both in his individual capacity and on behalf of G.G.C.L.

243. The Council of State refused to recognise the appeal lodged by the former General Secretary on behalf of G.G.C.L. on the ground that, since his expulsion on 25 July, he had lost the capacity legally to represent the Confederation; but it accepted the appeal lodged in his personal capacity.

244. The Council of State rejected the appeals against the Decisions of the Minister of Labour dated 25 and 29 July 1946 ordering the expulsion of the elected executive and the seizure of the premises and files of G.G.C.L., but admitted the appeal against the Ministerial Decision of 30 July setting up a new provisional executive.

245. The Council of State came to the conclusion that the Minister of Labour, in his capacity as the supreme supervisory authority of the trade unions, and in accordance with the decision of the Council of State, had, by his decisions of 25 and 29 July 1946, lawfully ordered the expulsion of the elected executive of G.G.C.L.

246. On the other hand, the Council of State held that the Minister of Labour had no power to appoint a new provisional executive to replace the committee which had been divested of its functions.

247. The Council also rejected the argument of the Ministry based upon section 33 of the Act concerning associations of 1914. Under this section the Minister of Labour is empowered to relieve an executive of an association of its functions and to appoint a provisional executive if it has been proved that an infringement has been committed involving sanctions under the Act in question, or if any serious administrative or financial irregularity has been proved, of such a nature as to involve sanctions under the Penal Code.

248. As the result of this second intervention by the Council of State, the Greek trade union movement was once more deprived of any kind of an executive, even of a provisional character. But the decisions of the Council of State had as a consequence the entrusting to the President of the Athens Court of First Instance, and no longer to the executive power, the delicate task of appointing a new provisional executive of G.G.C.L. in accordance with section 69 of the recently enacted Civil Code.

249. In reality the political problem involved in the appointment of an executive for G.G.C.L. had not been solved. In point of fact the President of the Athens Court of First Instance shortly afterwards appointed a new provisional executive —the seventh since the liberation. However, " on the general unsuitability of the persons selected there was unanimous agreement on the part of the tendencies taking part in the negotiations. The balance between the tendencies was indefensible and many of the persons actually appointed were almost devoid of experience or representative character." [1]

[1] See TRADES UNION CONGRESS: *79th Annual Report* (Southport, 1947), p. 201.

250. An appeal was immediately lodged and within 24 hours a stay of execution was granted until the end of June 1947, clearly in the hope that the direct negotiations which had already been entered upon might result in an agreement that the judge would be able purely and simply to approve.

SECTION 12

Resumption of Negotiations

251. The second phase of the negotiations was to occupy the second half of 1946 and a great part of the year 1947. Although the labour attachés of the United Kingdom and the United States and the representatives of the United Kingdom Trades Union Congress, the World Federation of Trade Unions and the American Federation of Labor took an active part in these negotiations, their combined efforts did not succeed in bringing about the expected agreement.

252. After various vicissitudes, a list of 21 candidates for the provisional executive was submitted to the Court of First Instance, which ratified the list by a decision of 9 June 1947.

253. In October-November 1947 the International Labour Office sent a mission to Greece; the object was to make a thorough examination of all labour legislation with a view to its revision. The conclusions and recommendations of the mission were set out in an I.L.O. publication, *Labour Problems in Greece*, which appeared in 1949.

254. The Ninth Congress, at which many incidents occurred, was held in Piraeus from 28 March to 10 April 1948; it elected an executive, the head of which was Mr. Fotis Makris, who became Secretary-General of G.G.C.L. Mr. Makris, whose appointment was confirmed by five subsequent congresses, remained in office up to and including 22 November 1964.

255. Between the years 1948 and 1964 many difficulties of varying importance arose on a great variety of questions of which the majority were not concerned with the subject of the present complaint. Many of these difficulties were the subject of former complaints before the complaint organs of the International Labour Organisation.[1]

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[1] Case No. 18, Sixth Report, paras. 323-352; Case No. 55, Sixth Report, paras. 875-928; Case No. 66, 12th Report, paras. 131-166; Case No. 105, 14th Report, paras. 117-145, and 16th Report, paras. 34-47; Case No. 112, 16th Report, paras. 57-86; Case No. 115, 15th Report, paras. 65-69; Case No. 121, 19th Report, paras. 135-186, and 24th Report, paras. 41-79; Case No. 132, 19th Report, paras. 91-107; Case No. 166, 27th Report, paras. 65-84; Case No. 174, 30th Report, paras. 209-237, and 41st Report, paras. 19-35; Case No. 176, 30th Report, paras. 10-13, and 36th Report, paras. 17-20; Case No. 185, 36th Report, paras. 133-169; Case No. 196, 36th Report, paras. 26-30; Case No. 198, 36th Report, paras. 66-71; Case No. 207, 41st Report, paras. 9 and 13-15; Case No. 215, 45th Report, paras. 15-22, and 47th Report, paras. 28-31; Case No. 222, 50th Report, paras. 7, 12-15 and 24-30; Case No. 224, 47th Report, paras. 138-153, 49th Report, paras. 266-281, 56th Report, paras. 165-182, 58th Report, paras. 493-531, 62nd Report, paras. 87-106, and 67th Report, paras. 12-15; Case No. 228, 47th Report, paras. 8 and 17-19, and 56th Report, paras. 29-34; Case No. 234, 58th Report, paras. 555-589, and 60th Report, paras. 78-101; Case No. 238, 50th Report, paras. 20-23; Case No. 240, 50th Report, paras. 31-51, and 53rd Report, paras. 7-27; Case No. 245, 53rd Report, paras. 39-49; Case No. 247, 57th Report, paras. 6-10; Case No. 249, 52nd Report, paras. 12 and 27-29; Case No. 256, 61st Report, paras. 20-41; Case No. 263, 56th Report, paras. 12-15; Case No. 295, 66th Report, paras. 496-509, and 68th Report, paras. 19-26; Case No. 299, 67th Report, paras. 90-98; Case No. 309, 69th Report, paras. 110-124, and 72nd Report, paras. 145-157; Case No. 333, 73rd Report, paras. 128-134; Case No. 341, 75th Report, paras. 42-107; Case No. 353, 75th Report, paras. 108-122; Case No. 382, 77th Report, paras. 37-48.

CHAPTER 8

ANALYSIS OF THE LEGISLATION RESPECTING TRADE UNION MATTERS

256. Greece has ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). As stated in Chapter 4, a preliminary analysis of Greek legislation concerning trade union matters had been communicated to the Government for its observations following the First Session of the Commission. The analysis in this chapter takes into account the comments made by the Government.

SECTION 1

Freedom of Association

257. Apart from the National Constitution of 1952, the main Greek legislative enactments referring to freedom of association are Act No. 281 of 1914 concerning associations, Act No. 2151 of 1920 concerning trade unions, and the Civil Code, of which the provisions relating to associations in general are equally applicable to trade unions.

258. These three enactments form the basis of the Greek legislative framework in the area in question. It should be pointed out, firstly, that they supplement or amend one another's provisions and, secondly, that they have themselves been amended or added to by other subsequent enactments, in particular Legislative Decree No. 4361 of 1964, which gave rise to the complaint now before the Fact-Finding and Conciliation Commission.

The Right to Organise.

259. The right to organise is guaranteed by article 11 of the National Constitution of 1952, which lays down that " Greek citizens shall have the right to form associations, so long as they observe the laws of the State, which shall in no case make this right subject to prior authorisation ".[1]

260. Section 19 of the 1914 Act concerning associations defines trade unions as follows: " Trade unions shall serve exclusively the purpose of studying, protecting and furthering the economic or occupational interests of their members, and shall be composed of persons of either sex who as a rule belong to the same industrial, commercial, agricultural or other occupation or who follow a kindred trade." The section goes on to stipulate that " a worker who is a member of a workers' trade union shall legally cease to be a member of the said trade union as soon as he ... enters upon a different occupation ".

[1] With respect to civil servants, article 11 of the Constitution states the ollowing: " The right to organise of civil servants of the State, and employees of legal persons and public bodies, may be subjected by legislation to certain limitations."

261. Finally, section 78 of the Civil Code lays down that " not less than 20 persons shall be required for the formation of an association ".

Union By-Laws.

262. According to section 80 of the Civil Code, which replaces section 2 of Act No. 281 of 1914, and which applies to associations in general as well as to trade unions, " the by-laws shall not be valid unless they state—(1) the purpose, name and address of the association; (2) the conditions of admission, resignation and expulsion of members, as well as their rights and obligations; (3) the funds of the association; (4) the manner in which the association can be represented in courts of law and elsewhere; (5) the bodies responsible for the management of the association, as well as the conditions governing the setting up, functioning and removal from office of such bodies; (6) the conditions under which general meetings of members may be convened and may deliberate and take decisions; (7) the conditions governing the amendment of the by-laws; (8) the conditions under which the association may be wound up ".

Management and Administration of Trade Unions.

263. Section 7 of Legislative Decree No. 4361 of 1964 provides that—" (1) The administration of trade unions and associations of trade unions and the disposal and management of their funds shall be governed by their by-laws. (2) Decisions on expenditure shall be taken and payments shall be made in accordance with the by-laws and by the bodies appointed for the purpose. (3) Supervision of the financial administration of trade unions and associations of trade unions shall be carried out by the supervisory committees prescribed in their by-laws. (4) Details relating to the granting of fees and leave in connection with the affairs of the trade unions and associations of trade unions shall be established in their respective by-laws and the totals shall be fixed in the budget approved by the general assembly of the members."

Trade Union Elections.

264. As regards the management of trade unions, section 92 of the Civil Code provides that the management should be composed of certain of its members, if the by-laws do not provide otherwise.

265. Under section 6 of Legislative Decree No. 4361 of 1964, elections to the executives of trade unions must be held under the supervision of the scrutinising committees prescribed by the respective by-laws. A legal representative must be present to ensure that the elections are held in conformity with the by-laws and with the legislation. " With regard to trade unions, before every vote for election to the executive, the legal representative, after assuring himself of the authenticity of the copy of the register certified by the officers of the trade union and by the scrutinising committee, shall confirm it by an attestation appearing at the end of the copy and of the register. The copy shall indicate the surname and given names, occupation, address and identity-card number of each member, the contributions that he has paid and, after the vote, the number of voters attested by the signature of the legal representative in the margin opposite the name of each person. After the vote, the legal representative present shall record the results of the vote in the register and on two copies, of which he shall hand one to the scrutinising committee and deposit the other with the competent court the day after the elections."

266. Section 8 of the same legislative decree lays down that the term of office of an executive shall be established by the respective by-laws for a specific period, and that the extension of its term of office for more than one month following the expiry of the period laid down shall not be permitted, even though it may be provided for in the by-laws.

Dissolution.

267. Under article 11 of the National Constitution " an association may be dissolved for infringement of the law only by decision of a court of law ".

268. The Civil Code contains the following provisions on the subject: " Section 103. An association may be dissolved at any time by decision of a meeting of its members." " Section 104. An association may be dissolved in the circumstances specified in its by-laws. An association shall be dissolved immediately if the number of its members falls below ten." " Section 105. An association may be dissolved by decision of a civil court at the request of the governing body of the association, or of one-fifth of its members, or of the supervising authority—(1) if, by reason of a reduction in the number of its members, or for other reasons, it has become impossible to form a governing body, or if, in general terms, it has become impossible for the association to continue in accordance with its by-laws; (2) if the purpose for which the association was founded has been achieved, or has been abandoned as a result of a long period of inactivity; (3) if the association is pursuing an aim different from that stated in its by-laws, or if the aims or methods of operation of the association have become unlawful or immoral or contrary to the public interest. An appeal may lie against the decision of the civil court."

269. In conjunction with these provisions mention should be made of section 69 of the Civil Code, which reads as follows: " If the persons needed to administer a body corporate cannot be found, or if their interests are in conflict with those of the body corporate, the president of the civil court may appoint a provisional administrative body at the request of any person who has a legitimate interest in the matter."

Associations of Trade Unions.

270. As regards associations of trade unions, section 16 (1) of the Act concerning trade unions of 1920 lays down that the formation of a federation of trade unions under the provisions of section 43 of the Act concerning associations of 1914 shall be invalid unless it is resolved upon by the general meeting. Section 43 of the 1914 Act itself begins as follows: " Two or more trade unions or associations may combine or federate for the pursuit of their common interests, each, however, retaining entire economic and administrative independence. Such federations may be recognised in pursuance of the provisions of the present Act; they shall, however, be bound to make known to the competent authority, in a suitable manner, the names of the managing committee of each of the associations concerned." Section 43 originally contained another provision couched in the following terms: " With respect to the elections and decisions of such federations, each association shall dispose of a number of votes proportionate to the number of members who have fulfilled their obligations." This provision was repealed by section 5 of Legislative Decree No. 4361 of 1964 and replaced by the following text: " All trade unions and associations of trade unions shall be represented at the general assemblies (congresses, etc.) of associations of whatever degree (workers' centres, federations, confederations) and shall have a

number of votes proportional to the number of voters among their members who have fulfilled their obligations. This proportion of the number of votes, to be established by the by-laws of each association, shall be the same for all the trade unions belonging to the association and applicable to the total number of voting members . . . . The number of votes of a trade union or association of trade unions shall in no case exceed one-tenth of the total number of votes."

271. The rules governing elections in the case of associations of trade unions are laid down in section 6 of Legislative Decree No. 4361 of 1964, which states, *inter alia*: " In the case of the election of representatives of the trade union to an association, the legal representative who has been present at the election shall hand to the association an attestation indicating the number of members who have fulfilled their obligations, the number of voters among them and the number of representatives elected to the association. With regard to associations (workers' centres or federations) the legal representative who has been present at the election shall verify the information prescribed in the previous paragraph [1], and on the basis of this certify as true the copies of the register of unions that are members of the association, drawn up by its officers and confirmed by the scrutinising committee. These copies shall contain the names of the trade unions making up the association, the surnames and given names of the representatives of each, the number of members of each trade union who have fulfilled their obligations, the number of those among them who have voted, the contributions paid by each of these trade unions to the association and the number of representatives who have voted in the election of the association, indicated by the signature of the legal representative in the margin opposite the name of each person. After the votes have been counted, he shall record the results in the register and in two copies. In the case of the election of representatives of an association to an association of higher degree, the legal representative who has been present at the election or at the congress shall hand to the association of higher degree an attestation, based on the information referred to above, indicating the number of members who have fulfilled their obligations, the representatives who have taken part in the election, the organisations to which they belong, the date of the election, the number of unions that are members and have voted and the representatives elected to the association of higher degree."

Registration and Acquisition of Legal Personality.

272. In regard to registration and the acquisition of legal personality the Civil Code, of which sections 63 to 106, promulgated in 1946, have replaced sections 1 to 11, 25 to 27, 35 and 36 to 38 of the Act concerning associations of 1914, contains the following provisions: " An association of persons for a purpose other than that of making a profit shall acquire legal personality on being entered in the public register (associations) kept for the purpose at the civil court for the area where the association has its headquarters " (section 78). " An application for the entry of the association in the register must be submitted to the civil court by its founders or by its governing body. A copy of its constitution, a list of the members of its governing body and a copy of its by-laws, signed by the members and dated, must be appended to the application " (section 79). " Provided that the requirements of the law have been complied with, the civil court shall accept the application and order—(1) publication in the press of a summary of the by-laws inclusive of the essential points;

[1] See above, under " Trade Union Elections ".

(2) the entry of the association in the register of associations. . . ." (section 81). "An association shall acquire legal personality immediately upon registration" (section 83).

273. Among the formalities which trade unions are required to observe, section 9 of Legislative Decree No. 4361 of 1964 lays down that the governing body of each trade union must submit to the appropriate ministry and to the prefect of the district in which its headquarters is situated—*(a)* a certified copy of the by-laws of the union within one month of its registration, and of any amendments made to them, within one month of the approval of these amendments; *(b)* a list of the members of the governing body whenever it is appointed or a change occurs in its membership; *(c)* at the beginning of each year, a statement of the number of members of the union; *(d)* the balance sheet approved for each financial year. These rules apply equally to associations of trade unions.

Protection against Anti-Union Discrimination in Employment.

274. Under section 23 of the Act concerning associations of 1914 " employers, directors, agents or other employees of any undertaking shall be prohibited—*(a)* from preventing workers, employees, or other wage earners, by dismissal or the threat of dismissal, or by other unlawful means, from founding trade unions, joining such unions or from becoming members of political parties; *(b)* from compelling the said persons by the same means to found trade unions or to become members of any particular association; *(c)* from compelling workers by any means, as a condition for the conclusion of a labour contract or for the prolongation of an existing contract, to give a written undertaking that they will not join, or that they will cease to be members of, such associations ".

Protection of Trade Union Leaders.

275. Trade union leaders are protected by Emergency Law No. 1803 of 1951, amended by Act No. 4504 of 1966, against dismissal during their term of office and for one year thereafter. Under these provisions dismissal may take place only in accordance with the procedure laid down in the Act and for one of the reasons specifically stated in the Act, which do not include trade union activities at the workplace or elsewhere.

276. The provisions of this law have been supplemented by Legislative Decree No. 4361 of 1964, section 12 of which has extended the protection afforded thereunder to further categories of trade union leaders (vice-presidents, treasurers).

Protection against Interference by Workers' and Employers' Organisations with One Another.

277. Section 19 of the Act concerning associations of 1914 stipulates, firstly, that " the participation of employers and employees, or of owners and tenants, in one and the same union shall be prohibited ", and, secondly, that " a worker who is a member of a workers' trade union shall legally cease to be a member of the said trade union as soon as he becomes an employer ".

* * *

278. With reference to all of the provisions previously mentioned, it should be pointed out that by virtue of both Legislative Decree No. 4204 of 1961, concerning

the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Legislative Decree No. 4205 of 1961, concerning the ratification of the Right to Organise and Collective Bargaining Convention, 1949 No. 98), the provisions of these Conventions are considered as internal law.

279. These two legislative decrees further provide that any provision of existing legislation which was more advantageous than those of the Conventions would remain in force (section 2).

280. Finally, it ought to be pointed out that section 3 of each of the legislative decrees mentioned above calls for the codification in a royal decree, in a single text, of the provisions of both the Conventions and all the trade union legislation in force; in addition section 13 of Legislative Decree No. 4361 of 1964 authorises the codification by decree of the trade union legislation in a single text.

SECTION 2

Financing of Trade Union Organisations

281. The financing of occupational organisations in Greece has over the last several decades been made up of certain characteristics which have apparently seriously influenced the development of the Greek trade union movement. Thus it would appear to be useful to devote a special section to retracing its history and the problems which it has raised.

The System in Force during the Period from 1920 to 1938.

282. With the coming into force of the Act concerning trade unions [1], trade union members were called upon to pay voluntary contributions. Only those persons could be eligible to the committee of a trade union who had regularly paid their voluntary contributions. It seems, however, that during this period only a small part of the members paid contributions to their occupational organisations in a regular manner.

Period from 1938 to 1945.

283. In 1938, during the régime of General Metaxas (1936-41), a legislative decree [2] was promulgated with a view to placing the occupational organisations on a new basis. Under section 6 of this decree a compulsory trade union contribution was imposed upon all employed persons, whether trade unionists or not. The system established in 1938 functioned in the following manner: the employer deducted the compulsory contribution monthly from the worker's salary and later paid this sum to the Bank of Greece. The Bank credited this sum to the account of G.G.C.L., which retained a part of it for its own needs. G.G.C.L. then distributed the remainder of this sum to trade unions and workers' centres, taking into consideration their importance and extent of membership.

Period from 1945 to 1954.

284. The Metaxas régime disappeared in 1941 but the system of compulsory contribution survived until 1945. As early as October 1942 the Greek Government

[1] Act No. 2151 concerning trade unions, dated 21 March-3 April 1920.

[2] Legislative Decree No. 1435 concerning trade unions, dated 24 October 1938.

in exile issued an Act (No. 3127) concerning the re-establishment of trade union freedoms, which did not come into operation, however, until March 1945, the date of its publication in the Government Gazette. This Act repealed all the provisions of the above-mentioned Act of 1938, including section 6 on compulsory contribution.

285. Nevertheless, in order to cope with the serious financial crisis with which the trade union movement was faced just after the liberation and during the insurrection, section 6 of the Act of 1938 was re-enacted almost immediately by means of a whole series of Acts promulgated in 1945 and in 1946 (Nos. 393, 581, 620 and 703).

286. By a joint decision of the Ministers of Finance and Labour (No. 29879 dated 18 September 1946), the amount of the new compulsory monthly trade union contribution was fixed, and was distributed as follows:

40 per cent. for the Greek General Confederation of Labour;

30 per cent. for the centre of the worker paying the contribution;

20 per cent. for the trade union catering for the worker's occupation;

10 per cent. for the Trade Union Provident Fund, of which 60 drachmas were allocated to pensions and 40 drachmas to welfare.

These contributions were to be paid in full by all persons who were permanently employed or who earned at least 16 days' pay per month.

287. Workers earning between six and 15 days' pay per month paid a reduced sum. Finally, those earning five days' pay or less were exempt from compulsory contribution.

288. The compulsory trade union contribution was to be deducted by the employers from the wages of their staff and credited to the National Bank of Greece, with the exception of the sums allocated to the workers' centres and trade unions of the workers concerned, which handled such sums directly on their own account.

289. The obligation thus created for all workers, whether members of a trade union or not, to pay a compulsory trade union contribution, was opposed by the workers, and an appeal for the abrogation of the ministerial decision was made to the Council of State.

290. The decision of the Council of State that followed (No. 1466/1947), while admitting that section 1 of the Act of October 1942 concerning the re-establishment of trade union freedoms had completely repealed the Legislative Decree concerning trade unions of 1938 promulgated during the dictatorship and also all other provisions of any Act or royal decree issued subsequently with respect to the composition, working and representation of G.G.C.L., or of occupational unions of wage earners of all kinds, or federations of such unions, nevertheless recognised the validity of the ministerial decision on compulsory contribution and laid down that " compulsory trade union contributions ... cannot be considered as being bound up with the composition, operation or representation of the Greek General Confederation of Labour." This affirmed the legal character of the system of compulsory contribution.

291. It is worth recalling here that a system such as that of compulsory contribution reintroduced in Greece after the war to cope with a difficult financial situation had been used in the pre-war corporative systems which served as a model for Greek law in 1938 and was a logical corollary of the legal trade union monopoly which

the officially recognised trade unions enjoyed. On the other hand, the I.L.O. mission to Greece in 1947 pointed out that a contribution of that type assumes the nature of compulsory taxation if it has to be paid for the benefit of a given trade union group, which will always be tempted to utilise it for its own purposes.[1]

292. In Greece compulsory contribution as a financial necessity in specific circumstances could hardly be justified, in principle, since its trade union movement was not unified. The I.L.O. mission to Greece in 1947 hesitated, however, to recommend outright suppression of this system because of the existing financial difficulties. In order to satisfy the recognised principles, the mission suggested that, since all workers were under the obligation to contribute to G.G.C.L., they should all benefit from the corresponding right to take part in trade union elections. Failing such a solution, the mission proposed that the compulsory trade union contribution should be suppressed.[2]

293. This recommendation was not followed, and the situation in the field of trade union financing remained practically unchanged until 1954.

Period from 1954 to 1964.

294. The legal provisions relating to the collection of compulsory contributions inspired by section 6 of the Legislative Decree of 1938, re-enacted in 1945-46, were once again repealed in 1954.[3] This step seems to have immediately placed the trade unions in a difficult financial situation. It was followed by two successive measures: (1) the Workers' Fund was granted the authority to collect, in addition to other funds, a compulsory contribution from all workers; (2) shortly afterwards, as a result of the unions' opposition to the above measure, a compulsory check-off on salaries was introduced for the benefit of G.G.C.L. on the basis of collective agreements.

295. In 1954 and 1955 the Workers' Fund was authorised [4] to increase its resources by a contribution, corresponding to the minimum daily wage of an unskilled worker, to be deducted by the employer from all wages at the end of each year. In return, all the trade unions would receive from the Workers' Fund a monthly subsidy, to be fixed by the Workers' Fund with the approval of the Minister of Labour. Certain workers' organisation, which considered this to be a means of enabling the authorities to interfere in their affairs, asked for the abolition of the system.

296. It was then decided [5] that national collective agreements of general application might provide that the employer can undertake to deduct from salaries specified membership contributions to employees' organisations. A decision of the Arbitration Tribunal of Athens (Decision No. 11103, 1956) based on this new provision stipulated that the employers should deduct from the salary to be paid for the month of May a sum equal to the salary of an unskilled worker, whether the workers were members of G.G.C.L. or not. A part of the sum collected should be paid to G.G.C.L. and the rest to the other organisations of which individual workers might be members.

[1] See *Labour Problems in Greece*, op. cit., pp. 257-258 and 266-267.

[2] Ibid., p. 267.

[3] Legislative Decree No. 2962, dated 20 August 1954.

[4] Decree dated 4 February 1954 and Act No. 3467, dated 31 December 1955, modifying and completing the legislation concerning the Workers' Fund.

[5] Act No. 3239, dated 18 May 1955, concerning collective agreements.

Apart from G.G.C.L. the local workers' centres and the local federations and trade unions also benefited from these contributions. Individual members of workers' organisations could refuse to pay their contribution by means of a check-off from their salary by addressing to their union a declaration to this effect. This declaration was transmitted to the employer, together with a certificate stating that the claimant had already fulfilled all his duties as a trade union member. There apparently existed no provision allowing the worker who was not organised and who was covered by a collective agreement containing a check-off clause to refuse to pay this contribution.

297. In 1962 two national collective agreements, concluded in conformity with Act No. 3239 of 1955, provided for an annual deduction, as compulsory contribution, of a sum equal to one half-day's salary, whether the worker was a member of G.G.C.L. or not. An appeal was lodged for the cancellation of these provisions, and the Council of State issued a decision invalidating as unconstitutional any collective agreements imposing on all those employed, without distinction, the payment of a contribution for G.G.C.L. Following this decision, the previous system of a compulsory check-off for the Workers' Fund in accordance with Act No. 3467 of 1955 was readopted. From then on the Workers' Fund was to contribute, to a great extent, to the financing of occupational organisations whose members paid the Fund a regular contribution, which was automatically deducted from the worker's salary.

The Current Situation.

298. Legislative Decree No. 4361 of September 1964, which gave rise to the complaint before the Fact-Finding and Conciliation Commission, did not modify the system. Section 11 introduces a new element, stipulating that participation by trade unions, or trade union federations, in the general assemblies is conditioned by the previous fulfilment of all financial obligations which figure in the statutes.[1] The legislative decree provides exceptionally that in order to participate in the first general assemblies following the coming into force of the decree previously enrolled members do not have to pay contributions for more than one year. It is worth noting that the object of this provision is to suppress the system of financial support of occupational organisations by the Workers' Fund, a system which is contrary to the intentions of the Government as well as to the principles of free democratic trade unionism.

The Financing of Trade Unions by Their Own Means.

299. Voluntary contributions have always been of secondary importance among the resources of the Greek trade unions. During the brief periods where no compulsory mode of financing existed, the trade unions immediately found themselves in a state of financial crisis. Neither did the system of compulsory contribution, however, meet with the approval of the trade union members. Since members did not pay voluntary contributions and the State could not provide sufficient financial support alone, it appeared that no other alternative to the compulsory contribution system existed. The system might have worked to the satisfaction of all if those organisations to which the workers concerned belonged had alone benefited from the contributions. The system of payment to a common state-controlled fund, the Workers' Fund, which in turn was responsible for the distribution of sums received, gave rise to most serious difficulties and complaints with which the Committee on Freedom of Associa-

[1] See Ch. 3 above.

tion has been faced since 1956.[1] It is clear, from what has been said above, that for more than 25 years a system of obligatory dues has existed in Greece, in one form or another.

300. It might be useful to describe here in brief the Workers' Fund.

Workers' Fund.

301. The Workers' Fund is a public institution; it was established in 1931 under the terms of Act No. 5204 with a view to assisting the development of the trade union movement. Several successive legislative measures have amended this text[2], attributing to the Fund functions directly connected with the financing of the trade unions and the activities of their leaders. The principal functions of this organisation were, from then on, to improve the conditions of workers and to develop trade unions according to different methods.

302. The Workers' Fund is administered by an 11-man Board of Directors.

303. An official from the Ministry of Labour or the Workers' Fund is appointed Secretary of the Board of Directors.

304. The Chairman, titular members and their substitutes, as well as the Secretary of the Board of Directors, are appointed by a decision of the Minister of Labour. The Director of the Workers' Fund carries out the functions of Reporter of the Board.

305. Members of the Board are appointed for two years.

306. The Board of Directors of the Workers' Fund is responsible for administration and management with a view to the achievement of the Club's objectives.

307. The resources of the Workers' Fund are fixed by the relevant legislation.

308. The funds of the Workers' Fund are at present divided according to the following proportions: 80 per cent. for recreational facilities, physical training and culture, and 20 per cent. to cover costs involved in the obtaining of the necessary premises for the unions. The Workers' Fund keeps separate accountancy on these two budgetary items, any transfer or loan from one budgetary item to another being prohibited.

309. The distribution of the funds of the Workers' Fund may be changed in virtue of a royal decree issued on the recommendation of the Board of Directors of the Fund and with the approval of the Minister of Labour.

310. The resources of the Workers' Fund consist at present of statutory dues, state, communal and municipal subsidies, as well as subsidies from any other body or person, of revenue obtained through the management of the Fund's property, of fines imposed in applying penal sanctions provided for in labour legislation, of funds withheld from salaries imposed by heads of undertakings as sanctions, of donations and legacies of any kind, of contributions from special funds or other insurance bodies, of fines imposed on the personnel of social policy institutions, of compul-

[1] Case No. 121 (17th, 19th and 24th Reports), Case No. 341 (75th and 85th Reports), and Case No. 382 (77th Report).

[2] Decree respecting the organisation and functioning of the Workers' Fund, dated 4 February 1954, and Act No. 3467, dated 31 December 1955, modifying and completing the legislation concerning the Workers' Fund.

sory contributions of employers equal to the sum of one half-day's salary per year for every unskilled and skilled worker, and to one-fiftieth of the salary of every employee. The resources also consist of compulsory contributions from workers, the amount of which was, as of 1962, equal to one half-day's salary of an unskilled worker, deducted from the end-of-year and Easter bonuses [1], of fines imposed on employers (persons and bodies corporate), of fines imposed on the staff in urban transport and, finally, of workers' dues equal to two days' salary per year, which are imposed by decision of the Minister of Labour and intended for the construction of workers' centres in the regions where the workers who pay the contributions live.

SECTION 3

Collective Agreements and Arbitration of Labour Disputes

311. Collective agreements, labour disputes and arbitration are governed by Act No. 3239 of 1955, as amended by Legislative Decree No. 3755 of 1957.

312. Section 1 of the Act of 1955 first states that " collective labour disputes shall be settled in accordance with the provisions of this Act by direct negotiations for a collective agreement between the occupational organisations concerned or, where agreement is not reached, by compulsory arbitration ". This section goes on to state that " the expression ' collective labour dispute ' means any controversy between employers' organisations and employees' organisations respecting terms and conditions of employment or remuneration ".

313. After this statement, the Act is composed essentially of two parts devoted respectively to collective agreements and to compulsory arbitration. These are followed by a certain number of general administrative provisions relating to the creation of a National Advisory Board on Social Policy, its composition and its role.

Collective Agreements.

314. Section 2 first contains the following definition: " A collective agreement is an agreement between one or more employers' organisations and one or more occupational organisations of employees, laying down the terms to be included in employment contracts made between persons covered by the agreement." It then states that " collective agreements shall be made in writing and filed by the parties with the Labour Directorate of the Ministry of Labour, which shall issue a certificate of registration . . . ". Collective agreements are then to be published in the Government Gazette by the Ministry of Labour, and they come into force on the day of publication.

315. Section 2, paragraph (4), makes the following provisions: " Where it proves impossible to reach an understanding by direct negotiation, any organisation possessing collective bargaining powers under this Act may apply to the Ministry of Labour for its mediation in reaching a collective agreement. If so, the competent official shall order the bodies concerned to resume negotiations after ascertaining that the application is in order and that the representatives of the parties have been

[1] As a rule, wage earners in Greece receive the equivalent of one month's salary, divided into two payments, one for the New Year, the other for Easter. The above-mentioned contributions amounted from 1953 to 1957 to 4 drachmas per month, and from 1957 to 1962 to a sum equal to the minimum daily wage of an unskilled worker.

duly appointed. He shall thereafter proceed to examine the substance of the application and any memoranda submitted, acting as a mediator for reaching a collective agreement."

316. Section 3 provides that no individual contract may be less favourable than the terms of a collective agreement covering the worker concerned. It also states that any terms of an individual contract which are more favourable to the employee shall prevail. It further states the right of the parties or persons concerned to sue for damages in respect of failure to observe the terms of a collective agreement.

317. Section 4, paragraph (1), reads as follows: " On the expiry of two years from the date of signature by the original parties, any collective agreement for a longer period shall be deemed to have been made for an indefinite period. The same rule shall also apply to all other collective agreements of limited duration when the stated term expires. Notice to terminate a collective agreement of indefinite duration shall be given in writing by the parties concerned and shall be communicated by the court registrar to all the other parties and to the Ministry of Labour." Paragraph (2) continues: " The said notice shall release the organisation to which it is given from all engagements for the future, and the legal effects thereof shall commence two months from the date on which it was communicated: Provided that existing individual employment contracts shall continue in force until lawfully dissolved." Paragraph (3) states that, on the advice of the National Advisory Board on Social Policy (mentioned in section 28 of the Act) [1], " the Minister of Labour may, by order published in the Government Gazette, suspend the legal effects of notice to terminate a collective agreement for a total of not more than 12 months from the date when it commenced to operate ".

318. With regard to the scope of collective agreements and their coverage, section 5 contains the following provisions: " (1) Where the territorial scope of a collective agreement is not explicitly stated in the document itself, the agreement shall be deemed to be binding on the parties only within the area of the court of the justice of the peace in which it was signed. (2) Where a collective agreement binds the employers of three-fifths of all the employees in the occupation within the area in which the agreement operates and the provisions of the following paragraph are not applicable, the Minister of Labour may, after consulting the Board mentioned in section 28, publish an order in the Government Gazette, declaring the agreement to be binding on all employers and employees in the occupation or occupations to which it relates, within the area for which it is operative. (3) Collective agreements made and signed in the presence of the Minister of Labour or the agents specially authorised by him for the purpose shall be binding on all employers and employees in the occupation or occupations within the area to which the agreement extends."

319. Under section 6 the obligations under a collective agreement are not affected by the dissolution of the signatory organisation or by loss of membership. Similarly, in the case of change of employer, the rights and obligations under a collective agreement are transferred to the successor.

320. Section 7, paragraph (1), classifies collective agreements as follows: " *(a)* national general agreements, relating to employees throughout the country or to more than one category of employees throughout the country; *(b)* national single-trade agreements, relating to employees in a given trade and/or branches related to that

[1] See paras. 338 and 339.

trade throughout the country; *(c)* local single-trade agreements, relating to employees in a given trade or its related branches in a specified town or area, in so far as they are not covered by a national single-trade agreement; *(d)* special agreements, relating to employees in one or more businesses or undertakings in a town or area or the whole country, in so far as they are not covered by a national single-trade agreement."

321. Concerning the bodies empowered to negotiate and sign the various categories of agreements mentioned above, paragraphs (2) to (5) of section 7 contain the following stipulations: " (2) National general agreements are negotiated and signed, on behalf of the employers, by the most representative employers' organisations, such as the Federation of Greek Industrialists, the Commerce Associations of Athens, Piraeus and Salonica (represented by a joint delegate) and the General Confederation of Tradesmen and Craftsmen; and, on behalf of the employees, by the Greek General Confederation of Labour. (3) National single-trade agreements are negotiated and signed by the most representative organisations of the employers and employees. (4) Local single-trade agreements are negotiated and signed by the most representative local organisations for the trade and/or related branches. (5) Special agreements are negotiated and signed by one or more employers' occupational organisations and the occupational organisation of the employees in one or more undertakings."

322. Section 7, paragraph (6), states that " for the drafting and signature of collective agreements under subparagraphs *(a)* and *(b)* of paragraph (1) a decision by the managing committee of each of the most representative employers' and employees' organisations concerned shall be required; for the drafting and signature of collective agreements under subparagraphs *(c)* and *(d)* of paragraph (1) a decision by the managing committee of each of the competent employers' and employees' organisations, duly authorised by the general meeting and adopted in accordance with the by-laws of the organisation, shall be required ".

323. Section 8 contains the following provisions: " In the case of a collective agreement mentioned in the preceding article which, by reason of its content, territorial scope, or the undertakings with which it deals, is considered to be of general significance, the most representative employers' and employees' organisations mentioned in paragraph (2) of section 7 may intervene or be called on to participate in the negotiations and shall also sign the agreement through their authorised representatives."

Compulsory Arbitration.

324. Section 9 states that, on failure of the negotiations undertaken under section 2 of the Act for the settlement of a collective dispute by means of a collective agreement, the official of the Ministry of Labour acting as mediator in the negotiations shall prepare a report indicating the matters in dispute and his findings and opinions. This report must be submitted to the appropriate directorate of the Ministry of Labour, which must forward it to the competent arbitration agency under section 10 in any case where the controversy affects more than 20 employees.

325. Section 10, paragraph (1), reads as follows: " At the first-instance court of each town in which a labour inspection office has been established, a four-member arbitration tribunal shall be constituted under this Act by order of the Minister of Labour, with the following composition: *(a)* the president of the first-instance judges or another first-instance judge designated by him (as chairman); *(b)* one official of the Ministry of Labour designated by the Minister of Labour, or, in his

absence, another civil servant designated by the Minister concerned; *(c)* one representative of the employees, designated by the Greek General Confederation of Labour or by such occupational organisation as is designated by the said Confederation; *(d)* one representative of the employers' organisation concerned . . . ."

326. Section 11 lays down the following provisions: " The first-instance arbitration tribunal under section 10 shall meet . . . after being convened by its chairman, and shall have a quorum whenever three members are present including the chairman. . . . The chairman's decision shall be final and shall be entered in the proceedings." " The first-instance arbitration tribunal shall, in its examination of the issue, consider all the relevant documents, summon the parties for questioning, hear witnesses and any expert evidence which it deems useful, visit premises and obtain such information as it may require from any central or local government authority and from any institution, organisation or undertaking. . . . " " The first-instance arbitration tribunal shall make its decision on the main issue without being bound by any legal forms, with complete freedom in evaluating the evidence." " The decision shall be that receiving the majority of votes, the chairman having a casting vote. . . . " " A first-instance arbitration tribunal may, by a vote of an absolute majority of its members, decide that a dispute which is not a matter of general concern shall be returned for settlement by direct negotiation between the parties . . . ."

327. Under section 12 " an appeal against the award of the first-instance arbitration tribunal may be made to the appropriate second-instance arbitration tribunal . . .".

328. Section 13 provides, *inter alia*, that " the second-instance arbitration tribunals shall consist of the following: *(a)* the president of the court of appeal in the town where the tribunal is established or an appeals judge designated by him, as chairman . . .; *(b)* one official of the Ministry of Labour designated by the Minister of Labour; *(c)* one member designated by the Federation of Greek Industrialists in Athens or by such employers' organisation in the town where the tribunal is established as may be designated by the said Federation; *(d)* one of the persons nominated by the appropriate representative organisations of merchants, tradesmen, craftsmen and joint stock companies, who shall sit according to the trade to which the particular dispute relates . . .; *(e)* two members designated by the Greek General Confederation of Labour or by an occupational organisation of employees specified by the said Confederation ".

329. Under section 14 " the decision adopted by the second-instance arbitration tribunal, where there is a quorum of five members including the chairman, shall be that which receives the majority of votes, the chairman having a casting vote . . .".

330. Section 15 provides that " the first-instance or second-instance arbitration tribunal dealing with any collective dispute referred to it under this Act and arising out of a collective agreement after the expiry of the agreed period of validity or after the agreement has been duly terminated by notice may vary or redraft existing collective terms of employment, including the financial clauses thereof, and order anything to be done which they consider suitable for reconciling the interests of employers and employees ".

331. According to section 18, " upon the parties being notified in writing that the competent official of the Ministry of Labour has found in his report that no agreement can be reached, or upon service of a decision of the Minister of Labour referring a dispute directly to the competent arbitration tribunal under this Act, any attempt

by the parties to force a settlement of the dispute in their favour by a stoppage or evident slowdown of work, etc., is prohibited for a period of 45 days, or 60 days where an appeal has been made. Any stoppage of work during the prohibited period or any alteration of conditions of employment during the said period shall be regarded as wrongful termination of the employment contract".

332. Section 19 provides that " compulsory arbitration proceedings shall cease if a collective agreement is reached in the course thereof ", and that " when an award has been declared by the Minister of Labour to be enforceable, it shall take the place of a collective agreement and shall be governed thenceforward by the relevant provisions of this Act ".

333. Under section 7 of Legislative Decree No. 3755 of 1957 the provisions of the Act, as analysed above, are amended with regard to the period for arbitration procedure, which is halved in order to provide for more expeditious action.

General Administrative Provisions.

334. The general provisions contained in this part of the Act contain some which call for particular attention.

335. The first of these is contained in section 20, paragraph (2) of which reads as follows: " In the event of any collective agreement or arbitration award being contrary to the general economic or social policy of the Government or to any such policy in particular matters, the Ministers of Co-ordination and of Labour may, after consulting the Board mentioned in section 28, amend or withhold approval of all or part of such agreement or award, by means of a joint order (with reasons) issued within 20 days of the end of the 15-day period specified in paragraph (1) of this section and published in the Government Gazette."

336. With regard to trade union dues section 22 contains the following provisions: " (1) A national general agreement may provide that the employer shall undertake to deduct specified membership contributions to the employees' organisations which are payable by employees covered by the agreement. (2) Such contributions shall be apportioned as follows: *(a)* the local labour centre shall receive seven-twentieths of the contributions levied in its area; *(b)* the federations shall receive four-twentieths of the contributions levied from employees in the particular trade; *(c)* the employees' association shall receive four-twentieths of the contributions levied from employees of the category represented by it; *(d)* the Greek General Confederation of Labour shall receive the remainder. (3) Where a collective agreement provides for deduction of contributions by the employers, the assessment and levying of the contributions shall be carried out either through the social insurance carriers under special agreements made with the employees' organisations or in some other manner prescribed by the collective agreement. (4) The yield from contributions under this Act shall be transferred directly to the receiving bodies by the social insurance carriers within two months of collection. (5) A member of an organisation may file a declaration with his organisation indicating his refusal to pay the contributions. The organisation shall endorse the application if the applicant has fulfilled his membership obligations and shall forward the declaration to the employer."

337. Section 23 contains the following provisions: " (1) In any disagreement as to whether a particular organisation is competent to represent the occupational interests of certain occupational categories involved in a collective labour dispute,

the decision of the chairman of the first-instance or second-instance arbitration tribunal in whose area the collective dispute has arisen or is being examined shall be final and without appeal. (2) In the absence of any private organisation of employers in the trade, or if a particular employer is not eligible for membership under the constitution of the normally appropriate private organisation or chamber, then the local chamber of commerce and industry (or, in the case of a collective agreement for the whole country, the Athens Chamber of Commerce and Industry) shall be regarded as the representative organisation."

National Advisory Board on Social Policy.

338. Section 28, paragraph (1), states that " a National Advisory Board on Social Policy . . . shall be set up under the Ministry of Labour as a body for consultation on social policy and labour legislation ". Paragraph (2) provides that " the Board shall consist of the following members: *(a)* a member of the liberal professions, having special knowledge of social policy matters, as chairman. In the absence of the chairman, the civil service member with the highest rank (or longest service, in the case of equal rank) shall preside; *(b)* five senior civil servants, namely the Director-General of the Ministry of Labour, the Director of Employment of the said Ministry, one director from the Ministry of Co-ordination, one director from the Ministry of Trade, and one director from the Ministry within whose province the particular matter for discussion falls, as determined by the chairman of the Board. The latter member and his substitute shall be designated by the Minister concerned. The above civil service members and an equal number of substitutes of the same grade shall be designated by the competent Ministers; *(c)* five employers' representatives and five substitutes designated as follows: two by the Federation of Greek Industrialists, one by the Athens Merchants' Association, one by the most representative organisation of small tradesmen in Athens, and one by the most representative organisation of craftsmen in Athens; *(d)* five employees' representatives and five substitutes designated by the Greek General Confederation of Labour."

339. After indicating in general terms that the function of the Board will be to investigate, consider and advise on all matters relating to the formulation or implementation of social, insurance and labour policy, section 29 provides that " the Board shall consider questions submitted by the Minister of Labour, by other Ministers, or by any eight or more of its members, which relate to any measure (Bill, decree, regulations, etc.) dealing with *(a)* matters of social policy, terms and conditions of employment and employer-employee relationships; *(b)* employment, apprenticeship, unemployment insurance, social insurance and insurance carriers; and to any general or special measure ".

CHAPTER 9

THE MAIN EVENTS IN GREECE SINCE THE COMPLAINT WAS SUBMITTED

340. The principal events in Greece since the complaint was lodged and which are relevant to the matter before the Commission fall under four headings: changes of government, the termination of office of the G.G.C.L. executive, appointments of the provisional executives of G.G.C.L., and successive postponements of the Congress of G.G.C.L.

Changes of Government

341. Mr. Papandreou's Government, which was in power at the time when the complaint was lodged, was replaced in July 1965. The Minister of Labour, Mr. Bacatselos, who had held office in that Government, retained his post in Mr. Novas's Government. Since the latter Government did not secure the confidence of Parliament and Mr. Tsirimokos was appointed Prime Minister, Mr. Bacatselos was replaced by Mr. Galinos as Minister of Labour on 20 August 1965. Mr. Tsirimokos's Government failed in its turn to secure the confidence of Parliament and Mr. Stephanopoulos was appointed Prime Minister. Mr. Stephanopoulos's Government was confirmed in office by Parliament in the second half of September and, apart from a few changes, has remained in power since that date. Mr. Bacatselos is again Minister of Labour in this Government.

Termination of the Term of Office of the Executive of the Greek General Confederation of Labour

342. At the time when the complaint was lodged, Mr. F. Makris was General Secretary of G.G.C.L. and lodged the complaint in this capacity, together with eight other members of the Executive Committee.

343. The term of office of the executive of G.G.C.L. of which Mr. Makris was General Secretary was for a period of three years and expired on 22 October 1964. This term of office was extended to 22 November 1964 in virtue of the constitution of G.G.C.L. and in accordance with the provisions of section 8 of Legislative Decree No. 4361 of 1964.[1]

344. In virtue of section 8 of the legislative decree mentioned above, which limits the extension of the term of office of trade union administrations to one month, and since it was impossible for G.G.C.L. to hold its Congress in accordance with the conditions laid down by section 10 of the said legislative decree [2], the Confederation had no administration from 23 November 1964 until the appointment, on 14 December 1964, of the first provisional administration appointed in application of section 69 of the Civil Code.[3]

[1] See paras. 58-60.

[2] See paras. 61-66.

[3] See para. 64 and Ch. 8 above.

Appointments of Provisional Governing Councils of the Greek General Confederation of Labour

345. Under section 69 of the Civil Code, when persons required to administer a legal entity (association) default or when their interests conflict with those of the legal entity, the president of the court of first instance may appoint, at the request of any interested party, a provisional governing council.[1]

346. Certain second-degree organisations, federations and local workers' centres, recognising that G.G.C.L. would be without leaders as from 23 November 1964, filed a request asking for the appointment of an executive for G.G.C.L. with the Athens Court of First Instance shortly before the expiration of the term of office of the executive of G.G.C.L. The President of the Court of First Instance, Mr. P. Petrokheilos, by decision No. 22397 of 14 December 1964, appointed a provisional administration of 31 persons whose mandate was to convene, as soon as possible, and in any case within eight months of the date of the publication of the decision of the President of the Court, the 15th Pan-Hellenic Congress of G.G.C.L. The judge had not thought it necessary to appoint a General Secretary and Treasurer. Although the by-laws of G.G.C.L. required these two to be elected by the Congress, he empowered the 31-man provisional administration which he had appointed to choose a General Secretary and Treasurer. He also laid down rules for this election and a deadline of one month within which the new executive should meet. Having required that all 31 members needed to be present at a meeting of the executive, the judge designated 12 alternates to sit in the place of absent members. A meeting of the provisional administration took place on 22 December, but certain differences of view appeared. After 12 members had left the meeting room, Mr. N. Papageorgiou was elected General Secretary.

347. The first provisional executive did not have time to proceed with the preparatory work for the 15th Congress because, shortly after its appointment, it was held to be illegal. On the petition of a number of trade union organisations which considered the election of Mr. Papageorgiou to be irregular, the President of the Court, Mr. Petrokheilos, then made a new decision (Decision No. 2953 of 22 February 1965) under which a further provisional executive was appointed. In this new decision, in order to avoid the difficulties raised in the previous instance, the judge personally appointed Mr. Dimitrakopoulos as General Secretary.

348. Two months later, on 21 April 1965, on the petition of a number of the interested parties, including Mr. Papageorgiou, the President of the Court of First Instance, Mr. A. Liakatas, by Decision No. 7184, replaced Mr. Dimitrakopoulos's executive by a new one, the head of which was again Mr. Papageorgiou. The judge gave as the reason for replacing Mr. Dimitrakopoulos the close connections which had existed between him and those persons who were in the leadership of G.G.C.L. at the time the complaint was filed.

349. Certain workers' representatives appealed against this decision. Their appeal was rejected by Decision No. 11169 of 17 June 1965, made by Judge I. Gournas.

350. Following a further appeal, the President of the Court, Mr. I. Gournas, held that some leaders of the provisional executive of G.G.C.L. had gone beyond their terms of reference by proclaiming a general strike when their task was to prepare for the 15th Congress; by Decision No. 14822 of 19 August 1965 he removed from office

[1] See Ch. 8 above.

nine members of the executive of G.G.C.L., of whom Mr. Papageorgiou, the General Secretary, was one, and replaced them by nine other members. He appointed one of them, Mr. Galatis, as General Secretary.

351. On 7 October 1965 Mr. Galatis appealed to the President of the Court of First Instance, Mr. C. Kalopaseas, for the purpose of replacing 18 members of the executive, with whom he stated that collaboration was impossible. His opponents appealed on 9 October 1965, requesting that Mr. Galatis, the Treasurer and 11 other members of the executive be replaced. By Decision No. 20108 of 9 November 1965 Mr. Galatis was confirmed in office but the composition of the executive was changed.

Successive Postponements of the 15th Pan-Hellenic Congress of the Greek General Confederation of Labour

352. Owing to the frequent changes in the provisional executive of G.G.C.L., which were largely the reflection of the different tendencies in the trade union movement, to a number of material problems and to many other factors which are difficult to determine precisely, the G.G.C.L. Congress was postponed many times.

353. The Congress, originally scheduled to be held on 5 September, then on 12 September 1964, was, after the expiry of the term of office of the elected administration of G.G.C.L., successively scheduled for 1 December 1965, 27 February 1966, 15 May, 5 June, 26 June, and finally 24 July 1966.

PART IV

CHAPTER 10

COMPLAINANT'S REQUEST TO TERMINATE THE EXAMINATION OF THE COMPLAINT

354. On 8 June 1966 the Director-General of the International Labour Office received from Mr. Lascaris, Greek Workers' delegate at the 50th Session of the International Labour Conference, a communication, dated 6 June and signed by Mr. F. Makris, in the following terms:

In October 1964 the elected Executive Committee of G.G.C.L. submitted to the International Labour Office a complaint against the Greek Government of the time regarding the violation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The objectives of the complaint were as follows:

Firstly: The abolition or amendment of sections 5, 6, 8, 10 and 11 of Legislative Decree No. 4361 of 1964, as being contrary to the provisions of the international Convention mentioned above. The Executive's principal objective in promulgating this legislative decree, at the insistent request of Mr. G. Papandreou, head of the Greek Government of the time, was—as was confirmed by the facts themselves—to render void the convocation of the 15th Congress of workers of G.G.C.L. and thus to remove indirectly the elected administration of this organisation, although the results of the ballot which took place to elect representatives to this Congress solemnly reaffirmed the confidence of the Congress in the administration in question; this objective no longer troubles us, since developments in the Greek trade union movement since that time have given us moral justification.

Secondly: The abolition of the system of financing trade union organisations through organs of the State, such as the Workers' Fund, a system which has been held to restrict the independence of the trade union movement and to lead to interference in its activities, with the well-known harmful consequences of the complete submission of the movement to a political party, as subsequent events have revealed.

The elected Executive Committee of G.G.C.L. reaffirms already in this communication the views which it has expressed on this subject, which have been completed by the inquiry subsequently undertaken by the two parties and by the deposit of various documents in the case.

As was said at the beginning, the objective of the elected Executive Committee of G.G.C.L. was, and remains, the restitution, within the framework of international Conventions and the National Constitution in force, of the principles of the autonomy of trade unions and of the freedom of association, which have been infringed.

In accordance with the objective upon which we had determined and with a view to bringing about a happy solution to the problem, we submitted, in collaboration with other leaders of the most representative trade union organisations, to the President and Vice-President of the Council, to the President of the House, to the Minister of Labour, as well as to the leaders of the principal political parties of our country, Messrs. G. Papandreou, P. Canellopoulos and S. Markezinis, a memorandum dated 2 April last, whereof a copy is annexed to the present communication.

In this memorandum we indicated, in all conscience, to the Government and to the leaders of the principal political parties of the country, the fundamental conditions necessary for the existence and functioning, in our country, of a free trade union movement, as well as the questions which should be regulated by legislative means. These conditions, when adopted and embodied in legislation, would permit a new G.G.C.L. administration issuing from the elections to lead the struggle for the reorganisation, within the framework of the principles and objectives of the International Confederation of Free Trade Unions, of the forces of the Greek trade union movement which have remained faithful to these principles.

The competent leaders of the trade union organisations who signed the memorandum subsequently undertook discussions on the basis of the memorandum, not only with the Government and, in particular, with the Minister of Labour, but also with the leaders of the principal political parties, with the exception of Mr. Papandreou who, despite an initial declaration of willingness to receive the trade union delegation in order to hear it explain its point of view orally and inform it of his own opinion on the questions of trade union organisation, finally avoided such an interview.

The interviews which took place and the extremely thorough and detailed discussions which occurred allowed us to acquire the conviction and the certainty that the present Government and the political leaders of the country had understood the importance of the questions and problems submitted to them and that they are in agreement as to the need to regulate these problems by legislative means.

However, the Government, while giving the assurances mentioned above, considered that the whole question should be settled after the convocation of the 15th Congress of G.G.C.L. by discussions and negotiations with the newly elected leaders of the trade union movement.

We have accepted the Government's point of view, because we consider it to be our duty, especially since the Minister of Labour, within the terms of the mandate given to him by the Government as currently constituted, has already shown by his actions not only that he understands the whole nature of the questions which preoccupy the trade union movement and the working class but also that he is imbued with truly friendly sentiments towards the workers, since it is in this spirit that he has provided solutions to the questions which were troubling them and which had been pending for a very long time. I.C.F.T.U. has obviously been kept abreast of these developments.

In these circumstances, the elected Executive Committee of G.G.C.L., faithful to the aims for which it fights and independently of its own observations or convictions, has, on the basis of the assurances given not only by the Government but also by the political parties which support it, decided to request you to consider the dispute which has arisen as coming to an end.

The elected Executive Committee of G.G.C.L. considers it its duty to point out and to emphasise the decisive contributions which both the I.L.O. and the Fact-Finding and Conciliation Commission have made, by their efforts, to this happy evolution of the problems with which the elected Executive Committee of G.G.C.L. is preoccupied and to the realisation of its objective: the protection of freedom of association in our country. We therefore sincerely thank you.

For the elected Executive Committee of G.G.C.L.:

(Signed) F. MAKRIS,
General Secretary.

355. After being informed of the contents of this communication, the Chairman of the Commission decided to send copies to the Greek Government and to the General Secretary of G.G.C.L. then in office and to inform Messrs. Papageorgiou and Dimitrakopoulos, former General Secretaries of G.G.C.L.

356. The Commission informed Mr. Makris that his request would constitute the first question to be examined at its Second Session and requested him to appear before it in person on that occasion.

357. The Commission also expressed the wish to the Greek Minister of Labour that he himself should find it possible to appear in person to state the Government's point of view regarding the complainant's request to the Commission.

358. The Commission informed the parties and the General Secretary of G.G.C.L. that it did not appear necessary at this stage of the proceedings to hear the witnesses as originally anticipated.

359. Finally, the Commission gave Messrs. Papageorgiou and Dimitrakopoulos the opportunity to come and state their points of view before it.

CHAPTER II

SECOND SESSION OF THE COMMISSION

A. Procedure Followed by the Commission

360. The Commission held its Second Session in Geneva from 1 to 14 July 1966. At the opening of the session, in the presence of the Director-General of the International Labour Office, Mr. Jacques Ducoux, who replaced Mr. Henri Friol as a member of the Commission, made a solemn declaration identical with that which had been made by the other members of the Commission at its First Session.[1]

361. The session included three sittings held in private which were attended by Mr. George Bacatselos, Minister of Labour of Greece, and representatives of the Government of Greece, the complainant and the present provisional administration of the Greek General Confederation of Labour, as follows: for the Government of Greece: Mr. J. Zarras, Secretary-General of the Ministry of Labour, and Mr. J. Deliyannis, Professor of Law and barrister; for the complainant: Mr. C. Fotiadis, former Legal Adviser to G.G.C.L., and Mr. J. Patsantzis, former Deputy General Secretary of G.G.C.L.; and for the present provisional administration of G.G.C.L.: Mr. J. Galatis, provisional General Secretary. All of these persons were present throughout the hearings.

362. In addition to these representatives, the Government of Greece had the following technical advisers: Mr. P. Theodoropoulos, President of the Athens Court of First Instance; Mr. S. Kladas, Special Adviser to the Ministry of Labour, and Mr. E. Flokos, Director, Ministry of Labour.

363. In addition to the hearings, the Commission also met a number of times in private. Apart from examining the statements made to it and the answers to questions which it had put, the Commission devoted most of its time at its Second Session to the preparation and adoption of its report.

1. *Representatives and Other Persons Heard*

364. The Commission called upon Mr. Makris, signatory of the complaint and of the communication withdrawing the complaint, to explain the request for withdrawal. The Commission took note of the absence of Mr. Makris, who did not present himself in person.

365. In explanation of the absence of Mr. Makris, his representative, Mr. Fotiadis, stated [2] that it was due to the election of Mr. Makris, on 18 June 1966, as Chairman of the Workers' Centre of Athens and the constitutional obligation which devolved upon him in that capacity to convene a meeting of the other elected officers of the Centre for the purpose of electing, in turn, the Centre's other constitutional organs.

[1] See paras. 77-78.

[2] Record of Hearings, first sitting.

366. In the absence of Mr. Makris, the Commission heard statements from Mr. Fotiadis, his representative, who was appointed in that capacity by an authorisation, duly authenticated by a notary, from Mr. Galatis, representative of the provisional administration of the Greek General Confederation of Labour, and from Mr. Bacatselos, Minister of Labour, on behalf of the Government of Greece.

367. In addition, the Commission heard statements from Mr. N. Papageorgiou and Mr. G. Dimitrakopoulos, both former provisional General Secretaries of G.G.C.L.

2. *Procedure Followed by the Commission in the Hearing of Representatives and Other Persons*

368. In opening the hearings the Chairman of the Commission made a statement to the representatives of the parties, which he repeated to all other persons who subsequently participated in the hearings, referring to the private nature of the Commission's sittings and to the Commission's reliance on those who took part in the proceedings being good enough to refrain from divulging the tenor of any of the statements made, the questions put and the replies thereto.

369. In accordance with a decision of the Commission that it was its duty to inquire into the facts surrounding the request for the withdrawal of the complaint, the Chairman made the following statement:

On 8 June 1966, a letter dated 6 June 1966 was handed to the Director-General of the International Labour Office by Mr. Lascaris, who was at that time acting as the representative of the complainant in this case. In the letter, Mr. Makris, on behalf of the complainant, recounted certain events which had occurred since the complaint had been filed. In his concluding remarks he requested that the Commission should regard the conflict between the complainant and the Government of Greece as no longer existing. The Commission has understood this communication as requesting that it permit the withdrawal of the complaint. Therefore, the Commission proposes to examine this request as its first item of business.

370. At the conclusion of the five statements made before the Commission [1], the Commission put certain questions to the representative of the complainant, Mr. Fotiadis, the representative of the present provisional administration of G.G.C.L., Mr. Galatis, and the representative of the Government of Greece, Mr. Deliyannis. The Commission also put questions to Mr. Papageorgiou and Mr. Dimitrakopoulos, former provisional General Secretaries of G.G.C.L.

371. The Commission then offered each of the three representatives the opportunity to make a closing statement. None of the representatives wished to take advantage of this opportunity, but the Minister of Labour of Greece made a brief statement expressing, in particular, the appreciation of his Government for the way in which the hearings had been conducted. The Chairman then declared the hearings closed.

B. Statements Made to the Commission

372. The representative of the complainant, in his statement to the Commission [2], explained the reasons which supported the complainant's request for the withdrawal of the complaint. He stated that the complainant now had every reason to believe that the new administration of G.G.C.L. which was to be elected at the forthcoming

[1] See paras. 366-367.
[2] Record of Hearings, first sitting.

Congress would find itself in a favourable climate to undertake negotiations with the Government and carry out reforms which would protect freedom of association in Greece in accordance with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), as well as the freedom of trade unions to bargain collectively and enter into collective agreements. In addition, the complainant considered that the operation of Legislative Decree No. 4361 during the past two years had not prevented the second-degree organisations, including the workers' centres, from meeting to elect their representatives for the 15th Congress of G.G.C.L. In this connection he stated that the allegations which had been made prior to the promulgation of Legislative Decree No. 4361 with respect to the unrepresentative nature of the leadership of the trade unions had been proved false, for even after the application of the legislative decree leaders accused by certain trade unions of having been elected in the past as a result of infringements of the law and the rules were re-elected to the trade union executive bodies. Furthermore, the former executive of G.G.C.L., after reconsidering the question as a whole, had recognised that Legislative Decree No. 4361 had really done away with the former legal provisions which had for many years past enabled the public authorities to interfere in the domestic affairs of the trade unions, in particular by supervision of their finances and management. The representative of the complainant then mentioned that with regard to the basic question of the abolition of the system of financing trade unions through the Workers' Fund, the Minister of Labour had set up a committee of experts to study the entire question of the freedom and autonomy of workers' organisations. This committee would try to find a solution to enable the present system of financing trade union organisations to be transformed into a system guaranteeing the independence of the trade unions. He considered this one of the proofs that the present Government and the Minister of Labour had shown themselves in practice to have a profound understanding of the problems which were of concern to the trade union movement in Greece. The representative of the complainant concluded by saying that the adoption of measures satisfactory to the workers, on the one hand, and the adoption of 15 new laws beneficial to the workers, on the other hand, testified to the good intentions of the Government.

373. The Minister of Labour, in his statement [1], assented to the withdrawal of the complaint and confirmed that the dispute which had originally been so serious appeared to be in the process of settlement, owing in large measure to the fact that its submission to the Fact-Finding and Conciliation Commission had helped to clarify the views of the parties concerned.

374. The statement of the Minister of Labour went on to explain that the purpose of Legislative Decree No. 4361 was to create the conditions essential for the development of a democratic trade union movement and for the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by Greece by means of Legislative Decree No. 4204 of 1961. Legislative Decree No. 4361 had both adapted Greek legislation to conform to the Convention and abrogated all provisions limiting the self-government of occupational organisations or permitting public authorities to interfere in their functioning. It had introduced more comprehensive protection for serving trade union officers, had ensured fair representation at the Congress of G.G.C.L., and had provided legal guarantees for the election of trade union executives. Inasmuch as there was a request for the

[1] Record of Hearings, first sitting.

withdrawal of the complaint, it was not necessary to describe in detail the circumstances which had required the adoption of the legislative decree. This had been done fully in information which the Government had already sent to the Commission; many of the long-standing weaknesses of trade unionism in Greece had been pointed out in the report of the I.L.O. mission, *Labour Problems in Greece*, in 1949, and in several reports of the Governing Body Committee on Freedom of Association.

375. The Minister of Labour stated that in introducing Legislative Decree No. 4361 in Parliament he had in no way desired to interfere in the internal affairs of the trade unions; he had always condemned any interference of a political nature as harmful to the development of a strong and independent trade union movement. Similarly, he had not hesitated to ask for the case to be examined by the Commission as soon as the complaint had been submitted.

376. With respect to certain allegations concerning the extent to which some provisions of Legislative Decree No. 4361 were contrary to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Minister pointed out that no trade union organisation had thought it necessary to take advantage of its right to challenge the decree as unconstitutional in the courts of Greece. Furthermore, the decree had been applied for two years without hindering the smooth functioning of trade union organisations, and elections had been held in a legal and unchallenged manner in 36 federations and 67 workers' centres. Neither had the procedure for the conclusion of collective agreements or for compulsory arbitration been affected.

377. Referring to the provisions of section 69 of the Civil Code, which permits the appointment by the courts of provisional administrations for trade union organisations under certain stipulated conditions, the Minister recalled that the I.L.O. mission to Greece in 1947 had been aware of this fact. The frequent appointment of provisional administrations that had taken place in this way since Legislative Decree No. 4361 had come into force were due to certain serious conflicts which divided the different tendencies within the trade union movement in Greece. In any event, he stated, that situation was coming to an end because the Congress of G.G.C.L. would now definitely meet on 24 July 1966.

378. The Minister referred to the supervision system of the I.L.O.—namely the Committee of Experts on the Application of Conventions and Recommendations—which provided machinery whereby national legislation could be put into harmony with the provisions of ratified Conventions. He had always given special attention to the comments of this Committee. He was fully prepared to take into account and give serious attention to any remarks the Committee might make on the question whether and to what extent the provisions of Legislative Decree No. 4361, and the practical application thereof, were contrary to Convention No. 87.

379. In addition to difficulties of organisation within the Greek trade union movement, the Minister stated that a principal cause of the movement's difficulties was the system of financing trade union organisations through the medium of the Workers' Fund, which had been in force for more than 20 years. The Minister stated that if he succeeded in contributing to the abolition of this system he would consider it one of his greatest successes in office. Sections 6 and 11 of Legislative Decree No. 4361 had aimed at creating the necessary conditions for the operation of a system of voluntary trade union contributions. The final difficulty was to find a system which would be acceptable to all the tendencies in the trade union movement. In this con-

nection he had set up a special committee of experts to draw up, in the near future and in collaboration with the principal trade union organisations, suggestions for a plan for passing from the present system of financing to a system based on a regular contribution paid directly by members of trade unions.

380. In his concluding remarks the Minister expressed his concern at the present state of the settlement of collective disputes and collective bargaining in Greece. That was why the drafting committee which he had set up to prepare a labour code was studying the problem and had received comments from the I.L.O. in this connection which it was now examining. After the election of the new administration of G.G.C.L. one of the Minister's principal tasks would be to seek, together with that administration, a definitive solution to the problems to which he had referred. The Minister pointed out that he was in a position to appreciate the favourable effects of the active participation of a free and representative trade union movement in the framing and implementation of measures intended to stimulate the economic and social development of Greece.

381. In his statement to the Commission [1] the representative of the present provisional administration of G.G.C.L., Mr. Galatis, reported that when he had assumed the office of General Secretary by appointment of the President of the Athens Court of First Instance in August 1965, only 12 of the 113 second-degree workers' organisations (workers' centres and federations) belonging to G.G.C.L. had held meetings to select their representatives to attend the 15th General Congress of the Confederation. Within a few months of his taking office, 67 workers' centres out of a total of 71 and 36 federations out of a total of 42, i.e. 91 per cent. of the total membership of the Confederation, had held such meetings and elected their representatives to the 15th Congress.

382. He added that in his position as provisional General Secretary he had had an excellent opportunity to observe closely the application in practice of Legislative Decree No. 4361. He had concluded that its application had in no way impeded the holding of elections at the local or occupational level. The trade union movement was now represented on the basis of the real number of members entitled to vote and no longer on the basis of fictitious figures. Thirdly, the coming Congress could now no longer be challenged as illegal or spurious. In general, he thought that the application of the legislative decree in the second-degree organisations, including the organisations of the signatories of the complaint, had not hindered their operation. The presence of a representative of the judiciary with extended powers had ensured that the elections should not be challengeable. The claims that the Government was empowered to interfere in the internal administration of trade union affairs through the legislative decree had, in his view, been proved entirely false. Some former governmental powers of supervision which had been contrary to standards of freedom of association had been abolished by the decree. It was clear to him that the far-reaching measures recently adopted in the fields of labour legislation, social insurance and general labour policy were due to the sincere efforts of the present Minister of Labour.

383. In his statement [2] Mr. Papageorgiou, former provisional General Secretary of G.G.C.L., in supporting the adoption of Legislative Decree No. 4361, explained the factual circumstances that had existed prior to its promulgation. At that time, ten trade union organisations with a total membership of 500 workers could send ten

[1] Record of Hearings, first sitting.

[2] Ibid., second sitting.

representatives to the congresses held by the Athens Workers' Centre, while organisations with 3,000 members could send only seven representatives. The result was that 10,000 workers spread over a multitude of small unions could impose their will on more than 100,000 workers in larger trade union organisations. As a reaction to this and other inequities the trade unions had struggled since 1956 to find a way to ensure the proper representation of the majority. This had been a major concern of the Government which had been elected in 1964 and had resulted in the promulgation of Legislative Decree No. 4361.

384. Mr. Papageorgiou reported that in the six months during which he had served as provisional General Secretary of G.G.C.L. he had noticed not a single irregularity in the application of the legislative decree. On the contrary, he stated, the decree merely impeded those who were attempting to get themselves elected against the will of the workers.

385. He alleged that the protests against the decree had been raised only after certain candidates for election to executive positions had realised that they faced defeat in the 15th Congress. Notwithstanding those protests, he repeated, no anomalies had arisen as a result of the application of the decree; its major purposes were to ensure that the real will of the workers prevailed and to harmonise Greek legislation with the standards of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

386. In his statement [1] Mr. Dimitrakopoulos, former provisional General Secretary of G.G.C.L., stated that, when he had signed the complaint in this case, he had shared the opinion of the other trade union leaders who had signed it that the provisions of Legislative Decree No. 4361 would have an unfavourable influence on the smooth development of the Greek trade union movement. However, during the period of his service as provisional General Secretary of G.G.C.L. from February to April 1965, he had come to appreciate that the application of these provisions had proved to be a safeguard of the democratic expression of the will of the majority in the selection of its representatives.

387. With respect to the statement made by the representative of the complainant concerning the matters contained in the complaint, Mr. Dimitrakopoulos expressed his entire agreement and felt it to be his duty to emphasise that every effort was being made by the present Government and its Minister of Labour to ensure that the trade unions would be free from every possible government intervention.

C. Replies to Questions Put by the Commission

388. In answer to a series of questions put by the Chairman [1] the representative of the complainant confirmed that all of the persons who had been signatories of the complaint had agreed to the communication of 6 June 1966, which asked that the dispute be considered as terminated. All had given Mr. Makris the power to speak for them. The letter was the general will of all the signatories.

1. *Legislative Decree No. 4361*

389. In answer to a question [1] put by the Commission the representative of the complainant stated that assurances had been received that the Government would

[1] Record of Hearings, second sitting.

co-operate with the executive which would be elected by the Congress of G.G.C.L. with a view to regulating outstanding problems by means of legislation. The representative of the complainant subsequently repeated that the apprehensions felt at the outset by the complainant had proved to be exaggerated after seeing how Legislative Decree No. 4361 was applied in practice. The complainant understood that section 6 of the decree, providing for the attendance at trade union elections of a representative of the judiciary, and the increased powers which were conferred on him with respect to the supervision of elections, were of a temporary nature and designed to deal with a specific situation, so as not to leave the impression that trade union officers were elected in an irregular manner; he wished, however, to emphasise that the complainant no longer considered the legislative decree to be an obstacle to elections.

390. In reply to a question concerning the nature of the assurances mentioned by the complainant the representative of the Government stated [1] that he was authorised by the Minister of Labour to say that no assurances of any definite amendments, abrogations or changes had been given, but that the Minister was prepared to look into all outstanding questions and discuss them with the new executive officers of G.G.C.L. The Minister of Labour of Greece personally confirmed [2] at the close of the hearings that he had undertaken no obligation to amend Legislative Decree No. 4361 and, in particular, he had entered into no commitment to abrogate the provision providing for the presence of a representative of the judiciary at elections. That provision had shown itself to be a safeguard of impartiality in the election of union officials in both first- and second-degree trade union organisations. The Minister stated that he was prepared to examine all the questions raised and discuss them with the executive to be elected at the 15th Congress.

391. Mr. Papageorgiou, in reply to a question based on the previous statement of the complainant, in its communication of 2 April 1966 and again in the oral statement of its representative, that assurances that there would be legislative changes had been received from the Government, stated [2] that he was quite certain that none of the provisions of Legislative Decree No. 4361 should be either amended or abrogated. The decree facilitated the convening of trade union congresses in a democratic manner. If any amendments were to be made, they should be such as to provide still further safeguards for the workers.

2. *The System of Financing Trade Union Organisations*

392. The representative of the complainant, Mr. Fotiadis, the representative of the present provisional administration of G.G.C.L., Mr. Galatis, and the representative of the Government, Mr. Deliyannis [1], and also Mr. Papageorgiou [2] and Mr. Dimitrakopoulos [2], all agreed that the present system of financing trade union organisations through the Workers' Fund needed to be replaced as quickly as possible by a system of financing which would render trade union organisations financially independent.

393. The representative of the complainant stated [1] that in his view the new system of financing could be effected only by the adoption of regulations permitting collective agreements and arbitration awards to confer on the trade unions the right to receive, through the employer as intermediary, the contributions of their members

[1] Record of Hearings, second sitting.
[2] Ibid., third sitting.

provided for in the by-laws. He saw no other possible solution, but would not oppose any better solution which might be suggested. The representative of the present provisional administration of G.G.C.L. agreed [1] that voluntary contributions through the medium of collective agreements constituted the proper approach to ensure the financial independence of the trade unions. Mr. Papageorgiou [2] expressed the opinion that the best way to change the system was by means of collective agreements under which employers would be required to collect the contributions of workers who wished to be members of trade unions and to hand them over to the organisation representing the workers in the undertaking concerned. Mr. Dimitrakopoulos [2], while favouring a system of financing similar to that currently in use in the railway workers' union, which was financially independent, recognised that this system could not be applied in the other organisations because of their different character, and expressed the view that the financing of the various trade union organisations and of G.G.C.L. might be provided for by general collective agreements.

394. The representative of the Government stated that the Minister of Labour was awaiting the recommendations of the committee of experts and the election of the new executive of G.G.C.L. to collaborate with them in changing the present system, which he agreed must be altered or even abolished. He explained [1] that the committee of experts, whose sole function was to study the question of the financing of trade unions, had already collected the data necessary for its study. It had listened to representatives of all the important trade union organisations and was now awaiting the election of the new executive of the Confederation in order to hear its views. It would then submit its report to the Minister of Labour, who would examine the matter in collaboration with the newly elected executive. He explained [1] that until the necessary changes were made the present system of regular monthly payments by the Workers' Fund to all unions, whether or not they were affiliated to G.G.C.L., would continue to operate. Some unions were financially independent and neither sought nor received assistance from the Workers' Fund. For the rest, the Workers' Fund which was an autonomous body made its contributions on the basis of the numerical strength of the particular organisations.

3. *Preparation for the 15th Congress of the Greek General Confederation of Labour*

395. In reply to a question, the representative of the complainant stated [1] that nearly all the elections of second-degree organisations had been held in preparation for the 15th Congress of G.G.C.L.. He did not know of any objections raised to the manner in which the preparation had been carried out. Mr. Galatis, present provisional General Secretary of G.G.C.L., confirmed [1] that during his term of office, 91 per cent. of organisations at the local or occupational level had met to elect their representatives to the Congress and that, while there had been a certain amount of competition between the various leaders, that could not be regarded as an impediment to the carrying out of the preparations. Some objections had been raised by a very small number of first-degree organisations; their object, he said, was to create disturbances serving the interests of the anti-trade union policy which those organisations were pursuing. He had had the opportunity to intervene personally to make an impartial examination of some of these objections and had concluded that they were not justified.

[1] Record of Hearings, second sitting.
[2] Ibid., third sitting.

396. The representative of the Government stated [1] that the delay in holding the Congress was due to the frequent changes of provisional administrations following the decisions of the Court of First Instance. In addition, it had been necessary to wait for certain large second-degree trade union organisations to hold their congresses; some of them had been very late in doing so, for instance the Athens Workers' Centre, which had held its congress in June 1966. Since November 1965, however, there had been a stable executive of G.G.C.L. and it had taken all necessary steps during the past few months to prepare for the Congress, which should be able to meet on 24 July 1966. Some objections had been raised to the preparations for the Congress regarding the exclusion of some first-degree organisations from the second-degree organisations; however, the Government did not wish to make any comment on these objections inasmuch as they were addressed to the judicial authorities.

397. Mr. Papageorgiou, former provisional General Secretary of G.G.C.L., in reply to questions, stated [2] that the most serious obstacle to the preparations for the Congress lay in the constant changes in the provisional executive of G.G.C.L. Also, some union leaders had tried to prevent certain workers' centres from holding their elections. While he thought that no objections had been raised by the workers to the manner in which the preparations had been made, there had been some fears that attempts might be made to falsify the results of the Congress. His personal opinion was that there had been some hidden attempts on the part of a small faction to prevent the Congress from being held in conformity with the rules of the International Confederation of Free Trade Unions, but that, with the help of the General Secretary of I.C.F.T.U. in upholding these standards, the attempts would fail. He added that if the present executive remained in office until the 15th Congress the Congress would take place in a regular way.

398. Mr. Dimitrakopoulos, also former provisional General Secretary of G.G.C.L., agreed [2] with the statements concerning the preparations which had been made by the representative of the complainant. He thought that the work of the Congress would go smoothly.

399. With regard to the representative nature of the Congress, the representative of the complainant thought [1] that the Congress would represent about 90 per cent. of the Greek trade union movement. It might have represented more than 95 per cent. if some of the organisations which had been excluded from participation in it had confined themselves to proper trade union activities.

400. Mr. Dimitrakopoulos also thought [2] that the Congress would overwhelmingly represent the Greek trade union movement and that those organisations which had been excluded because of their activities did not amount to more than 5 to 8 per cent. of the total. Mr. Papageorgiou stated [2] that the Congress, in the way in which it was being convened at present, would represent the large majority of workers in the country. There were some weaknesses of an administrative character, but it would be representative.

401. The representative of the Government stated [2] that the Ministry of Labour had no statistical data indicating whether the Congress would be representative of the whole Greek trade union movement. He confirmed that the organisers of the

[1] Record of Hearings, second sitting.
[2] Ibid., third sitting.

Congress claimed that it would be representative of all organisations of workers which supported the principles of the International Confederation of Free Trade Unions, which the organisers said represented a majority of the organised workers of Greece.

4. *General Comments on Over-All Developments in the Greek Trade Union Movement*

402. In reply to a question concerning recent developments, the representative of the complainant listed [1] a series of measures taken by the Government, since the filing of the complaint, which had generally improved the prevailing conditions regarding the protection of workers in Greece. Among these were the extension of the protection afforded to trade union officials in carrying on trade union activities, the extension of social insurance coverage, the reduction in the pensionable age of workers engaged in heavy or unhealthy work, the granting of a special vacation allowance, reduction of hours of work in certain occupations, and a building programme covering workers' housing and recreational centres.

403. With regard to future developments, the representative of the complainant thought [1] that after the election of a new executive of G.G.C.L. at the 15th Congress it would be clear that the doubts which had previously existed were no longer justified. All tendencies in the movement would be united and would accept the authority of the new administration.

404. The representative of the present provisional administration of G.G.C.L. was optimistic [2] that, following the satisfactory preparations for the Congress, a good start had been made in the reconstruction of an independent and strong trade union movement, freed of the methods and faults which had characterised the movement in the past and had had such damaging results.

405. The representative of the Government did not wish [2] to make any observations on the future evolution of the Greek trade union movement, but, with respect to the future role of the I.L.O., he said that he was authorised by the Minister of Labour to state that the technical assistance already received and presently in progress from the I.L.O. in various fields was greatly appreciated. He had no doubt at all that in the trade union field also the contribution of the I.L.O. would be most valuable. The Minister was prepared to consider what further contributions the I.L.O. could make to this question upon his return to Greece and after the election of the new executive of G.G.C.L.

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[1] Record of Hearings, second sitting.

[2] Ibid., third sitting.

CHAPTER 12

CONCLUSIONS

406. The Commission must now formulate its conclusions as regards the request to close the case which had been referred to it.

407. The complaint on the violation of freedom of association, which was at the origin of the case, was filed with the I.L.O. in September 1964 by the executive of G.G.C.L. which was at that time in office, against the Greek Government. In conformity with the existing procedure for the examination of such complaints, the allegations made by G.G.C.L. were brought before the competent body of the I.L.O., that is the Committee on Freedom of Association set up by the Governing Body of the International Labour Office. During the period when the case lay within its competence, the Committee on Freedom of Association submitted two reports thereon to the Governing Body.[1] In the second of these reports, having regard both to the importance of the issues raised in the case and to the fact that the Greek Government had itself suggested that the matter be brought before the Fact-Finding and Conciliation Commission on Freedom of Association, the Committee on Freedom of Association recommended that the Governing Body decide to refer the case to the said Commission.

408. From then on, that is, since March 1965, the date on which the recommendations of the Committee on Freedom of Association in this regard were approved by the Governing Body, the case has been before the Fact-Finding and Conciliation Commission.

409. The Commission held a First Session in July 1965, on which occasion it examined the constituent elements of the case, determined the procedure which it intended to follow and established its programme of work; this programme was to include a Second Session at which the parties and their witnesses would be heard, a visit to Greece, and a final session at which the Commission would draw up a report which would include suggestions and recommendations on the substance of the case aiming at finding a solution to the problems raised in the complaint. The date for the Second Session was originally set for 6 January 1966 but, at the request of the Government and with the consent of the complainant, was postponed until July 1966.

Withdrawal of the Complaint

410. Shortly before the Second Session of the Commission, in June 1966, a new element appeared in the form of a request addressed to the Commission by the complainant asking it to consider the dispute which was at the origin of the complaint as coming to an end.

411. The Commission held its Second Session in July 1966. On this occasion it considered that the first task incumbent upon it was to define its position in the light

[1] See 78th Report, paras. 331-333, and 80th Report (see Ch. 2 above).

of the special circumstances created by the withdrawal of the complaint which had been referred to it.

412. The first question for the Commission to determine was whether the mere fact that the complainant had withdrawn his complaint was sufficient to terminate automatically its consideration of the case. If not, it would be for the Commission to decide whether the procedure which had been initiated should be continued or not.

413. In reaching a decision on this point the Commission has taken account of a number of considerations.

414. As a matter of principle and independently of the present case, the Commission considers that the first reason for not permitting the withdrawal of a complaint automatically to bring the procedure to an end is that situations could be envisaged in which the complainant might have been led to withdraw his complaint as a result of pressure brought to bear upon him; a case ought not to be closed, therefore, without the Commission first being assured that such a withdrawal fully represents the freely expressed will of the author.

415. Again as a matter of general principle and with a view to avoiding any unfortunate consequences which might arise in future cases submitted to the Commission, the Commission, considering that it is conceivable that a complainant might for personal reasons make use of its procedure as a means of pressure against the opposite party, believes that such a use of its procedure would be contrary both to the objectives for which the procedure was set up and to the dignity of the International Labour Organisation, and that to prevent such an occurrence it is important that in all circumstances the Commission itself should be responsible for taking the final decision as to whether the withdrawal of a complaint should or should not entail the interruption of the procedure.

416. Moreover, from the moment that a procedure is initiated in which several parties participate, a request for the interruption of that procedure—even if made by the complainant—is not sufficient to cause the body entrusted with the examination of the case automatically to cease to proceed further with the case. That body should be able, in the first place, to hear the opinion of all the parties to the case on the request for withdrawal. In this regard the Commission wishes to stress another important consideration which arises from the nature both of the Commission's terms of reference and of its procedures. The Commission considers that as from the moment when a case is referred to it following the filing of a complaint, the consent of the Government that it should be referred to the Commission and the referral of the question to it by decision of the Governing Body of the I.L.O., the case in question is no longer a matter of a simple dispute between the parties involved; it acquires the character of a public inquiry, under public control and the results of which will be heard by a public much wider than just the parties themselves. Accordingly, such a case no longer belongs to the parties alone. It follows that even if they are all agreed that the procedure initiated should be terminated, this cannot be the only element to be taken into account in deciding whether or not the procedure is to be interrupted.

417. The Commission notes further that the withdrawal of the complaint by those who had filed it has resulted in a situation which has already arisen in the framework of other I.L.O. procedures, in regard both to freedom of association and to other international labour standards, and that the Governing Body, on the basis of conclusions drawn up by bodies which report to it, has followed principles analogous to

those of which the Commission as an independent and impartial body has taken account in the present case.

418. Thus the Commission noted that, as early as 1937, in connection with two complaints submitted respectively by the Madras Labour Union of Textile Workers [1] and by the Société de Bienfaisance des Travailleurs de l'Ile Maurice [2], in conformity with article 23 of the Constitution of the I.L.O. (now article 24), the Governing Body had formulated the principle that, once a representation had been submitted to it, it alone was competent to decide what effect should be given to it and that " the withdrawal by the organisation making the representation is not always proof that the representation is not receivable or is not well founded ".

419. The Committee on Freedom of Association of the Governing Body, when confronted with a similar situation [3], considered that the desire expressed by an organisation which had submitted a complaint to withdraw this complaint constituted an element of which full account should be taken, but was not sufficient in itself for the Committee to automatically cease to proceed further with the case.

420. Acting on the basis of the principle formulated by the Governing Body, the Committee on Freedom of Association decided that it alone was competent to evaluate in full freedom the reasons put forward to explain the withdrawal of a complaint and to endeavour to establish whether these appeared to be sufficiently plausible so that it might be concluded that the withdrawal was made in full independence.

421. As the Committee had noted, there might be cases in which the withdrawal of a complaint by the organisation presenting it was the result not of the fact that the complaint had become without purpose but of pressure exercised by the Government against the complainants, the latter being threatened with an aggravation of the situation if they did not consent to this withdrawal.[4]

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[1] In this case, relating to a representation submitted by the Madras Labour Union of Textile Workers and at the subsequent request of this organisation that the Governing Body should defer the action envisaged, the Governing Body approved a report of a committee set up by it, which contained the following passages:

> 3. ...The Committee noted that in the case before it there is no question of the representation being withdrawn. In such a case it might be necessary for the Committee to inquire fully into all the circumstances in order to satisfy itself that no improper pressure had been applied in order to secure the withdrawal of the representation. No question of that kind arises in the present case in which the organisation responsible for the representation merely requests the suspension of the proceedings.
>
> 4. Since the proceedings upon a representation are at all times under the control of the Governing Body, it is for the Governing Body to decide whether they shall be suspended. That is indeed recognised in the communication from the Madras Labour Union of Textile Workers which confines itself to " suggesting " that further action in this matter be " deferred ". It will however be natural for the Governing Body, even though it must take its decision upon its own responsibility, to attach very great weight to the fact that the association which made the representation no longer wishes to press it. (*Official Bulletin*, Vol. XXII, No. 2, 15 July 1937, p. 65.)

[2] In this case, relating to the representation submitted by the Société de Bienfaisance des Travailleurs de l'Ile Maurice and to the subsequent request by which this organisation had requested the Governing Body to " suspend the examination of the representation " in view of the fact that " the British Government has appointed a committee of inquiry in Mauritius in order to establish other conditions of work in this country ", the Governing Body approved a report by a committee set up by it, which contained the following passage:

> 3. Mr. Curé's communication does not entail the automatic withdrawal of the representation from the agenda of the Governing Body. Indeed, when a representation is made to it, the Governing Body alone is competent to decide what effect shall be given to it. The withdrawal by the organisation making the representation is not always proof that the representation is not receivable or is not well founded. (*Official Bulletin*, Vol. XXIII, No. 2, 30 June 1938, pp. 60-61.)

[3] See 12th Report, Case No. 66 (Greece), para. 157; 34th Report, Case No. 130 (Switzerland), para. 24.

[4] See 12th Report, Case No. 66 (Greece), para. 158; 34th Report, Case No. 130 (Switzerland), para. 24.

422. In view of all the above considerations, the Fact-Finding and Conciliation Commission therefore considers that it is not precluded from further examination of the case by the mere fact of the withdrawal of the complaint.

423. The Commission was next faced with the question of determining whether Mr. Makris, who was the signatory of the request for the withdrawal of the complaint, was duly authorised to make such a request. The Commission notes that the executive of G.G.C.L. which had filed the complaint had since ceased to hold office and that Mr. Makris is no longer the General Secretary of that organisation. The Commission has therefore considered whether, in these circumstances, Mr. Makris should not be regarded as a private person, and, consequently, not entitled to withdraw a complaint which he had filed in the name of a legal entity.

424. Nevertheless, the Commission has not thought fit to adopt this viewpoint. Inasmuch as it was as a consequence of the entry into force of new legislative provisions, which had been the subject of the complaint, that the executive of G.G.C.L. and, with it, its General Secretary, had been removed, the Commission considers that it should treat as receivable the request for the withdrawal of the complaint which has been submitted by the General Secretary of the complainant originally in office acting in the name of the co-signatories of the said complaint.

425. In coming to this conclusion the Commission has been influenced by the analogy with certain principles contained in the First Report of the Committee on Freedom of Association which had indicated that it might be possible for it to be suggested that persons claiming to act in the name of a trade union organisation were not so authorised to act on the pretext that the organisation in question had been dissolved or that the complainants no longer resided in the country concerned; the Committee considered that it would not be in keeping with the goal for which the procedure for the examination of complaints of violations of freedom of association had been conceived to admit that the dissolution or pretended dissolution of an organisation by governmental action could terminate that organisation's right to invoke the said procedure.

426. Problems might indeed have arisen if differences of view regarding the request for withdrawal of the complaint had emerged between the former and the present executive of G.G.C.L. or if the request for withdrawal had come from the present executive and not from the original complainant, but, in the event, the request for withdrawal did not give rise to any objections from any of the persons concerned.

427. Having decided that its consideration of the case was not automatically ended by the request for the withdrawal of the complaint, but that the request for withdrawal was technically receivable, the Commission considered that before coming to a decision on the request for the termination of the case, it must, as one element in that decision, hear the views of all the parties and ascertain the stage that the matter had reached.

428. Only after such an examination of the position would it be possible for the Commission to decide how it should exercise its discretion to close or continue the proceedings.

429. At this stage the Commission feels that it ought to point out that Mr. Makris, General Secretary of G.G.C.L. at the time of the filing of the complaint, has failed to

appear in person before the Commission, having merely sent someone authorised to represent him.[1]

430. It has noted the explanation given by Mr. Makris's representative for his absence, which was to the effect that it was only on 18 June 1966 that he had been elected President of the Athens Workers' Centre and it was his duty to convene a meeting of the elected members of the Board with a view to organising the election of the other constitutional organs of the Centre; this prevented him from travelling to Geneva to be heard by the Commission.[1]

431. The Commission notes that the decision to hold the elections mentioned in the preceding paragraph could have been taken at any time during the past 18 months, and that Mr. Makris was personally informed more than three months ago of the date fixed for the Second Session of the Commission, which has indicated to him several times that it would like him to participate personally in this session.

432. Mr. Makris, as has been seen, was General Secretary of G.G.C.L. at the time of the filing of the complaint and co-signatory of the latter. He was the author and sole signatory of the letter withdrawing the complaint. In the view of the Commission, when a person files a complaint which he subsequently requests the Commission to consider as withdrawn, that person has an obligation to respond to a formal request from the Commission by appearing before it to justify such a request in person. In any event, it appears to the Commission that the absence of Mr. Makris was not due to any outside pressure.

433. With a view to arriving at conclusions concerning the effect to be given to the request for withdrawal of the complaint, the Commission considered that it should, on the one hand, ascertain the conditions in which the complainant had been led to withdraw his complaint and, on the other hand, determine the stage that the matter had reached, taking account of the facts of the case.

434. As regards the conditions in which the complainant has been led to withdraw his complaint, it appears from the statements of his representative that the withdrawal has been made freely by the complainant, as a result of various considerations relating to developments in the trade union situation, the marked lessening of the tension which had previously existed in this field and the prospects which he considered to exist for the settlement of certain outstanding questions by means of discussions with the Government.

435. As regards the stage that the matter has reached, this can briefly be summed up as follows, from the points of view of the three principal questions raised by the case, namely the legislative questions, the problem of the financing of trade union organisations, and the repeated postponement of the Congress of G.G.C.L., which was charged with making arrangements for the election of the executive of the Confederation.

Legislative Questions

436. As regards the legislation and, in particular, Legislative Decree No. 4361 of 1964 which was the subject of the complaint, the Commission noted during the hearings held at its Second Session that the problems raised originally by the promulgation of the decree at issue appeared to have lost much of their acuteness.

[1] See Ch. 11.

437. The complainant, who at the time of filing the complaint alleged that several sections of the legislative decree conflicted with the principles of freedom of association and, particularly, with those laid down by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by Greece, admits that the application of these sections has not been as prejudicial to the exercise of trade union rights as he had feared and, indeed, in certain respects has been beneficial.

438. Thus the Commission observes from the statements made by the representatives of the parties that the trade union elections carried out in accordance with the system established by Legislative Decree No. 4361 proceeded normally in approximately 90 per cent. of the first- and second-degree trade union organisations affiliated to G.G.C.L.

439. It appeared to the Commission during the hearings that the only provision of the legislative decree to which the complainant still had some objections was that reinforcing judicial supervision of trade union elections, which had already existed in the past to a certain extent and had not given rise to objections by the trade unions. However, the complainant admitted that this provision had not engendered any difficulties during the recent elections. Moreover, another union officer heard by the Commission stated that he was in favour of the maintenance of this provision, which in his view tended to ensure the authenticity of elections and to prevent the perpetration of frauds in this field.

440. Furthermore, in regard to this point, as on other aspects of Greek trade union legislation, the Commission notes that the Minister of Labour, without having hitherto given or wishing to give any assurance as to the specific measures which might be taken, has declared his willingness to undertake consultations with the workers of the country, as represented by the executive of G.G.C.L. to be elected by the 15th Congress of that Confederation, with a view to jointly examining possible solutions to problems of concern to the workers. The Commission also observes, from the statements of the parties, that various legislative measures taken in the interest of the workers after the filing of the complaint have been appreciated by the complainant and have given rise to a measure of confidence in the outcome of future discussions.

441. There is, without any doubt, cause to welcome the tendency which thus seems to be developing in Greece towards greater collaboration between workers' organisations and the public authorities in the construction of a satisfactory system of trade union law.

442. In this context, stress should be laid on the importance, in any future legislative reform—which would also provide an opportunity for the highly desirable codification of the various texts dealing with trade union rights—of ensuring that the provisions of the new legislation are in full conformity with those of the relevant international labour Conventions ratified by Greece. The Government appears to be aware of this necessity, since the Minister of Labour himself, in the statements he made before the Commission, expressed his determination to follow and to take into account any observations concerning freedom of association which might be made in future by the I.L.O. Committee of Experts on the Application of Conventions and Recommendations.

Financing of Trade Union Organisations

443. The question of the financing of trade union organisations arose, in the case before the Commission, in connection with allegations concerning the allocation of funds to the various trade union organisations through the Workers' Club.

444. There can be no doubt of the considerable importance, from the point of view of the free exercise of trade union rights, of the question of financing trade union organisations by means of compulsory contributions and, since 1954, through a public body, the Workers' Fund (which in 1965, for example, according to information supplied by the Government, distributed some 27 million drachmas, or roughly United States $900,000, among the various trade union organisations in the country). It becomes immediately apparent that such a system is liable to permit abuses by bestowing on the public authorities means of pressure which may affect the autonomy and independence of workers' organisations.

445. On more than one occasion during the past ten years the Committee on Freedom of Association, when considering various complaints submitted to it on this matter, has drawn the attention of the Government to the dangers inherent in a system of financing through the Workers' Fund.[1]

446. At its Second Session the Commission noted that all the parties concerned and all the persons heard by it in the present case, without exception, agreed that it was essential to abolish the existing system of financing the trade union organisations. The Commission has noted, in particular, the firm intention expressed by the Minister of Labour to bring to an end the system now in force. It is true that all the parties did not express identical views as to the system which should replace the present one. The Minister of Labour contemplated in general terms a system of voluntary contributions, based on regular dues from members of workers' organisations, paid directly to these organisations. For his part, the representative of the complainant referred to provisions which would permit collective agreements and arbitration awards to grant to trade unions the right to collect through employers the contributions due from their members under their rules. Other persons heard by the Commission also mentioned agreements at the undertaking level and general collective agreements. Notwithstanding these differences of view as to the methods to be adopted, as already mentioned, there was unanimous and clear agreement on the need to abolish the existing system. The Commission feels bound to emphasise the importance and urgency of such a reform.

447. The Commission notes from the statements made before it by the Minister of Labour that a committee has been appointed to examine the means through which the existing system of financing the trade union organisations might be replaced, that this committee has already begun its work and that it has, in particular, sought the views of the most important trade union organisations in the country on the matter. The Commission has also noted that the Minister intends, on the basis of the conclusions reached by the committee, to enter into discussions with the future elected executive committee of G.G.C.L. with a view to finding a solution to this important question.

448. Whatever solution may be adopted, and even if it should be preceded by a transitional period, care should be taken in working out the new system to ensure that

[1] See Ch. 8 above.

it will not infringe, either directly or indirectly, the rights guaranteed by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which Greece has ratified. The enjoyment of these rights presupposes financial independence and requires that workers' organisations should not be financed in a manner which would make them dependent upon the discretionary decisions of the public authorities [1] or would impair the right of workers to establish and join organisations of their own choosing.[2]

Postponement of Elections of a Permanent Executive Committee of the Greek General Confederation of Labour

449. The Commission noted that by virtue of Legislative Decree No. 4361, read together with section 69 of the Civil Code [3], the executive committee of G.G.C.L. then in office was removed in November 1964 and replaced by a provisional executive appointed by the courts. This provisional executive committee was charged essentially with the preparation of the 15th Congress of G.G.C.L., which in turn was to be responsible for organising the election of a permanent executive committee. The Commission also noted that since the above-mentioned date, in further application of section 69 of the Civil Code, there had been a succession of several provisional executive committees of G.G.C.L. appointed by the courts, with the consequence that there were repeated postponements of the 15th Congress of the Confederation. Thus, between 23 November 1964 and 24 July 1966 (the date on which the Congress is to meet) there will have been no less than seven postponements.

450. The Commission is aware that the proceedings which have resulted in these successive postponements may reflect divergences within the Greek trade union movement. It is however the case that on the basis of section 69 of the Civil Code and as a result of numerous appeals to the courts, the functioning of the provisional executive committees of G.G.C.L. was impeded and the holding of the Congress delayed.

451. Quite apart from the instability which this situation produced, it may also be wondered whether the existing system may not place the courts in a difficult position by requiring them to settle complex issues of fact in regard to which they may not possess precise elements of appreciation or criteria.

452. In these circumstances the Commission considers that the appointment of a provisional trade union executive committee by the courts can be justified only as an exceptional and essentially provisional measure, providing transitional arrangements pending its replacement, in the shortest possible time, by an executive elected by the workers concerned.

453. It accordingly appears important to reconsider the present system, which involves serious disadvantages.

* * *

454. The Commission must now indicate its position concerning the case as a whole and the request made that since the dispute which had arisen was coming to an end the procedure should be terminated.

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[1] See I.L.O.: *The Protection of Trade Union Funds and Property*, Studies and Reports, New Series, No. 58 (Geneva, 1960), pp. 96 and 174.

[2] Art. 2 of Convention No. 87.

[3] See Ch. 3 above.

455. In this regard the Commission must be guided by the twofold nature of its terms of reference; it is, on the one hand, an investigating body charged with ascertaining the facts concerning the allegations relating to infringements of trade union rights submitted to it, and, on the other hand, a conciliation body, authorised to examine, together with the government concerned, situations which have been submitted for its investigation, with a view to securing their adjustment by agreement between the parties concerned.[1]

456. While in its capacity as an investigating body it is the duty of the Commission to point out in its report the facts which it has found, as an organ of conciliation it must pay special attention to any possibilities of agreement between the parties which may appear in the course of its examination of a situation referred to it.

457. In the case at issue, and without prejudging the future evolution of the situation, the Commission has taken note of the change of atmosphere as between the time when the dispute arose and the date on which the withdrawal of the complaint was requested, a change of which the request for withdrawal was one manifestation.

458. Positions which appeared irreconcilable when the case was referred to the Commission seem today to be less rigid. Some of the fears originally expressed by the complainant have, according to the complainant itself, been largely dissipated. There appear to have been signs of good will on both sides, and there appears to be a reasonable prospect of finding a basis for agreement in a field where only a few months ago this seemed to be impossible. Admittedly, the outlook is not yet entirely clear and will depend to a very large extent on the holding of the forthcoming Congress of G.G.C.L. and the subsequent developments.

459. In this connection, having noted that the Government had confined the undertakings given by it to the assurance that it would enter into negotiations on problems concerning the trade union movement with the representatives of the workers to be elected by the 15th Congress of G.G.C.L., the Commission has considered whether it should await the result of the Congress and the negotiations which will follow before formulating any conclusions on the case.

460. The Commission has thought it preferable to formulate conclusions at this time. Inasmuch as all the parties concerned have indicated their agreement to this course, it seems to the Commission that it is by accepting the request to put an end to the procedure on the international level that it can best facilitate the future negotiations which are foreseen on the national level.

461. Thus, it clearly appears from the statements made before the Commission at its Second Session that all the parties concerned are agreed in believing that there would be a better prospect of settling remaining points of disagreement if a solution were sought at the national level.

462. Moreover, as the Minister of Labour of Greece himself stated to the Commission during the same session, the question of the conformity of the legislation and practice in Greece, on the legal level, with the provisions of the freedom of association Conventions ratified by Greece will continue to be examined by the Committee of Experts on the Application of Conventions and Recommendations within the framework of the procedure established by the I.L.O. for the supervision of the application

[1] See First Report of the Committee on Freedom of Association, para. 13.

of ratified Conventions. In this connection the Commission has taken note of the statement of the Minister of Labour that he is prepared to pay serious attention to any remarks that the Committee of Experts may formulate on the subject, in particular concerning Legislative Decree No. 4361 which was the subject of the complaint referred to the Commission. The Commission desires that the attention of the Committee of Experts should be drawn to this statement.

463. In these circumstances, taking account of the request made to it by the complainant and of the consensus of all the parties on this point, having regard to the existence of the regular procedures of the I.L.O. for the examination of the application of ratified Conventions, and bearing in mind that one of the objects set forth by its terms of reference is to promote conciliation of the parties in cases which are submitted to it, the Commission considers that the continuation of the case on the international level would not be appropriate and might prejudice the success of the efforts which seem about to be made on the national level to overcome the difficulties which have arisen and to find a solution, which the Commission hopes will be lasting, to the problems relating to the trade union situation in Greece.

464. The Commission has therefore decided to consider the procedure in the present case as terminated.

Geneva, 14 July 1966.

(Signed) Erik DREYER,
Chairman.

César CHARLONE.

Jacques DUCOUX.