

COMMISSION ON HUMAN RIGHTSSecond SessionWORKING GROUP ON IMPLEMENTATION

Summary Record of Fourth Meeting held in the
Palais des Nations, on Monday, 8 December 1947
at 10.0 a.m.

Present:

Chairman:	Mrs. Hansa MEHTA (India)
Rapporteur:	Mr. DEHOUSSE (Belgium)
Members:	Colonel W.R. HODGSON (Australia) Mr. POUREVALY (Iran)
Specialized Agencies:	Mr. JENKS (International Labour Office)
Non-Governmental Organizations:	Mr. BENTWICH (Consultative Council of Jewish Organizations) Dr. G.M. RIEGNER (World Jewish Congress)
Observers:	Mr. A. CAMPBELL (United Kingdom) Miss WHITEMAN (United States of America)
Secretariat:	Mr. Edward LAWSON.

The CHAIRMAN asked Mr. JENKS (International Labour Office) to explain to the Working Group the system of implementation of the Conventions of ILO.

Mr. JENKS (International Labour Office) said that the responsibilities of ILO were divided, in this respect, into the application of ILO Conventions and the supervision of the application of ILO Conventions.

He said that there were obligations contained in the ILO Constitution which, based on the Declaration of Philadelphia,

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stated general principles of social policy. Such obligations were not legally enforceable, and there was, therefore, no formal procedure laid down for their implementation.

He said that measures of implementation only concerned the precise obligations contained in Multilateral Conventions, and were very limited.

When ILO adopts a convention, he explained, each Member State was obliged within a period of twelve months - occasionally extended to eighteen months - to submit this convention to its legislative body for consideration. The legislative body was not obliged to ratify such a convention.

Where legislative machinery necessary for implementation of a convention already existed in a State, formal approval by the legislative body was alone necessary. If such machinery was not existent, the ILO felt that the necessary legislative or administrative action should be taken by the State concerned before the State communicated its ratification of the convention to ILO. However, in such cases States preferred to ratify a convention before they had taken all the action necessary for implementation.

He added that in the past a State occasionally had ratified a convention, but had not undertaken the legal action necessary for implementation; in that case, ILO had asked the State to give an explanation. The ILO did not consider it sufficient for a State merely to take a convention text and adopt it in a part of its internal law.

Mr. JENKS then described the ILO's procedure for supervising enforcement of a ratified convention. Each member State was under an obligation to submit to ILO an annual report stating the legislative and administrative action taken by that State to secure the application and enforcement of the convention.

These reports were first examined by ILO, then by the Committee of Experts on Application of Conventions, which was composed of not more than 12 experts, who were debarred from holding other office. This Committee usually delegated the examination of reports to technical sections of the ILO which checked any discrepancies between the provisions of the convention and the provisions of the state Laws concerned, the technical sections then reported such discrepancies to the member of the Committee responsible for the work of the particular section.

He emphasised that the Committee was purely advisory, and only reported to the Governing Body the extent to which the situation was or was not satisfactory.

The Governing Body did not examine such reports, but submitted them to the International Labour Conference, which submitted them to a tripartite Conference Commission on the Application of Conventions, composed of 12 representatives of management, labour and government. It was the combination of the preliminary inquiry of the Committee of Experts with subsequent examination by the Mixed Committee, that had made the procedure effective, he felt.

This procedure, he said, had developed both slowly and unexpectedly, and had replaced a more elaborate procedure whereby the rights of governments or individuals to make "Representations" and "Complaints" had been established.

Approximately six such Representations had been made to the Governing Body, which had referred them to an examining body. The consequent reports of the examining body had, in all cases except one, caused the Government concerned to amend its law. These six Representations had come from the following sources; the Japanese Seamen's Union; the Latvian Seamen's Union; a Trades Union organisation in Mauritius; a Trades Union organisation in

French India; another organisation in Mauritius; and an Agricultural Workers union in Esthonia.

There had been only one Complaint. As a result of negotiatio the government involved had amended its law as required. A further procedure laid down, but not yet utilized, called for the hearing of Complaints by the Executive Committee, with appeal, if necessary, to the International Court of Justice.

Mr. JENKS added that, in the case of Federal States, the International Labour Conference considered that partial ratification was undesirable. Special study was necessary where the provisions requiring ratification fall partly in the Federal field and partly in the State field of legislation.

The CHAIRMAN asked Mr. JENKS (ILO) if the state was under an obligation to ratify a convention of ILO.

Mr. JENKS answered that the only obligation was that the convention should be submitted by the state to its legislature for consideration.

Mr. DEHOUSSE (Belgium) pointed out that the Commission on Human Rights was concerned with the implementation of a Convention not of a constitutional obligation as in the case of ILO.

Colonel HODGSON (Australia), referring to the position of a federal state, said that Australia would not accept the principle of ratification before implementation. He considered that there should be no ratification of the Convention of Human Rights until all the provisions of the Convention had been covered by appropriate federal and state legislation.

He asked Mr. JENKS (ILO) for clarification on certain points. First, whether a federal government fulfilled its obligation in merely bringing to the notice of its various state governments those provisions of the Convention which came into the field of state legislation. Secondly, what was the final fate of the

reports heard by the Conference Commission concerning discrepancies between the provisions of the Convention and the legislation concerned. Thirdly, what were the powers and composition of the Commission of Enquiry. Fourthly, what measures were suggested for a federal government which had difficulty in obtaining information from, and generally supervising, the governments of its several states.

He emphasised that the Working Group was concerned only with machinery for the implementation of the proposed Convention, and he asked what might be the final sanction against a persistent violator of the Convention.

Mr. JENKS (I.L.O.) said that it was also the doctrine of I.L.O. that there should be no ratification by a federal government until the appropriate measures of implementation had been taken both by the federal and state governments. He added, however, that it was sometimes necessary for a government to ratify a convention first, in order to make its implementation possible.

Colonel HODGSON (Australia) said that, in his opinion, it was inadvisable for the Working Group to make detailed recommendations concerning Federal States.

He asked Mr. JENKS (I.L.O.) for his view on the following suggested text: "The Working Group is of the opinion that the provision of the Bill or Convention must be embodied in the laws of the states ratifying it. States, therefore, must ensure that their laws cover the provisions of the Bill, so that no executive or legislative organ of government can override them, and that the judicial organs shall be the means whereby the rights of the citizens of the States set out in the Bill can be protected and enforced".