

COMMISSION ON HUMAN RIGHTS

SECOND SESSION

TRADE UNION RIGHTS (FREEDOM OF ASSOCIATION)

MEMORANDUM BY THE DIVISION OF HUMAN RIGHTS

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MEMORANDUM BY THE DIVISION OF HUMAN RIGHTS

SECTION A

I. The Task of the Commission of Human Rights in the Sphere of Trade Union Rights (Freedom of Association)

At its Fourth Session on 24 March 1947, the Economic and Social Council adopted a Resolution (No. 52 IV) in which it resolved to transmit certain documents on the Guarantees for the Exercise and Development of Trade Union rights presented to the Council by the World Federation of Trade Unions and the American Federation of Labour to the Commission on Human Rights "in order that it may consider those aspects of the subject which might appropriately form part of the Bill or Declaration of Human Rights". At the same time, the Council decided to transmit the documents to the International Labour Organization with the request that the item "guarantees for the exercise and development of Trade Union Rights" may be placed upon its agenda and considered at the forthcoming (1947) Session and that a report be sent by the ILO to the Economic and Social Council for its consideration at the next meeting of the Council.

At its Fifth Session on 8 August 1947, when it had before it the report by the International Labour Organization, the Economic and Social Council passed a Resolution (Resolution 84 (V)) where it said, inter alia, that it "awaits further reports on the subject to be transmitted by the ILO and awaits also the report which it will receive in due course from the Commission on Human Rights on those aspects of the subject which might appropriately form part of the Bill or Declaration of Human Rights". The Economic and Social Council also stated that it "considers that the question of enforcement of rights, whether of individuals or of associations, raises common problems which should be considered jointly by the United Nations and the ILO." It requested the Secretary-General to arrange for co-operation between the ILO and the Commission on Human Rights in the study of these problems.

The subject of Trade Union Rights (freedom of association) was also on the agenda of the Second Regular Session of the General Assembly (1947). On 30 October 1947, the Third Committee of the General Assembly adopted a resolution (document A/C.3/183) which at the time of writing had not yet come before the plenary session of the General Assembly, to the effect that the General Assembly approves the Economic and Social Council Resolutions No. 52 and 84 and decides to transmit the report of the International Labour Organization to the Commission on Human Rights with the same objects as those stated in the Resolution No. 52 of the Economic and Social Council. The full text of Resolutions 52 and 84 of the Economic and Social Council and of the Resolution adopted by the Third Committee of the General Assembly are attached to this paper as Annexes A, B and C. From these, it will be seen, therefore, that the Commission on Human Rights has a dual task:

1. To examine the substantive proposals submitted by the World Federation of Trade Unions and the American Federation of Labor and, according to the Resolution of the General Assembly, also the ILO Report in connection with the drafting of the International Bill of Human Rights;
2. To study - in co-operation with the International Labour Organization - the problem of enforcement (implementation).

Questions arising from this dual task which the Commission on Human Rights may wish to consider will be found in Section E of this paper.

SECTION B

II. Suggestions made by the World Federation of Trade Unions and the American Federation of Labor

1. The WFTU requested the Secretary-General of the United Nations by a letter dated 14 January 1947 to place on the agenda of the Economic and Social Council, inter alia, the item "Guarantees for the Exercise and Development of Trade Union Rights". On 26 February 1947, the WFTU submitted to the Economic and Social Council the following draft resolution on the guarantees for the exercise and development of trade union rights (document E/C.2/28; see also document A/374, Annex 1).

Draft Resolution Suggested by the World Federation of Trade Unions

- "I. Trade Union Rights are recognized as an inviolable prerogative enjoyed by salaried workers for the protection of their professional and social interests.
- II. Trade union organizations should be able to administer their own affairs, to deliberate and freely decide on all questions falling within their competence, in conformity with the law and with their constitution, without interference in their duties from governmental or administrative bodies.
- III. There should be no obstacle to the federation of trade union organizations on the occupational or inter-occupational level, whether locally, regionally, nationally or internationally.
- IV. All legislation which places restrictions on the above-mentioned principles is contrary to the economic and social collaboration laid down by the Charter of the United Nations.
- V. The Economic and Social Council decides to set up a Committee for Trade Union Rights which will safeguard, in a permanent fashion, respect for trade union rights. On every occasion on which the aforementioned principles are violated, the Committee will make the necessary enquiries and will submit recommendations to the Economic and Social Council as to the measures to be adopted."

2. The American Federation of Labor, by a letter dated 12 March 1947, requested the Secretary-General to submit to the Economic and Social Council its memorandum and draft resolution on the guarantees for the exercise and development of trade union rights (document E/C.2/32; see also document A/374, Annex II). This memorandum referred to the draft proposals of the International Bill of Rights submitted by the American Federation of Labor and circulated to the members of the Council on 20 August 1946 as document E/CT.2/2. The American Federation of Labor, after examining in detail the proposals submitted by the WFTU suggested that these proposals be amended as follows:

Draft Resolution Suggested by the American Federation of Labor

- "I. The Economic and Social Council recommends, in accordance with the Agreement between the United Nations and the ILO that the ILO take into early consideration the problem of trade union rights with reference to questions as follows:
- A. To what extent have workers the right to form, join or belong to labour or trade union organizations of their own choice without interference or coercion by the government?
 - B. To what extent are trade unions free to operate in accordance with the decision of their own members, whether on a local, regional or national basis, without interference by governmental authorities?
 - C. To what extent are workers free to select, elect or appoint officers of their own trade unions?
 - D. To what extent are unions free to raise their own funds and dispose of them by decisions of their own memberships or in accordance therewith, under their own rules and regulations without governmental interference?
 - E. To what extent are workers or their organizations free to communicate with other workers or organizations, either within the confines of the same country or outside the country?
 - F. To what extent are local, regional or national trade union members free to join international organizations, without fear and free from governmental interference?
 - G. To what extent are labour or trade union organizations free to deal with the employers of workers they represent and conclude collective agreements and participate in their formulation?
 - H. To what extent is the right of workers and of their organizations to resort to strikes recognized and protected?

- I. To what extent are workers and their trade unions free to resort to voluntary arbitration, free from government domination and interference, in order to settle their differences with their employers?
 - J. To what extent have workers and their organizations the right to press for governmental action for the purpose of securing legislative or administrative action on their behalf?
 - K. To what extent are workers free to move from one part of the country to another, within the confines of national borders, and to what extent are they free to migrate outside the national boundaries?
 - L. To what extent are workers free to accept employment, to stay on the job or to abandon it, in accordance with their own decision, without governmental coercion or interference?
 - M. To what extent, if any, does forced or slave labour exist and how are individuals of whatever nationality, race, sex, language, or religion protected against compulsory, or forced labour?
 - N. To what extent are working conditions and workers' welfare protected by legislative standards and what is the nature and character of such protection?
- II. The Economic and Social Council further recommends to the ILO that it drafts on the basis of the survey recommended above, for the purpose of ultimate submission to the various States, proposals for:
- (a) Incorporating the rights universally recognized.
 - (b) Protecting the workers and their organizations against the violation of basic labour or trade union rights,
 - (c) Providing proper measures for the enforcement of such rights".

SECTION C

III. Proceedings and Decision of the Fourth Session of the Economic and Social Council.

The unanimous opinion of the Council was that it was not desirable to discuss the substance of the matter at the end of the session as it was of an extensive nature the consequence of which would be manifold and important. However, the Council had to determine between the two points of view put forward by its members, namely whether the whole question should be postponed for consideration at the next meeting of the Council or whether the subject ought to be referred to the ILO for consideration at its forthcoming session and for the submission of a report from the ILO to the Council at its next session. The United Kingdom delegation suggested that it would be desirable, in accordance with

the agreement concluded between the United Nations and the ILO, to refer the question to the ILO and that after having its report the matter may be considered at the next session of the Council. The United States delegation, while supporting the proposal of the United Kingdom delegation, also desired to refer the matter to the Human Rights Commission with regard to those aspects of it which might come within its competence. These proposals were supported in principle by the delegations of Canada, Cuba, Netherlands, New Zealand, and Turkey. The delegations of France, Czechoslovakia, the Byelorussian Soviet Socialist Republic, Norway and the Union of Soviet Socialist Republics, were opposed to such a procedure wishing to postpone the whole question to the next session of the Council. The French and the Soviet Union delegations felt that the ILO could nevertheless present its recommendations and report on the matter voluntarily without any specific direction from the Council. The Czechoslovak delegation pointed out that it was desirable to discuss the question as a matter of principle before referring it to a specialized agency. The delegation of the Soviet Union pointed out that a decision to transfer the question to the ILO would undermine the authority of the Economic and Social Council, especially as the WFTU had desired to put forward its points of view directly to the Economic and Social Council. The Economic and Social Council adopted by a majority vote Resolution No. 54 (IV) which is reproduced in Annex A of this document.

IV. Proceedings and Decision of the Fifth Session of the Economic and Social Council

The Economic and Social Council had before it the Report of the ILO. The International Federation of Christian Trade Unions also presented a statement on the Freedom of Association and Trade Union Rights (document E/C.2/50). The Council heard the representatives from the ILO, the WFTU, and the American Federation of Labor, and the International Federation of Christian Trade Unions. The World Federation of Trade Unions expressed its feeling, without in any way disparaging the work of the International Labour Organization, that the problem with which it was concerned had not been dealt with satisfactorily and insisted that the Economic and Social Council itself should act on the matter immediately. It asked the Council to adopt a declaration of principles to serve as a basis for the recognition that the question of Trade Union Rights was associated with all the activities of the Council and to create a special commission which, in a flexible and practical manner, would be able to effectuate those principles. The American Federation of Labor felt that, though the report of the ILO had not fulfilled all the requests expressed in the document submitted by the American Federation of Labor, a new committee set up by the United Nations would never have been capable of acting as rapidly or of developing within a short period of time an adequate machinery for implementation. The American Federation of Labor also hoped that the final draft of the Bill of Human Rights would not weaken the decisions of the Drafting Committee of the Commission on Human Rights and that the draft may be adopted not later than 1948. The IFCTU pointed out that it would be necessary to create special machinery for safeguarding freedom of association and that the Council, the Commission on Human Rights and the General Assembly should give their full backing to the ILO.

The discussion between the various delegations in the Council centered on three points: First, whether the Council should take up the original proposal of the WFTU as a basis for a decision; this proposal of the Delegation of the Union of Soviet Socialist Republics was based on the contention that the report of the ILO should be regarded as an information document, complementary to the main proposals made by the WFTU. The proposal was rejected. The second point which was put forward early in the course of the discussion by the French Delegation was, that the Economic and Social Council, through its subsidiary organs, ought to carry on its own studies in order to co-ordinate the results, and that the Social Commission should be asked to give advice to the Council on the social aspects of the rights of Trade Unions just as the Commission on Human Rights had been asked to give its advice on human rights. The Delegation of Czechoslovakia desired to transmit the report of the ILO to the Social Commission, requesting that Commission to make proposals in order to complete and consolidate the text transmitted to the Council by the ILO, in a practical form, by an analysis of the legal situation and of the actual facts, taking into account the observations of the interested parties; and to bring its recommendations to the Council concerning the implementation of the proposed principles. A Norwegian amendment to this proposal, providing for the transmission of the Report of the ILO to the Social Commission for its comments upon the ILO report to the next session of the Council in order that the Council may present the comments it desired for the co-ordination of the ILO in drafting one or more conventions in this matter was rejected. The United Kingdom delegation, which submitted a resolution, together with the Delegations of the Netherlands and the United States, felt that any proposal for submitting the question to another organ besides the ILO would mean duplication of work, a loss of special competence available in the ILO, and that in the working out of practical measures to deal with this subject, the actual and practical groundwork should be undertaken by an organization in which the workers have the right of full participation and the right to vote.

The Resolution as adopted by the Economic and Social Council was substantially the same as the one put forward by the Delegations of the United Kingdom, Netherlands, and the United States of America, with the addition of two paragraphs forming (a) and (b) of paragraph three which originally formed items (a) and (b) of the Czechoslovak Draft Resolution. The text of Resolution No.84(V) is reproduced in Annex B of this document.

It will be noted that in this Resolution, the Economic and Social Council has expressed its wish to receive a report from the Commission on Human Rights. The Commission has also been asked to study the problem of enforcement in addition to the work concerning the substance of the International Bill of Human Rights.

V. Proceedings and Decision of the Second Session of the General Assembly (1947)

The Economic and Social Council transmitted its Resolution No.84 (V) and the Report of the ILO to the General Assembly at its Second Session (documents A/374 and A/374/Add.1). The item on Trade Union Rights (Freedom of Association) was placed on the agenda of the Third Committee of the General Assembly.

The Third Committee discussed the subject at its sixty-third, sixty-fourth, sixty-fifth and sixty-sixth meetings. The Committee failed to agree upon a resolution and decided to establish a Sub-Committee of fifteen members at its sixty-sixth meeting to study the proposals submitted to date by the various delegations and to draft a unanimous compromise proposal or to submit a minimum number of alternative proposals. The discussion in the Third Committee elicited that there were three points of view. The delegations of France, the United Kingdom and the United States of America, among others, felt that the ILO was specially well-fitted to give effective assistance to the Economic and Social Council in the matter of Trade Union Rights and that the Commission on Human Rights should collaborate with the ILO in connection with those aspects of Trade Union Rights (Freedom of Association) which would form part of the Bill of Human Rights. The General Assembly should give an immediate support to the matter and the work of the ILO, as hitherto the supervision of the undertakings given by the various governments had been ineffective.

The delegations of the Dominican Republic and Argentina, among others, proposed to broaden the scope of the resolution of the Economic and Social Council so as to include the consideration of other safeguards such as minimum wages, compulsory social insurance, right to work, as might provide for the minimum well-being within the reach of all the workers of the world.

The delegations of the Union of Soviet Socialist Republics, Czechoslovakia and Yugoslavia, among others felt that the Economic and Social Council, without discussing the substance of the ILO Report, had accepted its principles and referred it to the General Assembly. Further, this Council had failed to recognize and give adequate consideration to the principles embodied in the request made by the WFTU to the Council. The ILO included other groups as well as workers and it placed employers' organizations on the same footing as the workers. The ILO had not dealt specifically with Trade Union Rights, but with Freedom of Association. The subject under consideration was the safeguarding of the workers' rights. There had been no discussion of the principles embodied in the Report of the ILO, which, especially as regards Articles 7 and 8 of the decisions of the International Labour Conference placed Trade Union Rights in the hands of the employers. Moreover, it was not enough to consider the problem simply as a question of the workers' rights to form Trade Unions; those Trade Unions had to have freedom of action. The ILO had approached the problem purely from a legal standpoint without giving sufficient consideration to the social and economic aspects, and on the supposition that employers and employees were wholly free to make their decisions independently. It was obvious that there was no lack of general declarations of "paper" rights; it was their application which had to be watched. The resolutions put forward by the other delegations were not effective since no concrete measures for verifying the extent to which Trade Union Rights were being implemented in various countries had been included. The Secretary-General of the United Nations, together with the ILO, the WFTU and the Commission on Human Rights, ought to be asked to study the minimum guarantees required to ensure the rights of Trade Unions (Freedom of Association).

The Sub-Committee failed to reach a unanimous agreement as regards any one resolution and it submitted to the Third Committee a compromise proposal agreed upon by a majority of the members. Some concession was made in this resolution to meet the desires of certain delegations by the inclusion of paragraphs five and six. The delegations of Argentina, Czechoslovakia, and Yugoslavia submitted their own amendments. The Third Committee, at its seventy-third meeting, approved the Resolution of the Sub-Committee by a majority vote and rejected all the amendments. (See Report of Third Committee to the General Assembly, document A/444.) The text of the Resolution is reproduced in Annex C of this document.

This Resolution not only approves the two Resolutions Nos. 52 and 84 of the Economic and Social Council but transmits to the Commission on Human Rights the report of the ILO (last but one paragraph) and recommends collaboration between the ILO and the U.N. in the matter of enforcement (last paragraph).

SECTION D

THE REPORT OF THE INTERNATIONAL LABOUR ORGANIZATION AND THE PROPOSALS OF THE W.F.T.U.

VI. General Observations

The report of the ILO which was before the Fifth Session of the Economic and Social Council and also before the 1947 General Assembly, and which will have to be considered by the Commission on Human Rights for the purposes stated in the two resolutions of the Economic and Social Council and in the Resolution of the General Assembly is entitled "Decisions concerning Freedom of Association adopted unanimously by the Thirtieth Session of the International Labour Conference on 11 July 1947." These decisions consist of four parts; namely:

1. The Resolution concerning Freedom of Association and Protection of the Right to Organize and to Bargain Collectively;
2. List of Points to serve as a Basis for the Adoption of One or Several International Labour Conventions in 1948;
3. The Resolution concerning the Agenda of the 1948 Session of the International Labour Conference;
4. The Resolution concerning International Machinery for Safeguarding Freedom of Association.

The General Assembly and the Economic and Social Council had also before them the text of speeches delivered before the International Labour Conference on 11 July 1947 by M. Léon Jouhaux, Rapporteur, and by M. Louis Cornil, deputy rapporteur, of the Committee on Freedom of Association of the International Labour Conference. The ILO's report was accompanied by an explanatory letter from the Director-General of the International Labour Office to the Secretary-General of the United Nations dated Geneva, 16 July 1947.

The Commission on Human Rights, to whom the whole report of the ILO has been transmitted by the General Assembly, will, as far as the substantive proposals are concerned (See Section A (I) (1)) want to consider the "Resolution concerning Freedom of Association and Protection of the Right to Organize and to Bargain Collectively", as regards the study of the problem of enforcement, the Resolution concerning international machinery, mentioned above under (1) and (4) respectively.

The Commission will note that points I, II, III and IV of the Draft Resolution submitted by the WFTU (supra II (a)) deal with matter of substance and could be usefully considered in connection with the appropriate parts of the ILO resolution concerning Freedom of Association (1), while Item V of the WFTU Resolution deals with the problem of enforcement and it will therefore be appropriate to examine it in connection with the Resolution of the ILO concerning international machinery (4).

VII. Analysis of the ILO Resolution on Freedom of Association and of Items I to IV of the WFTU Proposals on Matters of Substance.

1. The Resolution of the ILO concerning Freedom of Association and Protection of the Right to Organize and to Bargain Collectively is divided into two parts dealing respectively with (I) Freedom of Association (Articles 1-7) and (II) Protection of the Right to Organize and to Bargain Collectively (Articles 8-10).

Roughly speaking, "freedom of association" as used by the International Labour Conference refers to the relations between individuals and organizations consisting of individuals on the one part, and the State on the other, while "right to organize" is used to describe the relations between individuals amongst themselves. "Freedom of association" would seem, therefore, to mean protection against interference by the State and the "right to organize", protection against interference, mainly by the employer.

2. The Commission will note that the ILO Resolution used the general term "freedom of association". This term is, of course, not restricted to the right to form organizations for professional purposes of workers or of workers and employers. The Commission will note, on the other hand, that the principles formulated by the International Labour Organization, though using the wider term "freedom of association" deal only with the freedom of association of employers and workers qua employers and workers. In examining the principles proclaimed by the ILO, the Commission on Human Rights may therefore wish to consider in each individual case whether the respective principle is appropriate to the right to form trade unions only, or whether it could or should be made to apply to the right of association for whatever purpose.

3. Article 427 of the Peace Treaty of Versailles (usually quoted as Article 41 of the Constitution of the ILO) enumerates among the methods and principles for regulating labour conditions which all industrial communities should endeavour to apply as one of special and urgent importance, the right of association for all lawful purposes.

Article 20 of the Secretariat outline (document E/CN.4/21, page 15) of an International Bill of Rights provides that "there shall be freedom to form associations for purposes not inconsistent with this Bill of Rights". The Secretariat outline provides for restrictions on the freedom to form associations in order to prevent associations being formed for purposes which are contrary to the Bill of Rights or to prevent associations from engaging in activities violating the Bill of Rights.

Article 16 of the United Kingdom Draft (document E/CN.4/21, page 37) which has been adopted by the Drafting Committee as one of the Articles to be considered for inclusion in a Convention (document E/CN.4/21, page 85, Art. II) provides that all persons shall be free to constitute associations in whatever form may be appropriate under the law of the state for the promotion and protection of their legitimate interests and of any other lawful object. The United Kingdom draft reserves to the State the right to lay down by its municipal law the appropriate forms for constituting associations. It guarantees the establishment of associations only for the promotion and protection of legitimate interests and lawful objects. The implication clearly is that it is for municipal law to ordain what are legitimate interests of persons forming associations and what can and what cannot be a lawful object of an association.

Article 23 of the United States suggestion (document E/CN.4/21, page 44) states only that "there shall be freedom to form associations".

Article 24 of the suggestion submitted by the representative of France (document E/CN.4/21, page 58) "recognizes and guarantees" the freedom of association for political, cultural, scientific, sporting, economic and social purposes compatible with this Bill, subject only to the protection of public order". The French Draft embodies therefore both the reservation of the Secretariat Draft (purposes compatible with this Bill) and, in a different form, the restriction reserved in the British Draft, because it is again envisaged that municipal law will decide what is public order and what are the steps necessary for its protection. The French Draft differs from the Secretariat outline and from the United Kingdom Draft in that it enumerates six types of "purposes" for which the freedom of association is guaranteed. It is to be assumed that Trade Union Rights are covered mainly by the "economic" purposes of the French Draft.

The Draft Declaration suggested by the Drafting Committee states in its Article 23 (document E/CN.4/21, page 78) that there shall be freedom of association for political, religious, cultural, scientific, professional and other purposes. The "purposes" of the Draft Declaration are not therefore identical with those of the French proposal; Trade Union Rights here probably come under the heading of "professional" purposes and are certainly covered by the clausula generalis of "other purposes". The Declaration is, of course, purposely drafted in general terms and is not intended to prevent the municipal legislator from enacting provisions protecting public order and similar interests. This becomes clear from a comparison between Article 23 of the Draft Declaration and Article 11 of the Draft Articles for inclusion in a Convention (document E/CN.4/21, page 85) the text of which is identical with the above quoted Article 16 of the United Kingdom Draft.

It may be useful to mention in this connection that also other draft international declarations or proposals on human rights which were submitted by member governments are based on the same principles. Reference is made to the declarations or proposals suggested by the Governments of Chile, Cuba, Ecuador, India and Panama. (Documents E/CN.4/AC.1/3/Add.1, page 147; E/CN.4/W.8, pages 12-13i; E/CN.4/32.)

By way of illustration and to show the common approach to this basic problem, reference is also made to Professor Lauterpacht's book "An International Bill of the Rights of Man" where the author suggests a provision to the effect that "there shall be full freedom of association..." (Article 5 of Lauterpacht's draft, page 110) and where he says that "The Bill of Rights is necessarily a document of great generality. Its details must be filled in by the mass of legislation and judicial precedent within various States. Any Bill of Rights must be subject to two fundamental exceptions - the welfare of the State and the legally recognized rights of the members of the community. The way in which these exceptions operate in various States is the result of a variety of factors which must necessarily differ from State to State...What is regarded as a sufficient measure of protection in one State may be utterly inadequate in another. The fact is that within the orbit of fundamental rights there is room for a wide divergence of law and practice, and with regard to most of the rights guaranteed in the International Bill of the Rights of Man...the law and the judicial practices of States have evolved their own solutions and their own procedures. It is possible - though highly improbable - that at some distant date the laws of States will merge into one world law in this and in other matters. The International Bill of the Rights of Man cannot attempt to introduce such a world law. On the contrary, it must be enforced through the law of States, suitably adapted, if need be, to the fundamental requirements of the Bill of Rights" (page 175).

As to constitutional provisions concerning the right of association, the compilation submitted by the Secretariat (document E/CN.4/AC.1/3/Add.1, pages 147-158) may be consulted.

The Commission on Human Rights will find that the International Labour Conference, though using the term "inviolable right" did not advocate an absolute and unrestricted right, which would not be subject to reasonable provisions of municipal legislation. This is clear from its Article 3, according to which, employers' and workers' organizations should not be liable to be dissolved or have their activities suspended by administrative authority. This provision impliedly recognizes the dissolution or suspension of organizations by court decisions or by acts of the legislature. In Article 6, it is recognized that the municipal legislator has a right to subject the acquisition of legal personality by employers' and workers' organizations to conditions, if these are not of such a character as to restrict the freedom of association as defined in the document. That the freedom of association is not unfettered appears also from Article 7 which emphasizes the full share of responsibilities and obligations of workers' and employers' organizations. M. Jouhaux, the Rapporteur of the Committee on

the Freedom of Association of the International Labour Conference, in his speech, delivered before the Conference, also made allowance for restrictions on the right of association in saying that "provided that that liberty does not interfere with the general interests of the collectivity in which it exists, then freedom of association must, if I may use a pleonasm be free". The Deputy Rapporteur of the Committee, M. Cornil, employers' delegate of Belgium, also stressed this point. He said, "Our task would be simple if it were merely to draw up texts which would guarantee complete freedom of association irrespective of any restraints. It would be simple, but it would be pointless, since the exercise of complete freedom of association can be justified only if there is respect for other equally essential freedoms...it is therefore for us to define the framework in which freedom of association can be exercised without prejudicing the other essential liberties."

4. In the Third Committee of the 1947 General Assembly, some delegates took exception (a) to the fact that the ILO Resolution in their opinion dealt not with the rights of trade unions, but with the right of association in general; (b) to the fact that the International Labour Organization Report places employers' organizations on an equal footing with workers' organizations.

In the following paragraphs of this paper, the text of the ten articles of the ILO Resolution on Freedom of Association will be reproduced, with annotations by the Division of Human Rights.

PART I. FREEDOM OF ASSOCIATION

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

Annotation

(a) The right to establish or join organizations is guaranteed to employers and workers "without distinction whatsoever". These words intend to afford protection against two kinds of discrimination:

- (i) discrimination as to race, sex, language or religion;
- (ii) distinction as to occupation.

From the Provisional Record of the International Labour Conference No. 30 (XXX-1947), Appendices, it appears that the I.L.O. purposely abstained from providing for exceptions which would have limited the right of association of civil servants, of members of the police and members of the armed forces. The Indian Government member was of the opinion that the armed forces and the police should not be included in the field of application of freedom of association because they were not authorized to take part in collective negotiations and had not the right to strike.

Several Government members drew the attention of the Committee to the fact that in certain countries the members of the police force and other public services were organized in the same way as workers in private undertakings; in other countries, their organizations were either forbidden or merely tolerated. It was also pointed out that in some countries, the armed forces have the right to organize. The French Workers' member warned the Committee against the adoption of a text which did not recognize the liberty of trade union organization in force in the most advanced countries. A restrictive convention could not serve as a model for the less advanced countries. Public employees should enjoy full freedom of association, including members of the police force under municipal authorities not directly under the State. The Amendment to exempt the armed forces and the police from the guarantee of the right of association was rejected by 1 vote to 57 with 3 Governments' members and the Employers' members abstaining. It is not entirely clear, however, whether there was any consensus of opinion on the question whether special restrictions on the right of association of the police personnel should be allowed or not. The statement by the French Workers' representative, quoted above, shows that he intended to guarantee the right of association to members of the police force under municipal authorities not directly under the State, from which it could be argued a contrario that a special regime concerning the state police would not be repugnant to the opinion prevailing among the members of the ILO Conference.

(b) When the ILO principles were discussed in Committee, the Employers' members proposed that the right of association should be guaranteed only "for purposes of regulating relations between employers and employees and all other purposes not contrary to the general laws". Several Workers' members of the Committee observed that this amendment was unnecessary and dangerous. It was unnecessary, they said, because trade unions, in common with other organizations and with ordinary citizens, had to be conducted according to general laws which were imposed on the whole population. The amendment, they said, was dangerous because it could enable a government to declare illegal a trade union object which in itself was perfectly legitimate.

After an exchange of views between the different groups in the Committee, the Employers' members withdrew their amendment, it being understood that freedom of association - like every other freedom - is bound by national laws, as is envisaged in the Constitution of the International Labour Organization which, in Article 41, Clause 2 cites, among the main principles of special urgent importance, "the right of association for all lawful purposes by the employed as well as by the employers".

(c) An amendment submitted by the Employers' members that the "right not to join" an organization also should be guaranteed, was rejected by the Committee by 41 votes to 50. The rejected amendment had, of course, intended to deal with the questions commonly known as "closed shop" and "union shop". This question will be discussed later in connection with Article 9 (2) of the ILO Resolution.

(d) It will be seen that Article 1 of the ILO Resolution deals with the subject matter of paragraph I of the Resolution submitted by the WFTU which is quoted above under II (1). The differences between the two proposals are as follows:

- (1) The proposal of the World Federation of Trade Unions speaks of trade union rights, whereas the ILO Report speaks of the right to establish or join organizations by employers and workers.
- (2) The proposal by the WFTU grants rights to "salaried workers" only - the ILO Report to employers and workers.
- (3) The WFTU speaks of an inviolable prerogative. The ILO of an inviolable right.
- (4) The proposal by the WFTU is restricted to the protection of professional and social interests. The ILO Report contains no such restriction.
- (5) The ILO Resolution, as distinguished from the WFTU proposal, guarantees the right to join organizations "of their own choosing" and "without previous authorization".

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

Annotation

(a) This Article purports to safeguard the autonomy of employers' and workers' organizations.

(b) From the discussions in the Committee on Freedom of Association of the International Labour Conference, it appears that an amendment proposed by the Employers' members to replace the words 'public authorities' by 'administrative authorities' was rejected. The amendment had intended to restrict the guarantee of Trade Union autonomy to the effect that it should be protected only against interference by administrative authorities and not against intervention by the legislature or by judicial authorities.

The Workers' members were opposed to this amendment mainly for the three following reasons:

- (1) It was necessary to protect trade unions against interference by political authority. Under the totalitarian regimes, political authority entirely dominated all other types of authority.
- (2) The value of a guarantee would be lessened if legislation could authorize a Government to interfere with the activities of trade unions.
- (3) The intervention of tribunals, especially by means of injunctions - as was the practice in the United States - would be not less dangerous for trade unions than intervention on the part of administrative authorities.

(c) Several Governments' members observed that the State could not abstain from all intervention if only because it had to ensure that the trade unions carried on their activities within the limits of the law. It was subsequently proposed by the Employers' members that interference with the autonomy of organizations by "due process of law" should be allowed. This proposal was also rejected. Nor was a further amendment accepted to provide that the effective exercise of such rights shall be subject to compliance with the formalities decreed by law. Several Governments' members stated that in practice organizations had to observe certain rules laid down by legislation such as, for example, provisions concerning the registration or depositing of rules. The Workers' members, however, considered that the text, if so modified, would be susceptible of a wide interpretation by certain Governments which would permit them to control the organizations.

(d) The Commission will note that the principle of autonomy of the organization is stressed emphatically in the resolution. Interference by public authority is not, however, excluded altogether. It is implied in the adopted text that the public authorities have the right to interfere if the organization embarks upon activities which are not the "lawful exercise of the right" of association. From the quoted discussions, it appears that the words "public authorities" are used in a wider sense, not restricted to administrative authorities, but also comprising the legislature and the courts. This means that legislative and judicial authorities also are prevented from interference in the internal affairs of the organization with the proviso, however, that the constitutions, rules, administration, activities and programmes do not constitute an "unlawful exercise" of the organization's right. The Resolution might for this reason be interpreted in the sense that, in principle, municipal law remains the yardstick for answering the question whether an organization's constitution, a rule, activity or programme is or is not lawful. A law or a court decision, however, which interferes in the internal affairs of an organization to such an extent

that the organization no longer retains its freedom to draw up its constitution and rules, to organize its administration and activities and to formulate its programmes would, of course, be contrary to the international obligation undertaken in accepting a convention based on Article 2.

(e) The Commission will further note, however, that while Article 2 protects the autonomous life of the organization against interference not only by administrative authorities, but also by the legislature and the judiciary, Article 3 does not exclude the dissolution or suspension of organizations by legislative measures and court decrees.

(f) Article 2 of the ILO Report covers, together with the subsequent Article 3, the ground which is dealt with in point II of the WFTU Resolution. A comparison between the two proposals will be found below in the Annotations to Article 3 of the ILO Resolution.

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

Annotation

(a) This provision protects the existence and the activities of the organization against action by administrative authority as distinguished from measures taken by the legislature itself, or by the courts.

(b) In some legal orders, organizations are liable to be dissolved for certain reasons by administrative decision, e.g., because they engage in criminal activities. Such administrative measures are, under the general laws of some countries, subject to review by either the ordinary Courts of the land or by special administrative courts. It appears that this system is incompatible with the provisions of Article 3 of the ILO Resolution.

(c) The Commission will find that there is no substantive difference between the proposals contained in Articles 2 and 3 of the ILO Resolution and Article II of the WFTU proposal. The safeguards provided for by the ILO are more elaborate and its Article 2 protects the organizations against interference by public authorities of all kinds, including legislative and judicial authorities, while the WFTU had demanded only the exclusion of the interference by governmental or administrative bodies.

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

Annotation

(a) Insofar as the right to establish federations and confederations of organizations within the State is

concerned, the Article is nothing but an explanatory statement on the general right of association from which the right of the associations to associate logically flows. The international guarantee of the right of affiliation with international associations, though no novelty in fact (there have existed international organizations of trade unions for many decades) appears as a matter of law to contain a development beyond the present legal position. In the law of some countries, it may be doubted whether the right of association, guaranteed by the Constitution or constitutional doctrine, includes the right to associate with foreign associations.

The Commission on Human Rights will find that Article 4 is a provision of an international character under two aspects: (1) The subject matter itself transcends national boundaries in that the right is given and guaranteed to citizens of one State to associate with citizens of other States. (2) This right is, moreover, declared to be a matter of international concern. This appears, to a certain extent, to be a new departure in international law.

(b) The Commission may wish to consider whether, and in what respect, there is a difference between "federation" and "confederation".

(c) In connection with Article 4, also, the Employers' members proposed to insert the words "for lawful purposes". The amendment was withdrawn under the same conditions as the similar amendment presented under Article 1.

(d) An amendment submitted by the Turkish Government member, indicating the terms under which the affiliation of a trade union to an international organization should be subject to previous governmental authorization where national legislation provided that this was necessary, was also withdrawn.

(e) The Commission will find that there is no substantive difference between the provisions of Article 4 of the ILO Resolution on the one hand and item III of the WFTU proposal on the other, though the two are drafted differently. The WFTU proposal does not speak of confederations; it goes however into more detail in enumerating that there should be no obstacle to federation on the occupational or inter-occupational level and adding to it "whether locally, regionally, nationally or internationally".

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

Annotation

This provision has no counterpart in the WFTU proposals.

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

Annotation

(a) The Commission on Human Rights will note that the proposals of the ILO proceed on the assumption that, in general, trade unions are not and will not be exempted from municipal legislation and regulation. Article 6 embodies, however, restrictions on the scope of municipal legislation, because it purports to prevent the municipal legislature from enacting laws which restrict freedom of association as defined in the preceding Articles.

(b) Article 6 of the ILO Resolution corresponds to item IV of the WFTU proposals and here, again, the Commission will note that there is no fundamental difference between the two proposals. The WFTU proposal refers to the Charter of the United Nations and thus implies that legislation placing restrictions on the principles formulated by the WFTU would be contrary to the Charter of the United Nations. The ILO proposal, though not based on this interpretation of the Charter of the United Nations, purports to have the same effect by stipulating that such restrictive legislation would be contrary to the principles proclaimed by the ILO, and, therefore, to a convention based upon them.

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

Annotation

(a) This Article was not contained in the text prepared by the International Labour Office. It was proposed by the Employers' members. The Workers' members considered that such a provision was too general and lacking in precision. However, the Committee on Freedom of Association adopted the Article by 54 votes to 51 and it has become part of the principles unanimously adopted by the ILO Conference.

(b) The Article has no counterpart in the WFTU proposals.

(c) In examining this Article, the Commission may consider it relevant to form an opinion on its scope and may consider whether a convention embodying Article 7 would place upon the signatories the obligations to repeal municipal legislation which grants to trade unions certain immunities as far as their liability in private law is concerned. This is the case, e.g., in the British Trade Disputes Act of 1906.

PART II. PROTECTION OF THE RIGHT TO ORGANIZE AND TO
BARGAIN COLLECTIVELY

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

Annotation

(a) Part II deals with the protection of the right to organize and to bargain collectively and has as its purpose the protection of the right of association against interference not by the State, but mainly by employers and their organizations and agents. Consequently, the legal character of this Article differs fundamentally from that of the preceding Articles. Article 8 does not formulate a legal right to which a legal obligation corresponds and which, as a consequence, can be enforced in a court, but it formulates a postulate addressed to organized workers and employers, i.e., to persons and organizations different from States. The State, party to a convention based on Article 8, would only promise to induce by recommendation and persuasion organizations of employers and workers under its jurisdiction to comply with the voeu which is contained in the Article. The national legislature may, of course, support its general policy aimed at this objective by enacting provisions which might go as far as placing a legal duty on the employers' and workers' organizations to come to an agreement in accordance with Article 8. This duty imposed by municipal legislation might be supported by provisions of criminal law, making non-recognition of the right of association by the other party a criminal offence.

(b) The view has been expressed in the debate in the Third Committee of the General Assembly by some delegates that this Article makes the protection of the right to organize and to bargain collectively dependent on the consent of the organized employers.

9. Article 9.

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

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

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

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

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

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

Annotation

(a) Article 9 (1) contains two sets of provisions. The first, under (a) purports to give protection against intimidation, coercion or restraint directed against the individual worker. The second set, under (b), aims at preventing the employer, employers' organizations and agents from interfering with or influencing trade unions.

(b) It may be appropriate to point out that the text of what is now Article 9 (1) (a) had undergone two amendments during the examination in Committee. While the original text proposed by the International Labour Office had suggested to prohibit "any acts on the part of the employer or his agents" the text as adopted prohibits only "intimidation, coercion or restraint" which are capable of causing fear in the mind of the employee. The other change effected during the proceedings in Committee consists in the fact that in the original draft the prohibition was addressed to the employer and his agents only; the final text guarantees the exercise of the right of freedom of association against intimidation, coercion and restraint "from any source". An important exception from this rule is, however, embodied in Article 9 (2).

(c) It may further be mentioned that the Committee on the Freedom of Association rejected by 53 votes to 57, amendments which proposed that the guarantee of the right to join, and the guarantee of the right to refrain from joining, an organization be put on an equal footing.

(d) The provisions of Article 9 (1) (b) (i) and (ii) are directed against so-called company unions. The ways and means to be adopted are left to municipal legislation.

(e) As far as paragraph 2 of Article 9 is concerned, its deletion was suggested by the Turkish government member who put forward the argument that no worker should be obliged to belong to any given trade union in order to obtain or continue in employment. The majority of the Workers' members were opposed to this amendment. They emphasized the necessity of securing to trade unions the right of maintaining and entering into collective agreements which include such a provision. The view was also expressed that it would be unfair to protect the worker who wished to enjoy all the advantages obtained by the trade unions but who refused to join the union. Some countries possessed legislation providing for compulsory trade union membership and the position would be highly prejudiced if the amendment were carried. The Employers' members, in supporting the amendment, urged that this was not a fit subject for discussion at this juncture, nor was it opportune to prejudge what a future convention might contain. They further stressed that the principle involved was one of freedom and that the liberty of the individual was directly involved. The amendment was rejected by 51 votes to 64.

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

Annotation

(a) This Article deals with the problem of implementation. It is not expressly said that the appropriate agencies mentioned should be international agencies or agencies ensuring the protection of the right of association on an international level. The reference to paragraph 9 of the Resolution indicates that the appropriate agencies which were in the mind of the Conference when adopting Article 9 were municipal agencies, judicial or otherwise, whilst the problem of international implementation is dealt with in the special Resolution concerning international machinery for safeguarding freedom of association which will be the subject of the following paragraph of this document.

(b) The problem of implementation is dealt with in item V of the WFTU proposals. It will be discussed in this paper in connection with the ILO Resolution mentioned under (a).

- VIII. The Resolution of the International Labour Conference Concerning International Machinery for Safeguarding Freedom of Association.

The Resolution recalls in its paragraph (1) the reference to freedom of association in the Declaration of Philadelphia and the Constitution of the ILO and it reaffirms belief in, and attachment to the principle of freedom of association in all countries as an essential element in those wider personal freedoms which are the foundation of peace, prosperity and happiness.

In its paragraph (2), the Resolution expresses concern "at the widespread reports that conditions may exist prejudicial to freedom of association in many countries".

In paragraph (3), it is said that the Conference "feels that steps should be taken to encourage, expand and universally establish freedom of association". The Conference lists as such "steps" the reminding of Governments of all States, whether Members of the International Labour Organization or not, of their obligations in this respect under the Constitution of the ILO and/or the Charter of the United Nations. It also mentions "other practical means".

In its fourth paragraph, the Resolution deals with the proposals made by the World Federation of Trade Unions and the American Federation of Labor. It notes the proposals of these organizations for the establishment of international machinery for safeguarding freedom of association and "feels that these proposals deserve close and careful examination".

In paragraph (5) the Resolution lists some of the issues of great complexity and difficulty which are raised by these proposals under the following headings:

1. Questions involving the sovereignty of States

This is an issue which is common to all aspects of the protection of the individual rights against the action of sovereign States within their territorial jurisdiction. It is one of the fundamental questions with which any plan of the international protection of human rights is faced, namely of determining where the line should be drawn between matters which are "essentially within the domestic jurisdiction of the State" (Article 2, paragraph 7 of the Charter of the United Nations) and subjects which are, or become matters of international concern.

2. The resolution further lists as an issue of great complexity and difficulty the relationship of any such machinery as proposed by the World Federation of Trade Unions and the American Federation of Labor to the proposals under examination by the United Nations for giving effect to an International Bill of Human Rights and establishing machinery for supervising the exercise of other fundamental freedoms, including freedom of speech, of information and of lawful assembly.

Here the question is raised whether Trade Union Rights or the right of association of workers, or of employers and workers, shall be the subject of special machinery or whether the general machinery which will eventually be envisaged for the implementation of the International Bill of Human Rights shall be used also as an instrument of implementation of Trade Union Rights or the rights or the right of association of workers and employers.

3. The third issue stressed by the Resolution is that concerning the composition, scope, powers (including powers of enquiry and investigation) and procedure of the proposed machinery.

This again is a problem which in one form or another will arise in any system of implementation of human rights.

It may be appropriate to recall in this connection that Articles 24 to 34 of the Constitution of the International Labour Organization already provide for a nuclear machinery for the handling of complaints concerning the failure to secure the observance of international labour conventions.

4. The fourth issue to which the Resolution draws attention is the question of the authority under which the proposed machinery would act. The word "authority" here may mean either the legal instrument from which the jurisdiction of the proposed organ would be derived, or the international organization or organizations to which this machinery would be subject or of which this machinery would form a part.

Paragraph (6) of the Resolution again stresses the necessity of giving to such questions, which may involve changes in the inter-relationship of States, the detailed examination and careful preparation which they merit and without which any international action would be bound to fail and likely to leave the situation worse than it is at present.

Paragraph (7) of the Resolution contains, however, the expression of some definite views of the International Labour Conference. These opinions of the International Labour Conference amount to the following:

(a) The Conference says that the establishment of permanent international machinery may be an indispensable condition for the full observance of freedom of association throughout the world.

(b) The Conference is quite positive about the question that if such machinery should be established, it should be established in consultation with the United Nations. This would seem to indicate that the machinery should not be established by the United Nations.

(c) It is further said that the machinery should, if established, operate under the guarantees provided by the tripartite Constitution of the International Labour Organization.

(d) From these propositions, it follows that in the opinion of the International Labour Conference there should be special international machinery for the observance of freedom of association of workers and employers, different from the international machinery eventually to be adopted for the implementation of the International Bill of Human Rights. The relationship of this machinery with the general machinery to be established for implementing the International Bill of Human Rights, is, however, under paragraph 5 (ii) of the Resolution one of the "issues of great complexity and difficulty" which merits, according to paragraph (6) "detailed examination and careful preparation".

(e) The reference to the guarantees provided by the tripartite Constitution of the ILO indicates that the special machinery suggested shall not have jurisdiction in all cases of alleged violation of freedom of association, in general, but be restricted to the question of the freedom of association of employers and workers as such. The tripartite organization of the suggested machinery would, it is submitted, be inappropriate for the safeguarding of other human rights than the right of association of employers and workers quo employers and workers.

SECTION E

IX. Questions for the Consideration of the Commission on Human Rights

In view of the two Resolutions of the Economic and Social Council and of the Resolution of the General Assembly, which have referred the matter to the Commission on Human Rights, the Commission may wish to consider, inter alia, the following questions:

A. Concerning Substance

1. Whether the International Bill of Human Rights should contain special provisions concerning trade union rights, additional to and different from, the general provisions safeguarding freedom of association which will form part of it.

In examining this question, the Commission may wish to take into account the probability that international agreement might be easier of achievement concerning the guarantee of the rights of workers' unions than on the safeguarding of the right of other forms of associations. States may, for instance, be less prepared to undertake obligations on an international level concerning the right of association for political purposes, than in the matter of trade union rights. The Commission on Human Rights may, on the other hand, wish to examine the possible consequences of granting a privileged position to a certain kind of associations, it may, e.g., form an opinion on whether this could react unfavourably on the development of, and international protection for, the right of association for other than trade union purposes, and of human rights in general.

2. In case the Commission on Human Rights should arrive at the opinion that special provisions concerning associations of workers, or of workers and of employers should be included in the International Bill of Human Rights, the Commission may wish to examine the proposals of the WFTU and the American Federation of Labor and of the ILO, which were analysed above, with a view to deciding which of these provisions should be embodied in the International Bill of Human Rights and which should be left to special International Conventions dedicated exclusively to the right of association of workers, or of workers and employers.

In considering this question, the Commission may wish to have regard on the one hand, to the necessary generality of a document like the International Bill of Human Rights, and on the other hand, to the desire to give to those rights of workers, or of workers and employers, which the Commission considers of great relevance and of general importance, as wide a field of application as possible.

B. Concerning Machinery

3. The Commission may further wish to express an opinion on the question whether special machinery should be established, on the international plane, for the enforcement of trade union rights (the right of association of workers, or of workers and employers) or whether there should be established one centralized machinery for the implementation of the Bill of Human Rights which would also cover those aspects of Human Rights which are of special importance for the rights of Trade Unions.

In giving attention to this question, the Commission may wish to have regard to the following considerations:

- (a) that there already exists international machinery for dealing with complaints for the violation of International Labour Conventions in the Constitution of the ILO;
- (b) that this existing constitutional machinery might be an appropriate basis for establishing, in connection with it, the envisaged machinery for the protection of trade union rights;
- (c) that, on the other hand, the establishment of two separate and independent machineries, one for the right of association of workers and employers, the other for other cases of the right of association and of all other human rights embodied in the International Bill of Human Rights, might lead to duplication of procedure and to unwarranted diversities of practice;
- (d) that a machinery established under the auspices of a specialized agency on which important members of the United Nations are not represented might be lacking in the authority to safeguard Trade Union Rights in all countries, particularly in those which are not members of the parent Specialized Agency;
- (e) The Commission may also wish to envisage the establishment, by the United Nations, of one centralized international machinery for the implementation of the International Bill of Human Rights, in the framework of which a special body, organized perhaps on the tripartite basis of governments, workers and employers could be entrusted with those of its activities which pertain to Trade Union Rights.

ANNEX A

GUARANTEES FOR THE EXERCISE AND DEVELOPMENT OF
TRADE UNION RIGHTS

The following is the text of the Resolution adopted by the Council at its Plenary Session on 24 March 1947:

THE ECONOMIC AND SOCIAL COUNCIL

HAVING TAKEN NOTE of the item regarding Trade Union rights placed on its agenda at the request of the World Federation of Trade Unions, and the memoranda submitted by the World Federation of Trade Unions and the American Federation of Labor,

RESOLVES to transmit these documents to the International Labour Organization with a request that it may be placed upon its agenda and considered at the forthcoming Session of the International Labour Organization, and that a report be sent to the Economic and Social Council for its consideration at the next meeting of the Council.

THE ECONOMIC AND SOCIAL COUNCIL

FURTHER RESOLVES TO TRANSMIT the documents to the Commission on Human Rights in order that it may consider those aspects of the subject which might appropriately form part of the Bill or Declaration on Human Rights.

ANNEX B

RESOLUTION ADOPTED BY THE ECONOMIC AND SOCIAL COUNCIL

84 (V) TRADE UNION RIGHTS (FREEDOM OF ASSOCIATION)

RESOLUTION OF 8 AUGUST 1947

THE ECONOMIC AND SOCIAL COUNCIL,

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

TAKES NOTE of the report and observes with satisfaction the action taken and proposed by the International Labour Organization within its recognized competence,

DECIDES

- (a) To recognize the principles proclaimed by the International Labour Conference;
- (b) To request the International Labour Organization to continue its efforts in order that one or several international conventions may be quickly adopted;
- (c) To transmit the report to the General Assembly;

AWAITS further reports on the subject to be transmitted by the International Labour Organization and awaits also the report which it will receive in due course from the Commission on Human Rights on those aspects of the subject which might appropriately form part of the bill or declaration on human rights,

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

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

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

ANNEX C

TRADE UNION RIGHTS (FREEDOM OF ASSOCIATION)

REPORT OF THE THIRD COMMITTEE

Rapporteur: Mr. Charles MALIK (Lebanon)

1. At its fourth session, the Economic and Social Council agreed to place on its agenda the following item proposed by the World Federation of Trade Unions:

"Guarantees for the exercise and development of Trade Union Rights".^x

The Council had also before it a memorandum submitted by the American Federation of Labor.^{xx}

The Council adopted, on 24 March 1947, the following resolution:

"THE ECONOMIC AND SOCIAL COUNCIL,

"HAVING TAKEN NOTE of the item regarding trade union rights placed on its agenda at the request of the World Federation of Trade Unions, and the memoranda submitted by the World Federation of Trade Unions and the American Federation of Labor,

"RESOLVES to transmit these documents to the International Labour Organization with a request that it (the item) may be placed upon its agenda and considered at the forthcoming session of the International Labour Organization, and that a report be sent to the Economic and Social Council for its consideration at the next meeting of the Council;

"THE ECONOMIC AND SOCIAL COUNCIL,

"FURTHER RESOLVES TO TRANSMIT the documents to the Commission on Human Rights, in order that it may consider those aspects of the subject which might appropriately form part of the bill or declaration on human rights."

2. At its fifth session, the Council had before it a report from the International Labour Organization entitled "Decisions concerning freedom of association adopted unanimously by the thirtieth session of the International Labour Conference on 11 July 1947", prepared in accordance with the terms of the above resolution.

^x See Annex I to document A/374.

^{xx} See Annex II to document A/374

The Council, on 8 August 1947, adopted the following resolution:

"THE ECONOMIC AND SOCIAL COUNCIL,

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

"TAKES NOTE of the report and observes with satisfaction the action taken and proposed by the International Labour Organization within its recognized competence,

"DECIDES,

(a) To recognize the principles proclaimed by the International Labour Conference;

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

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

"AWAITS further reports on the subject to be transmitted by the International Labour Organization and awaits also the report which it will receive in due course from the Commission on Human Rights, on those aspects of the subject which might appropriately form part of the bill or declarations on human rights,

"NOTES that proposals for the establishment of international machinery for safeguarding freedom of association are to be examined by the Governing Body of the International Labour Organization,

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

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

3. The report prepared by the International Labour Organization was submitted to the General Assembly in accordance with the direction of the Economic and Social Council (document A/374/Add.1).

4. In the course of its sixty-third to sixty-sixth meetings inclusive, the Third Committee to which this report was referred

by the Assembly, considered a draft resolution presented by the delegation of the Dominican Republic (A/C.3/166) and a draft resolution submitted by the delegation of France (A/C.3/167). Amendments were proposed to the Dominican Republic's draft resolution by the delegation of the Union of Soviet Socialist Republics (A/C.3/169) and by the delegation of Argentina (A/C.3/170). The Third Committee had also before it an amendment to the French draft resolution proposed by the delegation of India (A/C.3/172) and an amendment to both the Dominican and French draft resolutions proposed by the delegations of Chile and Colombia (A/C.3/171).

5. At its sixty-sixth meeting on 17 October 1947, the Third Committee instructed a Sub-Committee of fifteen members to study the proposals submitted and to achieve, if possible, a unanimous text of a resolution, otherwise to present as few alternative versions of a resolution as possible. This Drafting Sub-Committee, on 28 October 1947 (A/C.3/183), submitted a draft resolution based upon a compromise text proposed by the delegation of France which had been adopted by the Sub-Committee by eleven votes to four. Details of the voting on the draft resolution by the Drafting Sub-Committee are noted on page 3 of document A/C.3/183.

The following is the text of the resolution submitted by the Drafting Sub-Committee:

"(1) THE GENERAL ASSEMBLY,

"(2) TAKING NOTE of resolution 52 (IV) adopted by the Economic and Social Council at its fourth session, whereby it was decided to transmit the views of the World Federation of Trade Unions and the American Federation of Labor, on 'Guarantees for the Exercise and Development of Trade Union Rights' to the Commission on Human Rights, 'in order that it may consider those aspects of the subject which might appropriately form part of the bill or declaration on human rights',

"(3) TAKING NOTE also of resolution 84 (V) adopted by the Council at its fifth session, whereby it was decided to transmit to the General Assembly of the United Nations the report of the International Labour Organization entitled 'Decisions concerning freedom of association adopted unanimously by the thirtieth session of the International Labour Conference on 11 July 1947; to recognize the principles proclaimed by the International Labour Conference, and to request the International Labour Organization to continue its efforts in order that one or several international conventions may be adopted,

"(4) APPROVES these two resolutions;

"(5) CONSIDERS that the inalienable right of trade union freedom of association is, as well as other social safeguards, essential to the improvement of the standard of living of workers and to their economic well-being;

"(6) DECLARES that it endorses the principles proclaimed by the International Labour Conference in respect to trade union rights as well as the principles the importance of which to labour has already been recognized and which are mentioned in the Constitution of the International Labour Organization and in the Declaration of Philadelphia;

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

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

6. At its seventy-third meeting on 30 October 1947, the Third Committee considered the Drafting Sub-Committee's report. Amendments to the draft resolution were presented by the delegations of Argentina (A/C.3/184/Rev.1), Czechoslovakia (A/C.3/186) and Yugoslavia (A/C.3/187).

(a) The Yugoslav amendment suggested the deletion of paragraph 4 of the draft resolution. This proposal was rejected by twenty-nine votes to eight, with five abstentions.

(b) The Yugoslav amendment further suggested that paragraph 5 of the draft resolution be replaced by the following text:

"CONSIDERING furthermore that improvement of the living conditions of workers depends not only on respect for freedom of association but also on such other social safeguards as will assure to all men a minimum of economic well-being."

This amendment was rejected by twenty-seven votes to six, with ten abstentions.

(c) The delegation of Czechoslovakia proposed the insertion between paragraphs 5 and 6 of the draft resolution of the following paragraph:

"RECOMMENDS to the Economic and Social Council that it adopt, after having received the new study of the International Labour Organization mentioned in resolution 84 (V) of the Council, a resolution on trade union rights on the basis of the draft resolution of the World Federation of Trade Unions, points I-V, Annex I, to its letter of 26 February 1947."

This amendment was rejected by twenty-three votes to eight, with fourteen abstentions.

(d) The delegation of Yugoslavia proposed that paragraph 6 of the draft resolution should be replaced by the following text:

"REQUESTS the Secretary-General to take urgent measures in order that the World Federation of Trade Unions, the International Labour Organization and the Commission on Human Rights may study the practice of establishing, as rights inherent in the human person, the principle of freedom, of trade union association, and any other safeguards - such as minimum wages, equal pay for equal work for man and woman, abolition of racial discrimination in economic and social activities, full employment, effective struggle against unemployment especially in a period of crisis and compulsory social insurance, - as may provide the basis for a minimum of well-being within the reach of all the workers of the world."

This amendment was rejected by twenty votes to seven, with thirteen abstentions.

(e) The delegation of Argentina suggested that the proposed paragraph 6 be replaced by the following text:

"DECLARES that it endorses the principles proclaimed by the International Labour Conference in respect of trade union rights as well as the principles mentioned in the Constitution of the International Labour Organization and in the Declaration of Philadelphia and recognizes the following as being of fundamental importance for the workers:

(a) Full employment and the raising of standards of living;

(b) The employment of workers in the occupations in which they can have the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well-being;

(c) The provision, as a means to the attainment of this end and under adequate guarantees for all concerned, of facilities for training and the transfer of labour, including migration for employment and settlement;

(d) Policies in regard to wages and earnings, hours and other conditions of work calculated to ensure a just share of the fruits of progress to all, and a minimum living wage to all employed and in need of such protection;

- (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 collaboration of workers and employers in the preparation and application of social and economic measures;
- (f) The extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care;
- (g) Adequate protection for the life and health of workers in all occupations;
- (h) Provision for child welfare and maternity protection;
- (i) The provision of adequate nutrition, housing and facilities for recreation and culture;
- (j) The assurance of equality of educational and vocational opportunities."

The delegation of India submitted a sub-amendment to the Argentine amendment to the effect that after "Item j" of the Argentine amendment the following should be added:

"(k) Abolition of racial discrimination in any form in the organization and functioning of trade unions."

The Indian sub-amendment was adopted by twenty-one votes to one, with nineteen abstentions. The Argentine amendment, however, was rejected in a vote by roll-call, by nineteen votes to sixteen, with eight abstentions.

(f) The delegation of Czechoslovakia suggested the deletion of paragraph 8 of the draft resolution and the substitution of the following text:

"REQUESTS the Secretary-General to study, in co-operation with the World Federation of Trade Unions, the International Labour Organization and the Commission on Human Rights the practice of establishing trade union freedom of association and trade union rights."

This amendment was rejected by twenty-one votes to seven, with eleven abstentions.

7. All the amendments having been rejected, the Third Committee voted upon the resolution paragraph by paragraph.

The resolution, as a whole, was adopted by thirty-one votes to five, with six abstentions.

8. The Third Committee therefore submits for the approval of the General Assembly the following draft resolution:

TRADE UNION RIGHTS (FREEDOM OF ASSOCIATION)

THE GENERAL ASSEMBLY,

TAKING NOTE of resolution 52 (IV) adopted by the Economic and Social Council at its fourth session, whereby it was

decided to transmit the views of the World Federation of Trade Unions and the American Federation of Labor on "Guarantees for the Exercise and Development of Trade Union Rights" to the Commission on Human Rights, "in order that it may consider those aspects of the subject which might appropriately form part of the bill or declaration on human rights",

TAKING NOTE also of resolution 84 (V) adopted by the Council at its fifth session, whereby it was decided to transmit to the General Assembly of the United Nations the report of the International Labour Organization entitled "Decisions concerning freedom of association adopted unanimously by the thirtieth session of the International Labour Conference on 11 July 1947", to recognize the principles proclaimed by the International Labour Conference and to request the International Labour Organization to continue its efforts in order that one or several international conventions may be adopted,

APPROVES these two resolutions;

CONSIDERS that the inalienable right of trade union freedom of association is, as well as other social safeguards, essential to the improvement of the standard of living of workers and to their economic well-being,

DECLARES that it endorses the principles proclaimed by the International Labour Conference in respect of trade union rights as well as the principles the importance of which to labour has already been recognized and which are mentioned in the Constitution of the International Labour Organization and in the Declaration of Philadelphia;

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

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