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REPORT IV (2)

International Labour Conference

THIRTY-SECOND SESSION
GENEVA, 1949

APPLICATION OF THE PRINCIPLES OF THE RIGHT TO ORGANISE AND TO BARGAIN COLLECTIVELY

Fourth Item on the Agenda

GENEVA
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INTRODUCTION

The International Labour Conference, at its 31st Session (San Francisco, June-July 1948) decided to place the question of the application of the principles of the right to organise and to bargain collectively on the agenda of its next session with a view to a final decision being taken.

In accordance with paragraph 6 of Article 37 of the Standing Orders of the Conference, the Office communicated to the Governments a preliminary report containing the text of proposed international regulations, asking them to state, not later than 11 December 1948, whether they had any amendments to suggest or comments to make. [1]

By 1 February 1949 the Office had received replies from the following Governments: Australia, Austria, Burma, Canada, Ceylon, Chile, China, Ecuador, Finland, France, Haiti, Iceland, India, Iraq, New Zealand, the Netherlands, Norway, Siam, Sweden, Switzerland, Turkey, the Union of South Africa and the United Kingdom.

On the basis of these replies, the Office, in accordance with paragraph 7 of Article 37 of the Standing Orders, has prepared this final report, containing the text of the replies of the Governments and an analysis thereof, and submits to the Conference the text of a proposed international Convention supported by the conclusions formulated on the basis of the various replies. Any replies which reach the Office at a later date will be printed in a supplementary report.

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[1] International Labour Conference, 32nd Session, Geneva, 1949, Report IV (1): *Application of the Principles of the Right to Organise and to Bargain Collectively* (Geneva, I.L.O., 1948).

CHAPTER I

REPLIES OF THE GOVERNMENTS

General Observations

The following Governments declare that they have no observations to make with regard to the text of the proposed international instrument prepared by the Office : Burma, Canada, China, Ecuador, Finland, Iceland, Iraq and Siam. Of these, Burma, Canada, China and Siam add that the text provides a satisfactory basis for discussion.

AUSTRALIA

The text of the proposed international regulations listed on pages 17 and 18 of Report IV (1) is satisfactory.

The State Departments of Labour have been asked for their views on the proposed text, but replies have not been received. Accordingly, the enclosed comments must be considered as tentative, and as soon as replies are received from the States, the Government will inform the Office whether any amendments are necessary.

AUSTRIA

With regard to the points dealt with in Articles 1 to 5 of the proposed international instrument, no observations are necessary. In the opinion of the Austrian Government, these articles constitute an appropriate basis for discussion at the next session of the Conference.

CEYLON

The Government has no comments to offer or amendments to suggest to the text proposed.

CHILE

As regards the proposed text, the Government has no observations or amendments to put forward.

FRANCE

No observations are necessary with regard to Articles 1 to 5 of the proposed text which received the approval of the International Labour Conference at its session at San Francisco in June-July 1948.

HAITI

After considering the documents, it is estimated that the text proposed constitutes a suitable basis for discussion at the next session of the International Labour Conference.

No concrete proposals can be put forward, for the simple reason that regulations drawn up in such detail could not yet be put into application in Haiti in view of the present national conditions.

NETHERLANDS

The Government has no objections to Articles 2, 3, 5 and 6.

NEW ZEALAND

The New Zealand Government have no amendments to propose to the text, which they consider to be a suitable basis for discussion.

NORWAY

The Norwegian Government finds the proposed texts satisfactory as a basis for discussion.

SWITZERLAND

On general considerations, it is considered that the proposed text constitutes an adequate basis for discussion by the Conference at its 32nd Session.

TURKEY

As the proposed text is in such a form as to further the essential principles of the Turkish Act No. 5018 concerning trade unions, the Government considers that it might be adopted without modification.

Desirability and Form of the International Regulations

AUSTRALIA

Australia supports a Convention and not a Recommendation. A Convention is regarded as the logical extension of the Convention concerning freedom of association and the protection of the right to organise adopted at the 31st Session of the International Labour Conference.

AUSTRIA

The principles of the right to organise and to bargain collectively should be laid down in the binding form of a Convention, in view of the fact that these legal rules represent, in social and economic legislation, fundamental rights which, under a democratic régime, should be accorded to employers as well as to workers.

CEYLON

The Government would prefer that the proposed international instrument should be in the form of a Recommendation, but it would be prepared to reconsider this decision in the light of the discussions at the 1949 Session of the Conference.

CHILE

The Government is in favour of the adoption of a Convention, provided that the stipulations to be included therein are the same as those contained in the draft of the proposed text.

FRANCE

As it is of the utmost importance that the States Members should effectively ensure, in particular, the guarantee of the workers' right to organise and the protection of workers' organisations, it appears indispensable that the international regulations concerning these matters should take the form of a Convention, supplemented, if necessary, by a Recommendation.

INDIA

In the opinion of the Government of India the proposed international regulations should take the form of a Convention supplemented by a Recommendation. In view of the fact that a Convention should have a definite and precise text from which it will be clear to all States Members what their obligations are if they ratify the Convention, Articles 4 and 5 of the proposed international instrument are not suitable for a Convention, because of the vagueness of the terms " appropriate measures " and " appropriate machinery ". These two articles might properly be included in a Recommendation, while Articles 1, 2 and 3 might be included in a Convention. Article 6 will necessarily have to be included in both.

NETHERLANDS

The Government prefers the form of a Convention. However, the Government desires to reserve its attitude in the event of new provisions, such as the union security clauses, being inserted in the text, or in the event of Article 4 being interpreted in a manner which is not acceptable to the Netherlands Government.

NEW ZEALAND

The Government are prepared to support a Convention covering this matter. At the same time, should the Recommendation approach be more generally satisfactory to Governments, then the New Zealand Government will be prepared to support that method.

SWEDEN

The Swedish Government would prefer the interntaional instrument to take the form of a Convention.

SWITZERLAND

In its letter of 26 February 1948, the Swiss Government replied in the affirmative to the question whether the international regulations should take the form of a Convention. The Government added

that it reserved the right to specify the points of secondary importance which, in its view, should be embodied in a Recommendation rather than in a Convention. Accordingly, the Government expressed a preference for the third alternative solution of a Convention supplemented by a Recommendation.

UNION OF SOUTH AFRICA

It is considered that in view of the decision of the last session of the Conference as to the principles to be enunciated in the proposed international regulations on this question, such regulations should take the form of a Recommendation. In particular, this comment applies to the proposed Article 2 (2).

UNITED KINGDOM

In advance of the discussions at the 32nd Session of the Conference, His Majesty's Government do not feel themselves in a position to express their final views : *(a)* as to whether the proposed international instrument should more usefully and appropriately take the form of a Convention or a Recommendation ; or *(b)* as to the precise terms of such a Convention or Recommendation.

The modifications proposed in the paragraphs of the reply relating to the different articles should be read in the light of the above reservations.

Protection of the Workers' Right to Organise

The Office text of Article 1 of the proposed instrument was as follows :

Article 1

1. *Workers shall (should) be accorded adequate protection against acts of anti-union discrimination in respect of their employment.*

2. *Such protection shall (should) be accorded, more particularly, against acts calculated to—*

(a) *make the employment of a worker subject to the condition that he shall not join a union or shall withdraw from a union to which he belongs ;*

(b) *cause the dismissal of or otherwise prejudice a worker by reason of his membership in a union or because of his participation in union activities outside working hours or, with the consent of his employer, within working hours.*

CHILE

The Government wishes to take this opportunity to emphasise that it understands, in accordance with the point of view expressed in the extracts from the report of the Committee of the 31st Session

of the Conference, that nothing in the international regulations may deprive a worker, employee or employer of his inherent freedom not to exercise his right of association if he so decides.

France

With regard to the union security clauses, which were included in the first draft prepared by the I.L.O. and which the Conference excluded for the time being, attention is called to the fact that, if such provisions are again examined at the next session of the Conference, any clauses permitting the engagement or continuation in employment of workers to be made dependent on their membership of or withdrawal from a trade union appear, in those countries which have a plurality of trade unions, to be incompatible with the principles of freedom of association and of the right to work.

Netherlands

The Government has no objections to paragraph 1. The meaning of paragraph 2 *(b)* is not quite clear. There is no point in providing that an employer shall be prohibited from dismissing a worker because he engages in activities which are authorised by the employer. Probably the intention was to declare that union activities may be performed during working hours where they are based—and are so considered by the employer—on the custom prevailing in the country, region or locality concerned.

In that case, the clause might be amended to read " ... outside working hours, or within working hours in so far as such activities during working hours are considered permissible in the country, region or locality concerned".

See also the observations with regard to the desirability and form of the international regulations.

Sweden

In paragraph 1, substitute the words " on the part of the employer " for the words " in respect of their employment ".

In paragraph 2 *(b)*, delete the words " outside working hours or, with the consent of his employer, within working hours ".

Union of South Africa

The principles set out in paragraphs 1 and 2 of Article 1 of the proposed instrument do not present a difficulty, in view of the stringent provisions of the laws of the Union of South Africa protecting workers against any form of victimisation on account of trade union membership or activities. It is considered, however, that in Article 1 (2) *(b)* the word " lawful " should be inserted before the words " union activities ". It is not suggested that the proposed instrument intends to protect unlawful actions by any citizen merely because he is a worker. There is further the general principle that all citizens must observe the law. In the Convention on freedom of association, however, the Conference at the Thirty-first Session inserted a new Article 8 stipulating that workers and employers shall respect the law of the land. It does not appear necessary to repeat this provision *in toto*, and it is suggested that the insertion of the word " lawful " would meet the position. There remains the question of " closed-shop " or " union-security " pro-

visions in collective agreements. Such provisions could possibly be interpreted as prejudicing a worker who belonged to a union other than the union which negotiated the particular collective agreement. It might be advisable to make it clear that Article 1 is aimed at improper pressure to embarrass trade union activities as such.

UNITED KINGDOM

Paragraph 1.

It is considered that the words "shall (should) be accorded" might be interpreted as placing an obligation upon Governments to prescribe by law the protection envisaged in the proposed regulations, even if such protection is already afforded under the system of industrial relations which exists in the country concerned. It is, therefore, proposed that for the words "workers shall (should) be accorded adequate protection" should be substituted the words "workers shall (should) enjoy adequate protection".

Paragraph 2.

See comments on paragraph 1. It is proposed that the opening sentence of this paragraph should be redrafted to read "Workers shall (should) enjoy such protection more particularly ..."

Paragraph 2 (a).

It would appear that the words "or shall withdraw from a union to which he belongs" might be interpreted as being inconsistent with the freedom which, in some countries, exists for representatives of employers and workers to enter into arrangements, if they so desire, making the employment of workers conditional upon their membership of a particular trade union or trade unions. It is, therefore, suggested that the words "or shall withdraw from a union to which he belongs" should be replaced by the words "or shall relinquish trade union membership" so as to bring them into line with the remainder of paragraph 2 *(a)* and *(b)* which appears to be concerned with the protection of the worker against acts of discrimination against trade unions as such (see, however, comments below on paragraph 2 *(b)*). In making this proposal, His Majesty's Government are of the opinion that there is nothing in the proposed regulations which could deprive a worker (or an employer) of his inherent freedom not to exercise his right to associate if he so decides.

Paragraph 2 (b).

The words "by reason of his membership in a union" would appear to raise considerations similar to those to which attention has been drawn under paragraph 2 *(a)*, and it is suggested that they should be redrafted to read "by reason of union membership".

Protection of Workers' Organisations

The Office text of Article 2 of the proposed instrument was as follows:

Article 2

1. *Workers' organisations shall (should) be accorded adequate protection against any acts of interference on the part of employers, employers' organisations or their agents, 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 to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers, shall be deemed to constitute wrongful interference.*

UNION OF SOUTH AFRICA

For the reasons advanced during the discussions at the 31st Session of the International Labour Conference, Article 2 (2) will be so uncertain of precise interpretation that it will be unsuitable for inclusion in a document of the nature of a Convention. The principle that workers' organisations should be protected against interference from employers or employers' organisations could readily be supported either in a Convention or Recommendation—*i.e.*, interference of any description by employers. Article 2 (2) proceeds however to define wrongful interference—phraseology which appears to accept the position that there can be interference which is not wrongful. Article 2 (2), in the opinion of the Government of the Union of South Africa, should be deleted, more particularly if the proposed regulations take the form of a Convention. In such an instrument it would be quite unrealistic to include a provision requiring a Government which ratifies the Convention to enquire into the motive of any person's action—*vide* the phrase " with the object of placing such organisations under the control of the employer ". Support of a workers' organisation by " other means " will always be alleged where rival organisations operate in the same field, or where " break-away " organisations are formed, more particularly when employers or employers' organisations negotiate with one or other of such organisations. To include such a provision in a Convention would only add to the difficulties experienced where rival workers' organisations exist or are formed, more particularly if the State in question has ratified such a Convention. It is likely to lead to inter-workers' organisation disputes, which in any event present considerable difficulty to the State concerned, being brought before sessions of the International Labour Conference under the heading of the reports on Conventions. If workers are guaranteed freedom of association, and if they are protected against anti-union discrimination, it appears that reference to domination by employers is quite unnecessary. With these guarantees, a workers' organisation cannot fall under the domination of employers without the consent or co-operation of the workers. In the opinion of the Union Government the International Labour Conference would be well advised to delete this provision. It appears to contain an unjustifiable criticism of workers and their organisations. If it is retained, then the regulations should take the form of a Recommendation.

UNITED KINGDOM

Paragraph 1.

See comments on Article 1, paragraphs 1 and 2. It is proposed that the opening sentence of this paragraph should be redrafted as follows: " Workers' organisations shall (should) enjoy adequate protection ... "

Paragraph 2.

The significance to be attached to the word "wrongful" (which does not appear in the complementary paragraph 1) is not understood. It is suggested that for the words " wrongful interference " should be substituted the words " acts of interference within the meaning of this article ".

Acts of Wrongful Coercion

The Office text of Article 3 of the proposed instrument was as follows :

Article 3

Workers and employers shall (should) be accorded adequate protection against acts of wrongful coercion which would interfere with the free exercise of their right to organise.

UNION OF SOUTH AFRICA

No comments, except that the article appears to be unnecessary if it is aimed at the protection of a worker who participates in the organisation of workers. Interpreted in its broad sense, however, the article also embodies the protection of a worker who elects not to exercise his right to organise—a matter which was fully discussed at the 31st Session. It appears that insistence upon a worker joining an organisation or surrendering his employment would clearly constitute coercion which would interfere with the free exercise of his right to organise, and against this the article proposes that a worker should be accorded adequate protection. As phrased, the article would render unlawful a " union security " or " closed shop " clause, and to furnish " adequate protection " it would be necessary for a member ratifying such a Convention to prohibit such provisions.

UNITED KINGDOM

See comments on Article 1, paragraphs 1 and 2, and Article 2, paragraph 1. It is proposed that the opening sentence of this article should be redrafted as follows : " Workers and employers shall (should) enjoy adequate protection . . . "

Guarantee of the Principle of Collective Bargaining

The Office text of Article 4 of the proposed instrument was as follows :

Article 4

Appropriate measures shall (should) be taken to induce employers and employers' organisations on the one hand, and workers' organisations on the other, to enter into negotiations with a view to regulating conditions of employment by means of collective agreements.

INDIA

See observations with regard to the desirability and form of the international regulations.

NETHERLANDS

In the opinion of the Netherlands Government, the wording of this article is too restrictive. Governments should be left full freedom of action with regard to this question and the right to decide whether they wish to take such measures as are here envisaged. For this reason the Netherlands Government proposes the insertion of the words "if necessary".

UNION OF SOUTH AFRICA

On the clauses as proposed in Articles 4 and 5 the Government of the Union of South Africa has no comments to offer. It considers, however, that these provisions should be amplified by a further clause. (See proposed new article.)

Supervisory Measures

The Office text of Article 5 of the proposed instrument was as follows:

Article 5

Appropriate machinery shall (should) be established, where necessary, for the purpose of ensuring respect for the right to organise and to bargain collectively as defined in the preceding articles.

INDIA

See observations with regard to the desirability and form of the international regulations.

UNION OF SOUTH AFRICA

See observations made with regard to Article 4.

Scope of the Regulations

The Office text of Article 6 of the proposed instrument was as follows:

Article 6

The provisions of the preceding articles do not apply to officials in the service of public administrations.

AUSTRIA

The provisions of Article 6 give rise to certain objections. According to the report, the only officials of public administrations to be excluded from the application of the international regulations

will be those whose service is not governed by a private contract of employment. It seems to the Austrian Government, however, that those workers also, who are in a position of dependence, should not be deprived of their right to join an occupational organisation. It is considered that the fundamental right to organise should be extended equally to this category of workers and, therefore, the Government proposes the deletion of Article 6.

The question as to how far the special guarantees accorded to officials of public administrations under their statute require the inclusion of particular provisions in the regulations regarding the application thereof (as, for example, with regard to collective agreements or the settlement of labour disputes) is a problem to be settled when those matters are discussed in connection with the fifth item on the agenda of the Conference. In this connection, the Austrian Federal Government refers to its reply to Section II, paragraph 3 *(c)* of the questionnaire concerning freedom of association and the protection of the right to organise which was discussed last year.

India

The Government supports the inclusion of Article 6 of the proposed instrument, which adequately safeguards the position of Governments *vis-à-vis* officials in the service of public administration.

Norway

The Government, in view of the conditions in Norway, are in favour of the deletion of this article. Should this suggestion not be adopted by the Conference, it seems at any rate necessary to define clearly the expression " public administrations ".

As during the preparation of Convention No. 87 on freedom of association (San Francisco, 1948), the Government would again point out that a question has been raised regarding the right of an employer to demand that, without prejudice to the principle of freedom of association, persons employed in a leading or professional capacity must not be members of the same trade unions or trade union affiliations as those working under them. As in the case of Convention No. 87, it is understood that the Convention now under preparation constitutes no impediment to any discussion within the different countries of the above question.

Sweden

It may be pointed out that, under Swedish legislation, officials in the service of public administrations enjoy a right of negotiation, although such negotiations do not aim at the conclusion of collective agreements, but at establishing a basis for administrative decisions. A committee of experts, appointed by the Minister of Social Affairs, is at present examining the question of a possible extension of this right of negotiation so as to make it comparable with the right of negotiation of ordinary wage earners.

The Swedish Government would suggest—with reference to the amendment proposed by the Swedish Government member of the competent committee at the 31st Session of the Conference (see page 11 of the report)—that the Conference should more closely examine the case of workers who direct, distribute or supervise work in which they take part only incidentally.

UNITED KINGDOM

While " officials in the service of public administrations " is a phrase which appears to need closer definition, the reasons set out in paragraphs 16 and 17 of Report IV (1) for the inclusion of an article in these terms are not clearly understood. In advance of the discussions at the Conference, His Majesty's Government do not feel in a position to express a final view as to what the precise scope of the proposed regulations should be. They consider, however, that the regulations should, in any case, provide that the extent to which the guarantees shall apply to the armed forces and the police shall be determined by national laws or regulations.

Proposed New Article

UNION OF SOUTH AFRICA

In its reply to the questionnaire on freedom of association and during the discussions at the 31st Session, the Union of South Africa proposed the inclusion of the following additional provision :

" (1) Where population groups whose social and economic development or social and cultural institutions are analogous to those of the population of non-metropolitan territories to which Article 35 of the Constitution of the International Labour Organisation applies exist within the metropolitan territory of a Member, the said Member may, when ratifying this Convention, communicate to the Director-General of the International Labour Office a declaration—

(a) specifying modifications subject to which it will apply the provisions of this Convention to such population groups, and the area or areas in respect of which such modifications will apply ; or

(b) reserving its decision in respect of such population groups.

(2) Any Member may at any time by a subsequent declaration cancel in whole or in part a declaration specifying such modifications or reserving its decision."

It is considered that such an article should be included in any Recommendation or Convention on the right to bargain collectively. Such a provision is in complete conformity with Part V of the Declaration of Philadelphia, and would remove the discrimination between one State Member and another—a discrimination which today finds its origin in the Conventions and Constitution of the International Labour Organisation.

During discussions on this question at the 31st Session, the Government of the Union of South Africa pointed out that in dealing with population groups who were at a lower stage of social and economic development it would be both cynical and hypocritical to leave such persons to carry on collective bargaining in the normally accepted manner. Rarely does complete equality of bargaining power exist. To set up the normal machinery for such population

groups and in circumstances where a total inequality of bargaining power would exist would, it is considered, be no more than giving lip-service to a principle, well knowing that, in practice, the principle would not be brought into effective operation.

For these population groups some different methods of application of this principle on a progressive basis as clearly contemplated in Part V of the Declaration of Philadelphia must clearly be devised, and in any Recommendation or Convention that the Conference may adopt it is considered that the fact should be candidly stated and recognised.

At the 31st Session, when similar views were advanced, the view was expressed in some quarters that, while there was substance in such representations on the question of collective bargaining, the principle did not affect freedom of association. The international regulations now proposed do deal with collective bargaining.

On the necessity for removing the discrimination between one State Member and another, it is pointed out that right down the African Continent this problem is dealt with by special measures—measures which it will be quite competent to apply in view of Article 35 of the Constitution. Without a provision such as is proposed, a State Member such as the Union of South Africa, dealing with an identical problem, would be debarred from taking similar action merely because its whole population is located within its metropolitan borders, and this despite the fact that within those borders there exist isolated dependent territories of another State Member to which Article 35 of the Constitution applies.

CHAPTER II

ANALYSIS OF THE REPLIES OF THE GOVERNMENTS

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

It may be noted in the first place that ten Governments—Burma, Canada, China, Ecuador, Finland, Haiti, Iceland, Iraq, Siam and Turkey—have confined themselves to a statement that they have no observations to make with regard to the proposed instrument drafted by the Office, the text, in their view, providing a satisfactory basis for discussion by the Conference. These replies do not therefore call for any remark. The analysis of the replies of the other Governments follows the chronological order of the articles of the proposed international instrument the text of which is set forth in Chapter IV of this report.

Desirability and Form of the International Regulations

In the preliminary report communicated to the Governments [1], the Office reminded them that the Conference, at its last session deferred, until its following session (Geneva, 1949), taking a decision as to the form which the international regulations should finally assume.

In order that the next session of the Conference might reach this decision with full knowledge of the circumstances, Governments were requested to give a clear indication of their

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[1] Report IV (1), *op. cit.*

preference either *(a)* for a Convention, or *(b)* for a Recommendation, or *(c)* for a Convention supplemented by a Recommendation.

None of the twenty-three Governments have declared themselves to be opposed to the adoption of international regulations.

Two Governments (Ceylon and the Union of South Africa) express a preference for a Recommendation, but without excluding the possibility of a Convention being adopted. The Government of Ceylon declares that it would be prepared to reconsider its attitude in the light of the discussions to be held in the Conference, and the Government of the Union of South Africa bases the observations which it makes with regard to the text mainly on the hypothesis of a Convention being adopted. It is therefore reasonable to conclude that this Government would support the principle of a Convention if the Conference were able to take into account the amendments which it proposes.

The Government of India declares itself to be in favour of a Convention covering the first three articles of the proposed text and a Recommendation with regard to Articles 4 and 5 which, because of the flexibility of their terminology, are more suitable for regulation by a Recommendation. Article 6 would then have to be embodied both in a Convention and in a Recommendation.

The Swiss Government has also declared itself to be in favour of a Convention, while reserving the right to specify to the Conference the points of secondary importance which, in its view, might be embodied in a Recommendation rather than in a Convention.

The French Government considers it indispensable that the international regulations should take the form of a Convention, which, if necessary, might be supplemented by a Recommendation.

The United Kingdom Government reserves its attitude for the time being.

Six other Governments—Australia, Austria, Chile, the Netherlands, New Zealand and Sweden—declare formally that they favour a Convention. However, Chile and the Netherlands wish to make reservations in the event of the proposed text being substantially modified when it is discussed by the Conference.

To sum up, therefore, ten Governments declare that they

have no observations to make with regard to the proposed text. Nine Governments declare themselves to be in favour of the principle of a Convention, two Governments give their preference to a Recommendation, but without excluding the possibility of a Convention being adopted, while one Government reserves its decision.

Protection of the Workers' Right to Organise

Article 1

Article 1 consists of two paragraphs.

The first paragraph expresses the principle that the workers should be protected against acts of anti-union discrimination in respect of their employment.

The second paragraph cites as examples certain acts of anti-union discrimination : *(a)* acts of discrimination in respect of engagement, and *(b)* acts of discrimination during the employment.

The following eighteen Governments have made no observations : Australia, Austria, Burma, Canada, Ceylon, Chile, China, Ecuador, Finland, France, Haiti, Iceland, India, Iraq, New Zealand, Siam, Switzerland and Turkey.

The Government of the United Kingdom proposes that in paragraphs 1 and 2 of Article 1, in paragraph 1 of Article 2, and in Article 3 of the English text, the words " enjoy adequate protection" should be used in preference to the words " be accorded adequate protection ". In the view of the United Kingdom Government, the text should leave no possible doubt as to the fact that the international regulations are not intended to place Governments under an obligation to legislate, as the word " accord " might imply, if the protection prescribed by the international regulations is already assured by the system of industrial relations already existing in their countries.

With regard to paragraph 1 of Article 1, the Swedish Government proposes, in the interests of clarity, that the words " on the part of the employer " should be substituted for the words " in respect of their employment ".

The text of paragraph 2 gave rise to various observations, some relating to the problem of " union security " and others to the problem of " the freedom not to exercise the right to associate ".

Thus, the Government of the Union of South Africa—without, however, making any concrete proposal—considers it desirable to make it clear that the article in question is aimed exclusively at prohibiting improper pressure with the object of embarrassing trade union activities as such, but that it should not be interpreted as meaning that " closed shop " or " union shop " clauses in a collective agreement would be prohibited. Unless such a precaution were taken, union security clauses might be interpreted as being prejudicial to a worker belonging to an organisation other than that which concluded the collective agreement.

It is also with the object of not making union security clauses agreed between the parties illegal under the terms of any international regulation of the right to organise and to bargain collectively that the United Kingdom Government proposes that the words " or shall withdraw from a union to which he belongs ", in subparagraph *(a)* of paragraph 1, should be replaced by the words " or shall relinquish trade union membership " and that, in subparagraph *(b)* of the same paragraph, the words " by reason of his membership in a union " should be replaced by the words " by reason of union membership ".

However, the Government of the United Kingdom adds that, in its view, nothing in the proposed regulations should deprive a worker (or an employer) of his inherent freedom not to exercise his right to associate if he so decides.

Similar reservations are made by the Government of Chile.

The Netherlands Government also makes express reservations as to the attitude of its Government towards a Convention which contains any formal provision relating to union security clauses.

Finally, the French Government declares that union security clauses permitting the engagement or continuation in employment of workers to be made dependent on their membership of or withdrawal from a trade union appear, in those countries which have a plurality of trade unions, to be incompatible with the principles of freedom of association and of the right to work.

The remaining observations made in connection with paragraph 2 of Article 1 refer to the provision in subparagraph *(b)* concerning the participation of a worker in union activities " outside working hours or, with the consent of his employer, within working hours ".

It will be remembered that this formula was the result of a compromise reached by the Conference at its 31st Session and approved by all the members of the Committee on Freedom of Association and Industrial Relations. [1]

The Swedish Government proposes that these words should simply be deleted, while the Government of the Union of South Africa would prefer the insertion of the word " lawful " before the words " union activities ". The latter Government also emphasises that all persons must observe the law, and that the Conference would certainly not intend to protect unlawful actions merely on the ground that they were committed by workers. Without reproducing in the present regulations the provisions of Article 8 of the Convention on Freedom of Association and Protection of the Right to Organise [2] it would be sufficient to insert the word " lawful " before the words " union activities ", and to delete the words " outside working hours or, with the consent of his employer, within working hours ".

In the view of the Netherlands Government, the proposed text contains a contradiction in terms, in the sense that there is no point in prohibiting an employer from dismissing a worker because he does something which the employer himself has authorised. In order to clarify the principle which, in its view, underlies this provision, namely, that a worker may participate in union activities during hours of work when that is permitted by law or national, regional, or local custom, the Netherlands Government proposes that the text in question should be replaced by the words " outside working hours, or within working hours in so far as such activities during working hours are permitted in the country, region, or locality concerned ".

To sum up, subject to formal observations by a number of Governments, the fundamental guarantee which it is intended to define in Article 1 has not met with any opposition.

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[1] See Report IV (1), *op. cit.*, p. 7.

[2] Article 8 is 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."

Protection of Workers' Organisations

Article 2

This article, like the preceding one, contains two paragraphs. The first paragraph is intended to protect workers' organisations against any acts of interference in their establishment, functioning, or administration. The second paragraph assimilates to such acts any steps which an employer might take with the object of placing workers' organisations under his control.

Only the Governments of the United Kingdom and of the Union of South Africa have proposed amendments to this text.

The Government of the United Kingdom proposes that, in paragraph 2, the words " wrongful interference " should be replaced by the words " acts of interference within the meaning of this article ".

The Government of the Union of South Africa also criticises the use of the word " wrongful ", a term which, in its view, might suggest the possibility of interference which is not wrongful, and proposes, particularly in the case of a Convention being adopted, that paragraph 2 of Article 2 should be deleted. In effect, declares that Government, the provision in its proposed form would require a Government to enquire into the motives of an employer, which would be a practical impossibility. Moreover, it would place a Government in a difficult situation in cases where several rival organisations claimed the right to be recognised and an organisation which was not recognised by the employer alleged that the organisation which was recognised was " supported by him by financial or other means ". That would be a purely inter-union dispute which, by virtue of the present provision, might be brought before the Conference when it had to examine the reports on the application of Conventions.

The other twenty-one Governments have made no objection to Article 2 being maintained in its present form.

Acts of Wrongful Coercion

Article 3

Under this article, workers and employers are to be accorded adequate protection against acts of wrongful coercion which would interfere with the free exercise of their right to organise.

Only the Government of the Union of South Africa has made any observations regarding the substance of this article. The Government considers that the article is unnecessary if it is aimed at the protection of the organised worker. If it is intended also to protect the unorganised worker, the article would make any union security clause unlawful on the ground that it might be considered to constitute " an act of wrongful coercion which would interfere with the free exercise of the right to organise " and would, therefore, oblige the Government to accord adequate protection to the person concerned, in other words, to prohibit formally union security clauses.

Guarantee of the Principle of Collective Bargaining

Article 4

Under this article, appropriate measures would have to be taken to induce the parties concerned to enter into collective bargaining.

In the opinion of the Indian Government, this provision is not sufficiently explicit for inclusion in a Convention, and should, therefore, be reserved for inclusion in a Recommendation.

The Government of the Netherlands, on the other hand, considers the terminology too rigid, and proposes that the words " if necessary " should be inserted in order to leave the Governments full freedom to decide whether they wish to take " appropriate measures ".

The other twenty-one Governments make no observations.

Supervisory Measures

Article 5

No Government makes any observation with regard to this provision, which prescribes that appropriate machinery should be established, where necessary, for the purpose of ensuring respect for the right to organise and to bargain collectively.

However, the Government of India considers that the provision does not impose a sufficiently precise obligation for inclusion in a Convention and that, consequently, the point should be reserved for inclusion in a Recommendation.

Scope of the Regulations

Article 6

According to this article, the international regulations would not apply to officials in the service of public administrations.

The following eighteen Governments have made no observations: Australia, Burma, Canada, Ceylon, China, Ecuador, Finland, France, Haiti, Iceland, India, Iraq, the Netherlands, New Zealand, Siam, Switzerland, Turkey and the Union of South Africa.

The Government of the United Kingdom considers that the words " public administrations " are not defined sufficiently clearly for a definite opinion to be given, but that, as in the case of the Convention concerning freedom of association and the protection of the right to organise, the proposed international regulations should include a clause according to which " the extent to which the guarantees provided by the present Convention shall apply to the armed forces and the police shall be determined by national laws or regulations ".

The Norwegian Government also urges the need to define the term " public administrations ", but, basing its view on the position of public officials in Norway, it is rather inclined to propose the deletion of this article.

The Government of Sweden points out that officials in the service of public administrations in Sweden enjoy the right to organise and to bargain collectively. It stresses the point that officials placed in the same position of subordination as other wage earners should not be deprived of the right to organise.

The Austrian Government also proposes the deletion of this article.

With further reference to the scope of the international regulations, the Norwegian and Swedish Governments raise the question of staff who supervise the work in an undertaking. While wishing to safeguard to the full the right of all categories of workers to organise, they also wish the possibility to remain of stipulating, in collective agreements, that certain higher categories of wage earners—" persons employed in a leading or professional capacity " (Norway), or " persons who direct, distribute, or supervise work in which they take part only incidentally " (Sweden)—should not join the same organisations

as the workers under their orders. The Norwegian Government considers that any Convention should not be interpreted so as to exclude this possibility. The Swedish Government wishes this question, which it has already raised at the 31st Session of the Conference[1], to be examined once more by the Conference.

Proposed New Article

The new article proposed by the Government of the Union of South Africa aims at extending the application of the principles contained in Article 35 of the Constitution of the International Labour Organisation, relating to non-metropolitan territories, to the metropolitan territories of a State Member, in so far as there exist groups of population of a cultural and social character similar to that of the populations of non-metropolitan territories.

The proposed provision is identical with the amendment to the text of the Convention concerning freedom of association and the protection of the right to organise put forward at the 31st Session of the Conference by the representative of the Government of the Union of South Africa. That amendment was rejected by 9 votes to 75 by the Committee on Freedom of Association and Industrial Relations.[2]

The Government of the Union of South Africa takes up once more the arguments advanced last year by its representative, and declares in particular that it would not be possible to establish a system of collective bargaining to the advantage of groups of population who are not able to make use of it. It would be no more than just to extend the benefit of Article 35 of the Constitution to a State which, within the confines of its own territories, is faced by the same problems as face other countries in their non-metropolitan territories. The Government states further that at the Conference the view was expressed in some quarters that, while such arguments could not be invoked so as to bring into question the principle of freedom of association, they would not be without foundation with regard to the right to bargain collectively. Now, the principle

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[1] Cf. Report IV (1), *op. cit.*, p. 11.

[2] International Labour Conference, 31st Session, San Francisco, *Provisional Record*, No. 19, pp. VI-VII : " First Report of the Committee on Freedom of Association and Industrial Relations."

of collective bargaining is the precise question being dealt with under the proposed international regulations. The Government of the Union of South Africa concludes that, in any Recommendation or Convention which the Conference might adopt on this question, it should be candidly recognised that, in the circumstances outlined above, the principle of collective bargaining could not be applied according to the usual practice and that, consequently, the State Member concerned should be afforded the privileges possessed by other countries by the application of Article 35 of the Constitution.

CHAPTER III

CONCLUSIONS

On the basis of the replies analysed in the preceding chapter, the Office submits to the Conference for consideration a proposed Convention concerning the application of the principles of the right to organise and to bargain collectively, the text of which is set forth in Chapter IV of this report.

Desirability and Form of the International Regulations

The Conference will first have to decide as to the form which the international regulations should assume. In this connection it may be remembered that, at its 31st Session (San Francisco, 1948), the Conference decided that the question whether the international regulations should take the form of a Convention or of a Recommendation should be dealt with at the following session and that, in the meantime, the Governments should be consulted on this question. Accordingly, in its Report IV (1), the Office requested the Governments to give a clear indication of their preference either *(a)* for a Convention, or *(b)* for a Recommendation, or *(c)* for a Convention supplemented by a Recommendation.

The Governments which have communicated their replies to the Office have declared themselves unanimously to be in favour of some form of international regulation, and a very large majority favour a Convention. Only two Governments prefer a Recommendation, one prefers a Convention supplemented by a Recommendation, and another reserves its attitude for the time being.

In so far as Governments have given their reasons for preferring a Convention, they have urged especially that the international regulation of the right to organise and to bargain

collectively directly supplements the regulations concerning freedom of association and protection of the right to organise and, consequently, should likewise take the form of a Convention.

When placing before the Conference a proposed Convention concerning the application of the principles of the right to organise and to bargain collectively, it is desirable to point out that, while the proposed international regulations seek to define with the greatest possible precision the fundamental guarantees which should be enjoyed by those to whom the Convention applies, they are not, on the other hand, intended to place the States Members under an obligation to adopt a prescribed method for giving effect to such guarantees. And it is for this reason that the various articles in the proposed Convention have been drafted in a form sufficiently flexible to permit those States which already possess—either by reason of their legislation or through other means—an adequate system of protection of the right to organise and to bargain collectively to ratify the Convention without being obliged to take other measures to that end.

Proposed Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively

Articles 1 to 5 of the proposed Convention follow, with slight formal amendments suggested by the Governments in their replies to the Office, the conclusions adopted unanimously by the Conference at its 31st Session. On the other hand, Articles 6 and 7 of the proposed Convention are new. In order to give effect to a wish expressed at the last session of the Conference, it is intended that Article 6 should define the scope of the Convention. By Article 7 it is proposed that, under certain conditions, some areas of sparsely populated or little developed countries should be exempted from the application of Articles 4 and 5 of the Convention.

An explanation will be given, first of the reasons which have led to the formal amendments made to Articles 1 to 5, and secondly of the scope of the new articles.

Protection of the Workers' Right to Organise

The actual principle of the protection expressed in Article 1 of the text proposed by the Office has not been questioned in

any reply, but certain Governments propose formal amendments which, in their view, would clarify the meaning of the article without affecting its scope.

The following amendments have been made to the text in accordance with these suggestions :

In Articles 1, 2 and 3 of the English text of the proposed Convention, the phrase " workers (and employers) shall enjoy adequate protection " has been substituted for the phrase " workers (and employers) shall be accorded adequate protection ". The United Kingdom Government, in proposing this amendment, points out, it would appear with justification, that the phrase " shall be accorded adequate protection " might be interpreted, incorrectly, as placing an obligation upon Governments to prescribe by law the protection envisaged in the international regulations, even if such protection was already afforded under the system of industrial relations existing in the countries concerned.

In subparagraph *(a)* of paragraph 2 of Article 1, the Office has replaced the words " or shall withdraw from a union to which he belongs ", by the words " or shall relinquish trade union membership " and, in subparagraph *(b)* of the same paragraph, the words " by reason of his membership in a union " are replaced by the words " by reason of union membership ".

In the opinion of the United Kingdom Government, which proposed these amendments, the words " or shall withdraw from a union to which he belongs " might be interpreted as being inconsistent with the right which representatives of employers and workers enjoy, in some countries, to enter into collective agreements making the employment of workers conditional upon their membership of a particular trade union.

The Government of the Union of South Africa considers that it is necessary to make it clear that Article 1 is aimed exclusively at prohibiting acts of discrimination committed in order to embarrass " trade union activities as such ". Without such protection, adds that Government, union security clauses might be interpreted, under the article as drafted, as being prejudicial to a worker who belonged to a union other than the union which negotiated the collective agreement. The Government of the Union of South Africa makes a similar observation with regard to Article 3 of the proposed Convention.

The Netherlands Government, on the other hand, is opposed to the inclusion of any union security clauses in the Convention.

Similarly, the French Government states that, in its view, union security clauses permitting the engagement or continuation in employment of workers to be made dependent on their membership of or withdrawal from a specific trade union would, in those countries which have a plurality of trade unions, be incompatible with the principles of freedom of association and of the right to work.

Thus, the problem of union security clauses has once more been raised by several Governments. It would certainly appear to be clear from the discussions which have taken place at recent sessions of the International Labour Conference that it would not be possible to reach agreement regarding the regulation of the problem of union security by means of an international labour Convention. The only question which has to be considered is whether those States which permit union security clauses, either expressly under the terms of their national legislation, or in accordance with the established practice of certain occupations, would thereby be placed in a position in which it was impossible for them to ratify the Convention concerning the right to organise and to bargain collectively, even though in other respects they possessed a system of industrial relations completely in accordance with the provisions of the Convention. In fact, quite a number of countries of considerable industrial importance and possessing a particularly adequate system of protection of the right to organise would be faced by the choice of refraining from ratifying the Convention or of abandoning a practice deeply rooted in their traditions and accepted by the parties concerned.

If the Conference accepted the interpretation given by the Government of the United Kingdom to the amendment to the text proposed in paragraph 2 of Article 1, and embodied in the proposed Convention, a compromise solution might be found. In this way, countries (and especially those countries having a plurality of trade unions) would in no way be bound, under the provisions of the Convention, to permit union security clauses either in law or as a matter of custom, while other countries which allow such clauses would not be placed in the position of being unable to ratify the Convention.

Other observations made by Governments refer to that part of subparagraph *(b)* of paragraph 2 of Article 1 which concerns the participation of a worker in union activities "outside working hours or, with the consent of his employer, within working

hours ". These observations proposed either the outright deletion of these words or, alternatively, that they should be replaced by the word " lawful " or by a new formula in the following terms : " outside working hours or within working hours in so far as such activities during working hours are permitted in the country, region or locality concerned ".

With regard to the first proposal, that the words in question should be deleted, it should be pointed out that the provision contained in Article 1, paragraph 2, subparagraph *(b)* is the result of a compromise between the three groups of the Conference which was approved by all the members of the Committee on Freedom of Association and Industrial Relations at the last session of the Conference.

With regard to the suggestion that the provision should be replaced by the word " lawful ", it should be pointed out that Article 1 is not intended to give any particular immunity to the persons to whom the Convention applies, and that, consequently, workers (or employers) are bound, when exercising their trade union activities, to observe the law. If this reservation relating to respect for the law was not regularly understood as being implied in international texts, it would be necessary to add the word " lawful " to clarify all provisions specifying activities of any kind : contract, agreement, etc.

Finally, with regard to the third suggestion, it may be observed that employers are naturally bound to authorise certain trade union activities during working hours (such as, for instance, interviews between trade union leaders or members of works committees and the employer, etc.), if the law, or the custom having acquired the force of law, obliges them to do so, while the provision in question envisages those cases in which the employer, on his own initiative, authorises such activities during working hours without being obliged to do so by law or custom.

Protection of Workers' Organisations

Two Governments only have made observations on Article 2 and especially with regard to the word " wrongful " in paragraph 2 of the article. In the view of the Conference, which accepted this text unanimously at its last session, this word should be interpreted as meaning that the acts enumerated in paragraph 2 of the article would be wrongful under the actual terms of the international regulations in precisely the same way as the acts

defined in the first paragraph. However, in view of the fact that the word might cause ambiguity, the expression " acts of interference within the meaning of this article " has been substituted for the phrase " wrongful interference ". This amendment can only serve to make the intention of the Conference even more clear.

The Government of the Union of South Africa proposes the outright deletion of paragraph 2 of Article 2, both because paragraph 1 of Article 2 would, in its view, offer sufficient protection, and because, in its present form, paragraph 2 of Article 2 might raise considerable difficulties of interpretation.

It is desirable to point out that the acts referred to in paragraph 2 of Article 2, namely, the establishment of workers' organisations under the domination of employers or the support of workers' organisations by financial or other means, could not be legally described as " acts of interference " in the establishment, functioning or administration of workers' organisations. Hence, such acts would evade the protection provided by the international regulations. It is in order to enable workers' organisations also to benefit from the protection provided by the international regulations against acts of this kind that the Conference thought it necessary to include in Article 2 the second paragraph, which assimilates to the acts of interference referred to in paragraph 1 those acts which are enumerated as examples in paragraph 2.

Finally, it may be added that the terms of paragraph 2 of Article 2 are identical with or similar to those which are embodied in the national regulations of a large number of countries and which do not appear to have given rise to any great difficulty of interpretation.

Acts of Wrongful Coercion

The Government of the Union of South Africa, the only Government to make observations on Article 3, considers the provision superfluous because, in its view, it might be interpreted as placing Governments under an obligation to prohibit formally union security clauses. If the Conference accepted the interpretation given by the Government of the United Kingdom to Article 1 as amended, the same interpretation would also clearly be valid in respect of Article 3. In other words, the international regulations would leave it to national

regulations to decide the question of union security clauses according to the wish of the countries concerned.

Guarantee of the Principle of Collective Bargaining and Supervisory Measures

Article 4, as is clear from the flexible nature of its terminology, is not intended to place States under an obligation to take "appropriate measures" except where such measures do not already exist, either by means of legislation or by virtue of express or tacit agreements concluded between the parties in the various countries concerned. However, to render this intention even more clear, the Office, on the proposal of the Netherlands Government, has added the words "where necessary" which were already included in Article 5 of the proposed Convention.

Article 5, based on similar principles to Article 4, has not been changed.

The Government of India proposes that Articles 4 and 5 should be embodied in a Recommendation for the particular reason that their terminology does not appear to that Government to be sufficiently precise to warrant their inclusion in a Convention.

Admittedly, these provisions leave to States the greatest latitude when choosing the methods by which they should give effect to them, but it is nevertheless true that the guarantees provided by these articles are precisely defined. In fact, if appropriate collective bargaining machinery or appropriate supervisory machinery should be lacking, States ratifying the Convention would be obliged to establish such machinery while retaining full freedom of choice as to the methods to be adopted—establishment of labour relations boards, setting up of collective bargaining machinery or supervisory bodies, conclusion of agreements between employers' and workers' organisations, etc.

By including such provisions in any international regulations which might be adopted, the Conference intended that such regulations should relate not only to the protection of the right to organise, which is covered by the first three articles, but also to the right to bargain collectively, which is dealt with more particularly in Articles 4 and 5. Further reference will be made to these provisions in connection with Article 7 of the proposed Convention.

Scope of the International Regulations

The Conference will remember that the Committee on Freedom of Association and Industrial Relations expressed the view that the question of the scope of the regulations should be considered by the next session of the Conference. It was in deference to this wish that the Office drafted Article 6 of the proposed instrument.

It was in fact estimated that officials who benefit, in the majority of countries, from particular statutory conditions of employment were not exposed to the acts of discrimination prohibited under the present proposed Convention. Moreover, in the majority of countries, the conditions of service of officials are fixed not by means of collective bargaining but by law, in many cases after consultation with the trade union organisations representing officials. It may be remembered in this connection that, under the provisions of the Convention concerning freedom of association and the protection of the right to organise adopted by the Conference last year, officials enjoy, in the same way as workers and employers, the guarantees provided by that Convention.

But, while only officials in the service of public administrations were excluded from the scope of the regulations, it was intended to be understood that, on the other hand, all workers—including manual workers and salaried employees in the service of public administrations—who had not the status of officials should be covered by any international regulations that might be adopted.

It was mentioned in Chapter II that the majority of the Governments have given their unreserved approval to this formula. However, certain Governments have urged the need to define the term " public administrations ". Others have pointed out that, in their countries, officials in the service of public administrations enjoy the right to organise and to bargain collectively, and, accordingly, these Governments have proposed the deletion of this article.

It would be useless to attempt to give, in an international context, a definition of the conception of " public administrations ", which, in certain countries, includes today not only the Government services properly so-called, but also very large sectors of the national economy. The true criterion for the definition of officials must, in the view of the Office, be sought in

the statutory conditions governing their employment, conditions which offer them guarantees at least equal to those provided by the proposed Convention. But it would appear that in certain countries officials do not enjoy statutory conditions of employment which genuinely protect them from the acts of interference which the international regulations are intended to prohibit. Accordingly, in order to take account of these differences between national regulations and also in order to find a compromise formula which may give satisfaction to all concerned, the Office has redrafted Article 6 in the following terms :

> The provisions of the preceding articles do not apply to public officials benefiting from conditions of employment which protect them from interference with the free exercise of the right to organise as defined by the present Convention.

Further, the Government of the United Kingdom has expressed the opinion that the regulations should in any event include a clause, modelled on Article 9, paragraph 1 of the Convention concerning freedom of association and the protection of the right to organise, providing that " 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 ".

In view of these various proposals, the Conference will be called upon to decide whether it wishes to substitute Article 9, paragraph 1 of the Convention concerning freedom of association referred to above for the present Article 6 of the proposed Convention, or, alternatively, whether it desires to complete the proposed Convention by the addition of a new article reproducing Article 9, paragraph 1 of the Convention concerning freedom of association.

With further reference to the scope of the international regulations, the Norwegian and Swedish Governments have once more called the attention of the Conference to the case of persons who direct the work in undertakings. While wishing to safeguard to the full the right to organise and to bargain collectively of such categories of workers, those Governments nevertheless wish the possibility to remain of stipulating in collective agreements that certain categories of staff employed in a supervisory capacity should not belong to the same organisations as the workers placed under their orders.

In this connection, it may be pointed out that the international regulations are in no way intended to limit the contractual freedom of the parties or, therefore, to prevent them

from providing in collective agreements that the supervisory staff should not be members of the same organisations as the workers placed under their orders, with the express reservation, however, that national regulations should ensure that all categories of wage earners, whatever the nature of their occupation, should enjoy the guarantees of the right to organise and to bargain collectively prescribed by the present proposed Convention.

In these circumstances, it does not appear necessary to include a special provision for this purpose in the proposed Convention.

Exemption from the Application of Articles 4 and 5 of the Proposed Convention

In its reply to the text proposed by the Office, the Government of the Union of South Africa proposes the addition of a new article to the proposed regulations, to provide that those States Members within whose territories there exist groups of population whose cultural and social character is analogous to that of the population of non-metropolitan territories should benefit from the application of the principles of Article 35 of the Constitution of the International Labour Organisation which relates to non-metropolitan territories.

The Conference will remember that, at its 31st Session, the Committee on Freedom of Association and Industrial Relations rejected by 9 votes to 75 an amendment in identical terms put forward by the same Government. But, in addition to the reasons mentioned last year, the Government of the Union of South Africa urges, in its reply, that at the Conference the view was held in certain quarters that, while the arguments put forward in support of the amendment could not be invoked so as to bring into question the principle of freedom of association, they were nevertheless not without foundation with regard to the right to bargain collectively. Now, the Government adds, it is this right which is being dealt with in the proposed Convention submitted to the Conference.

It was pointed out above that the proposed Convention consists, in fact, of two parts: the first, consisting of the first three articles, relates to the right to organise, while the second, consisting of Articles 4 and 5, relates more particularly to the right to bargain collectively. The first three articles, like the provisions of the Convention concerning freedom of association and the protection of the right to organise, bear a character of universality which the Conference refused to allow to be question-

ed at its preceding session. On the other hand, Articles 4 and 5 provide for the establishment of machinery or agencies, where necessary, for the purpose of inducing the parties to regulate conditions of employment by means of collective agreements. On several occasions in the past, the Conference has included in international Conventions which lay upon States an obligation to establish machinery or services of a technical kind clauses exempting a State Member from the application of all or certain of the provisions thereof, if the territory of the State Member includes large areas where, by reason of the sparseness of the population or of the stage of development, the competent authority considers it impracticable for these provisions to be enforced. Examples of this kind of exemption may be found in Article 29 of the Convention (No. 81) concerning labour inspection in industry and commerce and in Article 12 of the Convention (No. 88) concerning the organisation of the employment service.

In order that the Conference may have an opportunity of considering the desirability of a similar exemption with regard to the application of Articles 4 and 5 mentioned above, the Office has accordingly included a new Article 7 in the proposed Convention.

Non-Metropolitan Territories

Articles 8 and 9 of the proposed Convention have been drawn up in conformity with Article 35 of the Constitution of the Organisation. It will be observed that they have not been drafted in exactly the same form as that of the articles which were included in the Conventions adopted in 1947 and 1948. The entry into force of the Constitution of the International Labour Organisation Instrument of Amendment, 1946, has led to a simplification of the introductory portion of these articles. Further, it appears desirable to explain here the meaning of subparagraph *(d)* of Article 8 (1). Hitherto, this subparagraph consisted of the following words: "the territories in respect of which it reserves its decision". The purpose of this provision was to enable a State to reserve its decision until such time as the position with regard to the territories in question had been more carefully examined. It would no doubt be preferable for this reason to be clearly expressed in the text. It is therefore proposed that, at the end of subparagraph *(d)*, the words "pending further consideration of the position" should be added.

CHAPTER IV

PROPOSED TEXT

The following pages contain the text of the proposed Convention concerning the application of the principles of the right to organise and to bargain collectively, which is submitted to the 32nd Session of the Conference.

Proposed Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively

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 Thirty-second Session on 8 June 1949, and

Having decided upon the adoption of certain proposals concerning the application of the principles of the right to organise and to bargain collectively, which is the fourth item on the agenda of the Session, and

Having determined that these proposals shall take the form of an international Convention,

adopts this day of of the year one thousand nine hundred and forty-nine the following Convention, which may be cited as the Right to Organise and to Bargain Collectively Convention, 1949 :

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 to 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 his participation in union activities outside working hours or, with the consent of his employer, within working hours.

Article 2

1. Workers' organisations shall enjoy adequate protection against any acts of interference on the part of employers, em-

PROJET DE CONVENTION CONCERNANT L'APPLICATION DES PRINCIPES DU DROIT D'ORGANISATION ET DE NÉGOCIATION COLLECTIVE

La Conférence générale de l'Organisation internationale du Travail,

Convoquée à Genève par le Conseil d'administration du Bureau international du Travail, et s'y étant réunie le 8 juin 1949, en sa trente-deuxième session,

Après avoir décidé d'adopter diverses propositions relatives à l'application des principes du droit d'organisation et de négociation collective, question qui est comprise dans le quatrième point à l'ordre du jour de la session,

Après avoir décidé que ces propositions prendraient la forme d'une convention internationale,

adopte, ce jour de mil neuf cent quarante-neuf, la convention ci-après, qui sera dénommée Convention sur le droit d'organisation et de négociation collective, 1949 :

Article 1

1. Les travailleurs doivent bénéficier d'une protection adéquate contre tous actes de discrimination antisyndicale à l'emploi.

2. Une telle protection doit notamment s'appliquer en ce qui concerne les actes ayant pour but de :

a) subordonner l'emploi d'un travailleur à la condition qu'il ne s'affilie pas à un syndicat ou cesse de faire partie d'un syndicat ;

b) congédier un travailleur ou lui porter préjudice par tous autres moyens, en raison de son affiliation syndicale ou de sa participation à des activités syndicales en dehors des heures de travail ou, avec le consentement de l'employeur, durant les heures de travail.

Article 2

1. Les organisations de travailleurs doivent bénéficier d'une protection adéquate contre tous actes d'ingérence de la part

ployers' organisations or their agents, 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 to support workers' organisations by financial or other means, with the object of placing such organisations under the control of employers, shall be deemed to constitute acts of interference within the meaning of this article.

Article 3

Workers and employers shall enjoy adequate protection against acts of wrongful coercion which would interfere with the free exercise of their right to organise.

Article 4

Appropriate measures shall be taken, where necessary, to induce employers and employers' organisations on the one hand, and workers' organisations on the other, to enter into negotiations with a view to regulating conditions of employment by means of collective agreements.

Article 5

Appropriate machinery shall be established, where necessary, for the purpose of ensuring respect for the right to organise and to bargain collectively as defined in the preceding articles.

Article 6

The provisions of the preceding articles do not apply to public officials benefiting from conditions of employment which protect them from interference with the free exercise of the right to organise as defined by the present Convention.

Article 7

1. In the case of a Member the territory of which includes large areas where, by reason of the sparseness of the population or the stage of development of the area, the competent authority considers it impracticable to apply the provisions of Articles 4 and 5 of this Convention, the authority may exempt such areas

des employeurs, des organisations d'employeurs ou de leurs agents, dans leur formation, leur fonctionnement ou leur administration.

2. Sont notamment assimilées à des actes d'ingérence au sens du présent article des mesures tendant à provoquer la création d'organisations de travailleurs dominées par l'employeur, ou à soutenir des organisations de travailleurs par des moyens financiers ou autrement, dans le dessein de placer ces organisations sous le contrôle de l'employeur.

Article 3

Les travailleurs et les employeurs doivent bénéficier d'une protection adéquate contre les actes de pression illicite tendant à porter atteinte au libre exercice de leur droit syndical.

Article 4

Des mesures appropriées doivent, si nécessaire, être prises pour induire les employeurs et les organisations d'employeurs, d'une part, et les organisations de travailleurs, d'autre part, à engager des négociations en vue de régler les conditions d'emploi par voie de conventions collectives.

Article 5

Des organismes appropriés doivent, si nécessaire, être institués pour assurer le respect du droit d'organisation et de négociation collective défini par les articles précédents.

Article 6

Les dispositions des précédents articles ne s'appliquent pas aux fonctionnaires publics bénéficiant d'un statut d'emploi qui les met à l'abri des atteintes au libre exercice du droit d'organisation tel qu'il est défini par la présente convention.

Article 7

1. Lorsque le territoire d'un Membre comprend de vastes régions où, en raison du caractère clairsemé de la population ou en raison de l'état de leur développement, l'autorité compétente estime impraticable d'appliquer les dispositions des articles 4 et 5 de la présente convention, elle peut exempter

from the application of the said articles of this Convention either generally or with such exceptions in respect of particular undertakings or occupations as it thinks fit.

2. Each Member shall indicate in its first annual report upon the application of this Convention submitted under Article 22 of the Constitution of the International Labour Organisation any areas in respect of which it proposes to have recourse to the provisions of the present article and shall give the reasons for which it proposes to have recourse thereto; no Member shall, after the date of its first annual report, have recourse to the provisions of the present article except in respect of areas so indicated.

3. Each Member having recourse to the provisions of the present article shall indicate in subsequent annual reports any areas in respect of which it renounces the right to have recourse to the provisions of the present article.

Article 8

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraph 2 of Article 35 of the Constitution of the International Labour Organisation shall indicate —

(a) the territories in respect of which the Member concerned undertakes that the provisions of the Convention shall be applied without modification;

(b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;

(c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;

(d) the territories in respect of which it reserves its decision pending further consideration of the position.

2. The undertakings referred to in subparagraphs *(a)* and *(b)* of paragraph 1 of this article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

lesdites régions de l'application des articles susdits de la convention soit d'une manière générale, soit avec les exceptions qu'elle juge appropriées à l'égard de certains établissements ou de certains travaux.

2. Tout Membre doit indiquer, dans son premier rapport annuel à soumettre sur l'application de la présente convention en vertu de l'article 22 de la Constitution de l'Organisation internationale du Travail, toute région pour laquelle il se propose d'avoir recours aux dispositions du présent article, et doit donner les raisons pour lesquelles il se propose d'avoir recours à ces dispositions. Par la suite, aucun Membre ne pourra recourir aux dispositions du présent article, sauf en ce qui concerne les régions qu'il aura ainsi indiquées.

3. Tout Membre recourant aux dispositions du présent article doit indiquer, dans ses rapports annuels ultérieurs, les régions pour lesquelles il renonce au droit de recourir auxdites dispositions.

Article 8

1. Les déclarations qui seront communiquées au Directeur général du Bureau international du Travail conformément au paragraphe 2 de l'article 35 de la Constitution de l'Organisation internationale du Travail devront faire connaître :

a) les territoires pour lesquels le Membre intéressé s'engage à ce que les dispositions de la convention soient appliquées sans modification ;

b) les territoires pour lesquels il s'engage à ce que les dispositions de la convention soient appliquées avec des modifications, et en quoi consistent lesdites modifications ;

c) les territoires auxquels la convention est inapplicable, et, dans ces cas, les raisons pour lesquelles elle est inapplicable ;

d) les territoires pour lesquels il réserve sa décision en attendant un examen plus approfondi de la situation à l'égard desdits territoires.

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

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

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

Article 9

1. Declarations communicated to the Director-General of the International Labour Office in accordance with paragraphs 4 or 5 of Article 35 of the Constitution of the International Labour Organisation shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications, it shall give details of the said modifications.

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

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

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

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

Article 9

1. Les déclarations communiquées au Directeur général du Bureau international du Travail conformément aux paragraphes 4 et 5 de l'article 35 de la Constitution de l'Organisation internationale du Travail doivent indiquer si les dispositions de la convention seront appliquées dans le territoire avec ou sans modification ; lorsque la déclaration indique que les dispositions de la convention s'appliquent sous réserve de modifications, elle doit spécifier en quoi consistent lesdites modifications.

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

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

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