

Freedom of Association and Industrial Relations in Asian Countries : I

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A recent article in the International Labour Review gave a brief outline of developments in the field of freedom of association and industrial relations in the countries of the Near and Middle East.¹ The following article briefly surveys the position in the countries of Asia.

The first part of the article, which appears below, outlines the development of associations of workers and employers in Asian countries and summarises the law and practice concerning freedom of association, collective bargaining and collective agreements. The second part, which will appear in the May issue of the Review, deals with industrial disputes, co-operation between governments, employers and workers, workers' education, and the training of labour and trade union officials and representatives of management.

It should be borne in mind that a survey such as this necessarily suffers from lack of adequate data, particularly with reference to social and cultural factors, which greatly affect developments in industrial relations in these countries.

GENERAL BACKGROUND

THE industrial relations system of a country develops, within such framework as may be provided by legislation, according to the fundamental characteristics of the local environment—economic, industrial, political, social and cultural or traditional—and according to the distinctive traits and aptitudes of its people.

The central economic fact in Asian countries is the existence of great material poverty and standards of living that are among the lowest in the world. Table I gives figures of annual income per head of population in nine Asian countries in 1949, with corresponding figures for nine economically developed countries :

¹ J. A. HALLSWORTH : " Freedom of Association and Industrial Relations in the Countries of the Near and Middle East ", Vol. LXX, Nos. 5-6, Nov.-Dec. 1954.

TABLE I. ANNUAL INCOME PER HEAD OF POPULATION IN ASIAN AND OTHER COUNTRIES, 1949 ¹

(U.S. dollars)

Asian countries	Income	Selected economically developed countries	Income
Burma	36	United States . . .	1,453
Ceylon	67	Canada	870
India	57	New Zealand	856
Indonesia	25	Switzerland	849
Japan	100	Sweden	780
Korea (South)	35	United Kingdom . .	773
Pakistan	51	Denmark	689
Philippines	44	Australia	679
Thailand	36	Norway	587

Source : United Nations : *National and Per Capita Incomes, 70 countries, 1949* (Statistical Papers, Series E, No. 1, New York, 1950), pp. 14-16.

¹ These figures are subject to a wide margin of error. They do not, moreover, take full account of differences in cost of living. On the other hand, where there is great concentration of income in the hands of a few, average income per head tends to be an arithmetical exaggeration of what low-income groups actually receive.

With the exception of Japan, Hong Kong and Singapore, Asian countries are all predominantly agricultural. In India 71.9 per cent. of the economically active population are engaged in agriculture, in Pakistan 76.5 per cent., in the Philippines 65.7 per cent. and in Thailand 84.8 per cent.

The bulk of agricultural workers are farmers and tenants, but significant numbers of them are also employed as wage earners in the plantation industries (tea, sugar, rubber and coconut), which constitute the mainstay of economic life in Ceylon and are of primary importance in Indonesia, Malaya and the Philippines and various regions of Burma, India, Indo-China, Pakistan and Thailand.¹ In most countries, however, the vast majority of non-agricultural workers are to be found in handicrafts or cottage industries and in small-scale establishments.

In Ceylon, according to the census of 1949, a little less than 10 per cent. of the total occupied population were engaged in small-scale industries and related activities. In India it has been calculated that there were in 1952 over 20 million persons engaged in cottage and small-scale industries. According to estimates made in Indonesia in the 1930s, there were about 2,800,000 persons engaged in the manufacturing industries, of whom 2,500,000 were workers in small-scale industries. An estimate for Pakistan indicates that about 5 million persons are dependent on cottage indus-

¹ See I.L.O. : *Basic Problems of Plantation Labour*, Report for the Committee on Work on Plantations, First Session, Bandung, 1950 (Geneva, 1950).

tries as a subsidiary or full-time occupation. In the Philippines there were, apart from cottage industries, over 30,000 small manufacturing establishments in 1948-49.

In all countries except Japan considerable numbers of the industrial, commercial and agricultural undertakings are foreign-owned. While a great part of the foreign capital has come from Western countries, Chinese and Indian immigrants in several countries have also managed to establish their own enterprises. However, in practically every country the government is the largest single employer, owning or controlling a significant proportion of the larger enterprises, which in a number of countries take the form of legal or virtual monopolies.

The Governments of Burma, Ceylon, India, Indonesia, the Republic of Korea, Pakistan and the Philippines have embarked upon economic development programmes, which lay varying degrees of emphasis on increased industrialisation. Under these programmes the trend towards expansion of the public sector of the economy is being accelerated, but private investments in large-scale industries, sometimes with the aid of foreign capital, have also tended to increase. In Thailand there has also been increased public financing of industrial development as a matter of policy. In all other countries industrialisation is proceeding at a faster pace than before.¹

Notwithstanding the varying degrees of industrial development reached in Asian countries, the systems of industrial relations are all developing in the common background of a deeply imbedded traditional culture. Until fairly recent times ways of life continued to evolve in a pattern of unbroken historical continuity and on the basis of a profound mixture of religious, ethical and philosophical precepts. This traditional environment has nurtured among Asian peoples traits, aptitudes and outlooks that must now exert a pervasive influence in the way they interpret and react to the conditions of industrial life.

The modern industrial organisation has brought to Asian countries a new type of collective relations in employment. The evidences of conflict between the industrial and traditional cultures—"between the new and the old social forms, attitudes and human values"²—are probably nowhere more strikingly manifested than in this particular area of human relationship. Conflicts arise between old and new ideas concerning the workers' social status and the nature of the employer-employee relationship, between the role of the modern trade union and the traditional conception

¹ United Nations Economic Commission for Asia and the Far East: *Economic Survey of Asia and the Far East, 1953* (Bangkok, 1954).

² I.L.O.: *Report of the Director-General, Report I, International Labour Conference, 37th Session, Geneva, 1954* (Geneva, 1954), p. 27.

of the management function, often as a benevolent but autocratic paternalism.

Outside Japan, the Republic of Korea and Thailand, the workers suffer from high rates of illiteracy (as high as 90 or 95 per cent. in a few countries). Within various countries diverse ethnic groups and different regional languages exist : large numbers of Chinese workers are to be found in Burma, Indonesia, Malaya, Thailand and Viet-Nam, and Indian workers in Burma, Ceylon and Malaya. The fact that in several countries there are many foreign-operated enterprises means also the presence of heterogeneous groups of employers whose national traditions are reflected in varying management and industrial practices.

With reference to the political situation it may suffice to point out that many of these countries have just become independent or have recently undergone major political changes, and that conditions in several of them are still far from normal. While the political changes have meant a reorientation in various fields of policy making, the former political status of many countries has left its mark on their policies concerning industrial relations. The legislation of Burma, Ceylon, India and Pakistan bears the influence of British legislation, that of the Philippines and Viet-Nam the influence of the United States and French legislation respectively. The particular character of the Allied Occupation of Japan has led to the modelling of that country's trade union legislation on that of the United States, and this pattern was later followed in the Republic of Korea. Industrial relations policies in Malaya, Hong Kong and Singapore continue to be based on the British pattern.

Development of Workers' and Employers' Organisations

Under the systems of industrial relations in Asian countries, the principal parties are still the individual employers and the workers' organisations. Employers' organisations are comparatively less developed than the workers' organisations and have thus far played a minor role in labour-management relations. However, as large numbers of workers remain unorganised, particularly in small-scale establishments, which are often run as family enterprises, the management function plays a preponderant role in the determination of terms and conditions of employment.

While the furtherance of the interests of members has been the basic purpose of central organisations of workers and employers, in a number of countries the establishment of such organisations has been encouraged by the desire to have representative organisations competent to represent the Workers' and Employers' groups

at the International Labour Conference and other tripartite international meetings as well as in the machinery for co-operation between the government, employers and workers.

Workers' Organisations.

The trade union movement in Asian countries suffers from many handicaps. There are inherent difficulties in organising agricultural workers spread over wide areas and without a common workplace, and other factors are the mass illiteracy of the workers and the tendency among employers to resist trade unions. In many large establishments the managements have learned to accept trade unions; the opposition comes generally from employers in small-scale or family enterprises and those who maintain sentimental or doctrinaire adherence to the traditional conception of the management function. But it is also to be noted that the influence of the traditional outlook is to be found among the workers themselves, many of whom would be prevented by feelings of personal loyalty and attachment to their employers from entertaining the idea of organisation.

Because of low wages, workers cannot pay contributions in such amounts or even with such regularity as would make their organisations financially strong. They would find it difficult to join or remain members of trade unions in the face of legions of unemployed and surplus agricultural workers pushed by necessity to accept employment on the employers' terms. In several countries trade unionism has to contend with racial and language barriers, high rates of absenteeism, the tendency among workers to go back to the villages after spells of factory employment and the geographical separation of large groups of workers through the wide dispersion of industrial activity in countries with inadequate means of transport and communication.

Notwithstanding these difficulties, the trade union movement gained some headway in Asian countries in the years before the Second World War. The movement started in many countries even before the enactment of legislation giving trade unions special legal status and, in some countries, in the face of repressive government measures. But except in Ceylon and pre-partition India, the trade unions in various countries practically disintegrated during the course of the war and have been largely or entirely replaced by new organisations.

The post-war period has been marked by the most rapid strides so far made by the trade union movement in Asian countries. At least three factors have made these advances possible: (a) the constant inflow of outside or international influences; (b) the

pressure of trade union rivalries, often based on political or ideological differences; and (c) new policies concerning freedom of association as a result of political or constitutional changes and the enactment of new legislation or amendments (for example, in Hong Kong, Indonesia, Japan, the Republic of Korea, Malaya, the Philippines, Singapore, Thailand and Viet-Nam).¹

Recent figures concerning trade union membership in Asian countries are shown in table II.

TABLE II. TRADE UNION MEMBERSHIP IN ASIAN COUNTRIES

Country	Membership	Country	Membership
Burma (1953) . .	65,000 ¹	Malaya (1953) . .	128,019 ⁶
Ceylon (1953) . .	307,369 ²	Pakistan (1952) .	258,283
Hong Kong (1951)	160,000 ³	Philippines (1953).	150,430 ⁷
India (1952) . . .	3,237,630	Singapore (1952) .	63,831 ⁸
Indonesia (1952) .	1,516,140	Thailand (1953) .	69,530 ⁹
Japan (1952) . . .	5,719,560 ⁴	Viet-Nam (1954) .	149,600 ¹⁰
Republic of Korea (1951)	800,000 ⁵		

¹ Not including members of the All-Burma Peasants Organisation, estimated to be approximately 400,000. See John LLOYD: "Planning a Welfare State in Burma", in *International Labour Review*, Vol. LXX, No. 2, Aug. 1954.

² *Administration Report of the Commissioner of Labour for 1953* (Colombo), p. 18.

³ *Annual Report, 1950-51* (Hong Kong, Labour Department), pp. 74-91.

⁴ *Year Book of Labour Statistics, 1952* (Tokyo, Ministry of Labour), p. 269.

⁵ Figure (for the Federation of Korean Trade Unions only) taken from the report of the Third World Congress of the International Confederation of Free Trade Unions.

⁶ Figure relates only to paid-up membership (*Annual Report, 1953*, Federation of Malaya), p. 67.

⁷ Data supplied by Department of Labour, Manila.

⁸ *Annual Report, 1952*, Colony of Singapore, p. 53.

⁹ Figure (for the Thai National Trade Union Congress only) from the report of the Third World Congress of the I.C.F.T.U.

¹⁰ Figure for the Viet-Nam Christian Confederation of Labour only. Cf. *Industry and Labour* (Geneva, I.L.O.), Vol. XII, No. 6, 15 Sep. 1954, p. 304.

These figures are based on the claims of central workers' organisations or on the returns filed by registered trade unions with the competent authorities, but the figure for Japan was obtained in a survey of trade unions conducted by the Ministry of Labour. Some trade unions claim a membership in excess of the figures appearing on official returns; there are trade unions that are

¹ The existing trade union legislation in Burma, Ceylon, India and Pakistan was enacted before the Second World War. The trade union regulations in Malaya and Singapore were enacted in 1940, but it was possible to bring them into force only in 1946. See Labour and Trade Union Organisation in the Federation of Malaya and Singapore: *Report by Mr. S. S. Awberry, M.P., J.P., and Mr. F. W. Dalley* (Kuala Lumpur, Government Printing Department, 1948), p. 35.

neither registered nor affiliated to central organisations, the membership of which may be negligible in some countries and substantial in others.

It may also be noted that the criteria usually applied by Asian trade unions for the maintenance of membership are often different from those followed in Western countries. The standard of "membership in good standing" defined in terms of regular payment of union dues is observed by only a few organisations; the simple entry of the worker's name in the list of trade union members is considered by the unions to be sufficient to bring him within the potentialities of trade union action; as and when the occasion arises workers so registered are expected to go on strike or otherwise to act as the union decrees; it appears, indeed, that Asian workers largely manifest their trade union membership when such dramatic moments arrive.

Most of the organised workers are to be found in strategic sectors of the economy—in railways, motor transport, the maritime industry, dock and port work, mining and quarrying, electric power supply, etc., in government-controlled enterprises, in the larger manufacturing establishments and in urban centres. Plantation workers have reached a high degree of unionisation in Ceylon, Indonesia and Malaya and to a certain extent in India, Pakistan and the Philippines. Large numbers of agricultural workers have been organised in a few countries, notably Burma and Thailand.

The trade union movement in most countries is characterised by the numerical preponderance of small unions, mostly organised at the company level, and this is another cause of trade union weakness in those countries. Out of 207 unions registered in Ceylon in 1953, 123 had less than 250 members and those with more than 1,000 members numbered only 28.¹ In India about 58.8 per cent. of registered unions in 1950 had less than 300 members and 84.1 per cent. less than 1,000 members.² In Japan over 68 per cent. of the existing unions are in workshops or enterprises employing less than 200 workers.³

This prevalence of small-scale unions is undoubtedly a mark of the comparative infancy of the trade union movement in Asian countries. In Japan it has been noted that workers, even while organising for collective action, still show the influence of the country's "feudalistic tradition"; they "cherish a sentiment of

¹ *Administration Report of the Commissioner of Labour for 1953* (Colombo), p. 19.

² *The Indian Labour Year Book, 1950-1951* (Delhi), p. 165.

³ Iwao AYUSAWA: "Developments in Organised Labour", Part III, in *Contemporary Japan* (Tokyo), Vol. XXI, Nos. 10-12, 1953, p. 543.

kinship and intimacy with their employer " and " instead of being class-conscious or craft-conscious, they are inclined to be ' enterprise-conscious ' " and " are reluctant to extend their activities beyond the enterprise or firm in which they are engaged ".¹

In many countries federations have been formed largely on an industrial, general or regional basis, and function under varying degrees of cohesion and integration. But there is hardly one country that can claim a unified, national trade union movement ; rival federations and central organisations exist side by side with independent organisations. The main causes of rivalry and division are political and ideological, and are evidenced by widely divergent objectives and methods of accomplishing them ; but it would appear that it is the trade union leaders who have given the political or ideological policy to the organisations headed by them.

It may be noted that trade union leadership in Asian countries is largely in the hands of people not connected with industry. The trade union movement in these countries is essentially their creation ; they have provided the initiative and knowledge of trade union organisation that the workers themselves lack. They are, moreover, immune from possible discriminatory action by employers, which would discourage the workers from taking active part in campaigns for organisation and in the prosecution of disputes. But at the same time inadequate participation by the members in the making of trade union policies—an inescapable condition in countries where the mass illiteracy of the workers is high—means that trade union policies are usually what the leaders make them.

The ideological differences among trade union leaders are a reflection of similar conflicts on the international scene ; but in many countries the political orientation of trade union leaders may be traced back to their countries' struggles for emancipation from colonial rule. It was a matter of both patriotism and prestige for them and their organisations to take an active part in these struggles ; long, habitual contact with political leaders and engagements in political activities resulted in tendencies that were to continue even after independence was won.

In India the All-India Trade Union Congress was formed in order to serve as the workers' representative organisation for I.L.O. purposes, but later certain elements in the trade union movement felt that it had developed tendencies out of keeping with the political and economic philosophy of Mahatma Gandhi. To counteract these tendencies the Indian National Trade Union Congress was formed in 1947, under the inspiration of the Congress

¹ Iwao AYUSAWA, *op. cit.*, p. 549.

Party and with the blessing of Gandhi himself.¹ In 1948 the socialist and other trade unions banded together to form the Hind Mazdoor Sabha and in 1949 still another organisation—the United Trade Union Congress—came into being.

In Ceylon the principal central workers' organisations are the All-Ceylon Trade Union Congress, the Ceylon Trade Union Federation and the Ceylon Federation of Labour, but a large independent organisation exists in the form of the Ceylon Workers' Congress. In Hong Kong the principal central workers' organisations are the Federation of Trade Unions and the Hong Kong and Kowloon Trade Union Council; in Indonesia the Sobsi (Sentral Organisasi Buruh Seluruh Indonesia), the Sobri (Sentral Organisasi Buruh Republik Indonesia), the Serikat Buruh Islam Indonesia (S.B.I.I.) and the Kongress Buruh Seluruh Indonesia (K.B.S.I.); and in Japan the Sohyo (General Council of Japanese Trade Unions), the Sodomei (General Federation of Japanese Trade Unions), the Shin Sanbetsu (National Federation of Industrial Organisations), the Sambetsu (National Congress of Industrial Unions) and the Japanese Trade Union Congress.

Some central workers' organisations appear to have acquired a preponderant position in a number of countries, e.g. the Trade Union Congress (Burma), the Malayan Trade Union Council, the All-Pakistan Confederation of Labour, the Federation of Korean Trade Unions, the Singapore Trade Union Congress and the Thai National Trade Union Congress. Very recently a Philippine Trade Union Council was organised, which appears to have gained the support of a number of the larger organisations of the country. There is a Viet-Nam Christian Federation of Labour but the General Confederation of Labour operates in Viet-Minh controlled areas.

The following organisations are affiliated with the International Confederation of Free Trade Unions: the All-Ceylon Trade Union Congress, the Hong Kong and Kowloon Trade Union Council, the Indian National Trade Union Congress, the Hind Mazdoor Sabha, the Japanese Trade Union Congress and the "Co-ordinating Committee of I.C.F.T.U. Affiliated Unions in Japan", the Federation of Korean Trade Unions, the Malayan Trade Union Council, the All-Pakistan Confederation of Labour, the Philippine Trade Union Council, the Singapore Trade Union Congress and the Thai National Trade Union Congress.² The following are affiliated to

¹ K. A. ZACHARIAH: *Industrial Relations and Personnel Problems* (Bombay, Asia Publishing House, 1954), p. 117.

² Report of the Third World Congress of the International Confederation of Free Trade Unions. Information concerning the Philippine Trade Union Council is based on recent newspaper reports.

the World Federation of Trade Unions : the Burma Trade Union Congress (to be distinguished from the Trade Union Congress (Burma)), the Ceylon Trade Union Federation, the All-India Trade Union Congress the Sobsi and Sobri in Indonesia, the Sambetsu in Japan, the Pakistan Trade Union Federation and the General Confederation of Labour in Viet-Nam.

Employers' Organisations.

Employers' organisations in Asian countries are generally of two types : (a) those properly denominated as employers' associations, the major activities of which include labour and industrial relations matters ; and (b) those formed primarily for the promotion of trade, commerce or industry, in which questions relating to labour and industrial relations are only of incidental interest. Among organisations of the first type, a few engage in collective bargaining.

Statistics regarding the extent of membership of employers' organisations in different countries are generally lacking. However, in Japan the central employers' organisation—the Japan Federation of Employers' Associations—is known to have 41 constituent bodies : 32 industrial associations and nine regional associations. The industrial associations are composed of 12,372 companies and the regional associations of 6,368 ; altogether they represent 12 per cent. of the total number of employers in Japan and employ more than 70 per cent. of the workers.

In 1953 there were in Ceylon 12 registered employers' organisations, with 1,662 members, including the Employers' Federation of Ceylon with seven affiliated organisations comprising 168 members.¹ In the plantation industries the central organisations are the Ceylon Planters' Society with 962 members and the Ceylon Estates Employers' Union with 505 members (1952). There is also a Federation of Omnibus Operators with 27 members.

In India 39 employers' organisations were registered in 1950, 29 of which had a total membership of 4,877.² The principal central employers' organisations are the Employers' Federation of India, with 34 constituent associations, and the All-India Organisation of Industrial Employers, with 26 constituent associations, besides an All-India Manufacturers' Association composed of 441 members (1949).

There were 73 registered employers' organisations in Hong Kong in 1951, with over 9,000 members, many of them dealers and mer-

¹ *Administration Report of the Commissioner of Labour for 1953* (Colombo), p. 54.

² *The Indian Labour Year Book, 1950-1951*, op. cit., p. 162.

chants¹; eight in Malaya in 1953, with 970 members², and 42 in Singapore in 1952 with 5,321 members.³ Among these are the Employers' Federation of Hong Kong with 114 members, and a planters' association in Malaya with 474 members.

The principal employers' organisations in Indonesia are the Association of Indonesian Enterprises and the Federation of Employers' Organisations in Indonesia, but there are also an Agricultural Syndicate, a Sugar Syndicate, an Association of Metal Industries and a number of regional associations of plantation and transport employers.

The employers' organisations in Burma, Pakistan, the Philippines and Thailand exist mainly in the form of chambers of commerce or industry and trade associations. In Burma, the Philippines and Thailand, separate chambers of commerce have been organised for different national groups of employers.

The Employers' Federation of India, the All-India Organisation of Industrial Employers, the Association of Indonesian Enterprises and the Japan Federation of Employers' Associations are affiliated to the International Organisation of Employers.

FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE AND TO BARGAIN COLLECTIVELY

The International Labour Conference has adopted two Conventions of vital importance in industrial relations, namely the Freedom of Association and Protection of the Right to Organise Convention, 1948, and the Right to Organise and Collective Bargaining Convention, 1949. Under the former the Conference endorsed the principles that workers and employers shall have the right to establish and join organisations of their own choosing without previous authorisation; that these organisations shall have the right to draw up their constitutions and rules, to elect their officers in full freedom and to organise their administration, activities and programmes; that the public authorities shall refrain from any interference that would impede the exercise of this right and that these organisations shall not be liable to be suspended or dissolved by administrative authority; that workers' and employers' organisations shall have the right to form federations under the same guarantees and to affiliate with international organisations of employers and workers.

¹ *Annual Report, 1950-1951*, Hong Kong Labour Department, pp. 74-91.

² *Annual Report, 1953*, Federation of Malaya, p. 68.

³ *Annual Report, 1952*, Colony of Singapore, p. 53.

While it is necessary to ensure freedom of association from undue legislative restraints and interference by the public authorities, it is just as essential to provide adequate protection for the exercise of the right to organise and to bargain collectively in so far as action by private individuals or organisations is concerned. Thus, under the second Convention mentioned above, it is provided that workers shall enjoy protection against acts of anti-union discrimination in respect of employment; that workers' and employers' organisations shall be protected against acts of interference by each other or each other's agents or members in regard to their establishment, functioning or administration; and that such protection shall be particularly provided against action to promote the establishment of workers' organisations under the domination of employers.

Reference may also be made to a resolution adopted by the Asian Regional Conference of 1947 (New Delhi)¹, which declared: "The recognition of the principle of freedom of association and the effective guarantee of the right to organise and to bargain collectively are indispensable for the improvement of labour standards and should be accepted in all Asian countries."² Subsequently a resolution adopted at the Asian Regional Conference of 1953 (Tokyo) urged "the development as soon as possible of free associations of employers and workers" as bases of systems of collective negotiation.³

Recognition of Freedom of Association

The Governments of Burma, Pakistan and the Philippines have ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948.

The Constitutions of Burma, India, Indonesia, Japan, the Republic of Korea the Philippines, and Thailand contain varying degrees of guarantee of freedom of association. The Basic Principles Committee of the Constituent Assembly of Pakistan has included in its recommendations a provision declaring freedom of association a fundamental right to be guaranteed in the future Constitution of the State.

Special legislation has been enacted in Burma, Ceylon, Hong

¹ The following countries have been represented, directly or otherwise, at the Asian Regional Conferences convened by the I.L.O. (at New Delhi in 1947, at Nuwara Eliya in 1950, and at Tokyo in 1953): Afghanistan, Burma, Cambodia, Ceylon, China, Hong Kong, India, Indonesia, Japan, Laos, Malaya, Pakistan, the Philippines, Singapore, Thailand and Viet-Nam.

² *Official Bulletin* (Geneva, I.L.O.) Vol. XXX, No. 3, 15 Nov. 1947, pp. 196-200.

³ *Ibid.*, Vol. XXXVI, No. 4, 30 Nov. 1953, pp. 89-91.

Kong, India, Malaya, Pakistan, Singapore and Viet-Nam concerning both workers' and employers' organisations, and in Japan, the Republic of Korea and the Philippines concerning workers' organisations alone. Apart from the constitutional provisions and in the absence of special legislation, the establishment of workers' and employers' organisations in Indonesia and Thailand and of employers' organisations in Japan, the Republic of Korea and the Philippines may be subject to general regulations applicable to associations formed for purposes other than profit.

Constitutional Recognition.

Under the Constitutions of Burma, India, the Philippines and Thailand, the right to form associations or unions is generally guaranteed. In Japan, Indonesia and the Republic of Korea, the Constitutions provide both for a similar general guarantee and a special guarantee of the right of workers to form trade unions. In Burma the Constitution further provides that the State shall enact legislation and take other measures to protect and assist workers in the exercise of their right to organise.

In the Philippines and Thailand, the constitutional guarantees extend to associations for lawful purposes. In the other countries, the rights are guaranteed within the limits of the law (Republic of Korea) or subject to such limitations as may be imposed by law exclusively in the interests of public order or morality (Burma, India and Indonesia) or for the purpose of securing the respect of the rights of others or of promoting the general welfare (Indonesia).

Under the principle that the Constitution is the supreme law of the land, any act of the legislature or of the public authority in conflict with the constitutional provisions may be declared null and void by the highest court. Normally, the declaration of nullity may be obtained by the remedies provided for in ordinary legislation; but in Burma and India the Constitutions themselves specify the remedies by which the constitutionality of any measure may be subjected to judicial review.

Recognition by Special Legislation.

General scope of legislation. Trade unions may be formed by either workers or employers in Burma, India and Pakistan under what was originally the Indian Trade Unions Act, 1926¹; in Ceylon under the Trade Unions Ordinance, 1935²; in Hong Kong

¹ I.L.O. *Legislative Series*, 1926 (Ind. 1). In Burma the Agricultural Labourers Minimum Wages Act contains a general provision recognising the right of agricultural workers to organise.

² See I.L.O. : *Asian Labour Laws* (New Delhi, 1951), p. 180.

under the Trade Unions and Trade Disputes Ordinance, 1948¹; and in Malaya and Singapore under the Trade Unions Enactments, 1940.² Under the Industrial Associations Ordinance promulgated in Viet-Nam in 1952, industrial associations may be formed by workers or employers who are of Viet-Nameese or French nationality and are engaged in the same occupation, trade or profession or in similar or allied ones.³

The Trade Union Law of Japan of 1949⁴, which replaced an enactment of 1945, and the Trade Union Law of the Republic of Korea promulgated in 1953⁵ specifically declare that workers shall have the right to-organise; a similar declaration is made in the Philippine Industrial Relations Act of 1953⁶, which substantially modifies the Labour Organisation Act of 1936.⁷ While the legislation in the Philippines and the Republic of Korea applies to workers generally, separate regulations have been made in Japan concerning workers in public enterprises and the public services.

The legally recognised purposes of trade associations include the regulation of the relations between employers and employees (for example, in Burma, Ceylon, Hong Kong, India, Malaya, Pakistan and Singapore), the protection of the interests and the promotion of the material and social conditions of the workers (in Japan, the Republic of Korea and the Philippines) or the protection and defence of the occupational interests of members (in Viet-Nam).

Implicitly or by specific provision, these purposes include the right of trade associations to engage in collective bargaining and in trade disputes for the furtherance of their objects. Moreover, in a number of countries, specific provisions have been made concerning the right of trade associations to engage in activities such as mutual aid, labour welfare, social security and workers' education.

Regulations in Burma, Ceylon, India and Pakistan permit trade associations to engage in specified political activities, provided a separate political fund is constituted for the purpose and contribution thereto is voluntary and shall not be used as a basis for unequal treatment of members. In Hong Kong, the Republic of Korea, Malaya, Singapore and Viet-Nam, trade associations may not engage in political activities.

¹ *I.L.O. Legislative Series*, 1948 (H.K. 1).

² See *Asian Labour Laws*, op. cit., p. 1056. The regulations in Malaya and in Singapore are substantially the same.

³ See *Industry and Labour*, Vol. IX, No. 10, 15 May 1953, p. 317.

⁴ *I.L.O. Legislative Series*, 1949 (Jap. 3).

⁵ See *Industry and Labour*, Vol. X, No. 8, 15 Oct. 1953, p. 316.

⁶ *Ibid.*, No. 7, 1 Oct. 1953, p. 263.

⁷ *Asian Labour Laws*, op. cit., p. 1213.

Special regulations and limitations concerning the right of certain persons. The Public Corporation and National Enterprise Labour Relations Law and the Local Public Enterprise Labour Relations Law of Japan¹ recognise the right of the workers in any public corporation or enterprise to form a trade union to which only the employees are eligible for membership, but persons holding managerial or supervisory positions and those employed in a confidential capacity are not allowed to form or join trade unions.

While the Trade Union Law of Japan does not specifically impose a similar restriction, it provides that organisations that admit to membership supervisors with direct authority to hire, fire, promote or transfer workers and those having access to confidential information relating to the employers' labour relations plans and policies may not be legally recognised as trade unions. This is also the rule in the Republic of Korea with respect to persons who are considered to represent the employer's interests. In the Philippines supervisors may not join organisations of workers under their authority but may form separate unions.

Various types of limitation exist concerning the exercise of the right to organise by public servants. They are debarred from this right in Malaya and Singapore, but exemption may be granted in favour of any category of public servants, and it appears that in practice such exemptions have been granted. In some countries only certain categories of public servants are excluded, for example military personnel, including civilians attached to the army (Republic of Korea); police and prison officers (Ceylon, Japan and the Republic of Korea); members of fire-fighting units (Japan and the Republic of Korea); and members of the agricultural corps (Ceylon).

In Ceylon the employees in any one specified government department or service or belonging to any specified class or category of workers may form a trade union, subject to the condition that membership shall be restricted to the employees of the department, service, class or category concerned. The employees in the local public service in Japan may form associations with each local body as a basic unit², but no such limitation is prescribed with regard to personnel in the national public service.³

In Japan personnel organisations in both the national and local public services have the right to negotiate but not to conclude collective agreements and they may not engage in a strike. In the Philippines employees engaged in purely governmental functions are not allowed to join any organisation that imposes

¹ *Japan Labour Code, 1952* (Tokyo, Ministry of Labour, 1953), pp. 94-124.

² *Ibid.*, p. 685.

³ *Ibid.*, p. 643.

on its members the obligation to strike or join in a strike. In Viet-Nam the rights of public servants to form associations are to be covered by separate regulations.

Provisions relating to establishment or registration. The regulations generally prescribe certain requirements in regard to the registration or establishment of trade associations as a condition for acquiring legal existence or a special legal status. In Burma, India, Pakistan and the Philippines registration is optional on the part of the trade associations concerned ; in Japan a trade union may submit to the competent authority evidence that it is in compliance with the law and obtain a certificate to that effect.

Registration is compulsory in Ceylon, Hong Kong, Malaya and Singapore, and also in Japan in the case of personnel organisations in the local public service. In the Republic of Korea and Viet-Nam a trade association is deemed to be legally established upon the filing of the necessary documentation with the competent authority and the issue of a certificate.

Generally, as part of the prescribed procedure for obtaining a certificate, a trade association must submit a copy of its Constitution or rules and a list of its officers. This list is to be accompanied in the Philippines by a sworn statement of all the officers that they are not members of the Communist Party or of any other organisation that advocates the overthrow of the Government by force.

In Burma, Ceylon, India, Malaya, Pakistan, the Philippines and Singapore, a decision of the competent authority refusing registration is subject to judicial review. In Hong Kong an appeal may be made to the Governor in Council, whose decision is final. The Trade Union Law of Japan also provides for administrative review.

Upon obtaining a certificate, an organisation becomes entitled to operate as a trade association for the purposes recognised by law. This means, in Japan, the right to participate in the procedures and to avail itself of the remedies provided by law (those relating to unfair labour practices and the nomination of members to tripartite bodies) ; and in the Philippines the right also to be designated as the exclusive representative of the employees in a collective bargaining unit.

In addition, in a number of countries a registered or certificated organisation acquires other rights, privileges and immunities. It acquires a corporate or legal personality (for example, in Burma, India, Pakistan, the Philippines and Viet-Nam) or the right to sue and be sued in its registered name (in Ceylon, Malaya and Singapore) or the right to apply for registration as a juridical person (in Japan and the Republic of Korea).

Registered trade unions enjoy immunity from suits in respect

of restraint of trade or tortious action in the furtherance of trade disputes (for example, in Burma, Ceylon, Hong Kong, India, Malaya, Pakistan, the Philippines and Singapore) as well as from legal proceedings for criminal conspiracy (in Burma, Hong Kong, India and Pakistan) or from liability for damages through properly declared strikes (in Japan). In Viet-Nam the real and movable property necessary for meetings, facilities for vocational instruction and libraries of industrial associations are exempted from attachment.

In countries where the registration of trade unions is optional, organisations may exist that have not been registered, sometimes with considerable membership. In Burma, India and Pakistan such organisations may be subject to the disabilities attaching at common law to trade combinations in respect of restraint of trade and criminal conspiracy. It is not, however, certain to what extent this rule of the common law has been affected in Burma and India by the constitutional provisions guaranteeing the right to form associations or unions.

In Japan organisations that fail to submit evidence that they have been established in accordance with the law appear to be protected by the constitutional guarantee, though they are denied the right to participate in the procedures and to avail themselves of the remedies provided for in the Trade Union Law. Unregistered trade unions in the Philippines are not considered unlawful: while employers are not obliged to bargain collectively with them, some of them have in practice been recognised by employers.

Provisions relating to functioning. The regulations in all countries prescribe further conditions with regard to the functioning of trade associations, compliance with which is generally a prerequisite both for registration and for maintaining registered status. The most common requirement is that the constitution or rules of an organisation must provide for certain matters, it being left to the organisation to determine the specific content of the provisions to be made. These matters generally include the objects of the organisation, conditions of membership, the selection of officers, the sources and management of funds and amendment of rules. In the Republic of Korea the competent authority may amend or cancel any provision deemed to be contrary to law, order or the public interest.

The regulations in many countries deal with the composition of the executive and the qualifications of officers. In Burma, Ceylon, India, Malaya, Pakistan and Singapore a prescribed number of officers must be persons actually employed or engaged in the industry with which the union is connected, while eligibility for office in Hong Kong and Viet-Nam is restricted to such persons. In the case

of trade unions of public servants in Ceylon and of employees in public corporations and enterprises in Japan, only actual employees qualified for membership may be elected officers of the organisation.

In Viet-Nam, furthermore, nationality is a prescribed qualification for eligibility, and a person convicted of an offence punishable by a penalty involving the loss of civil rights is disqualified from office. A similar disqualification applies in the Philippines to persons convicted of an offence involving moral turpitude, the disqualification extending to appointments in positions involving the handling of union funds ; conviction automatically disqualifies a person from continuing in the office or position.

In addition to the adoption and amendment of the constitution or rules and the election of officers, certain matters are required to be decided, under the regulations in many countries, by vote or secret ballot of the members. These matters include the imposition of a levy (Malaya and Singapore), strikes (Japan and the Philippines) or any matter related to a trade dispute (Malaya and Singapore). But in the Republic of Korea decisions reached in a meeting of members or representatives deemed to be contrary to law, order or the public interest may be cancelled by the competent authority.

Various regulations exist concerning the expenditure of funds and the making of financial accounts and reports. Funds may be spent only for purposes specified by law (Burma, India and Viet-Nam) or subject to legal requirements and the rules of the organisation (Ceylon, Hong Kong, Malaya and Singapore) or for purposes expressly authorised by the majority of the members (the Republic of Korea and the Philippines). Responsible trade union officials are required to submit financial reports to the competent authorities (Burma, India and Pakistan) or to render financial accounts to members (Japan and the Republic of Korea) or both (Ceylon, Hong Kong, the Philippines and Singapore). In most countries provision is made for the auditing of the reports or accounts and for the inspection by members of financial documents.

Effects of failure to comply with legal requirements. The competent authorities in a number of countries may cancel the certificate of an organisation that no longer meets with the conditions for registration or has violated a legal requirement (for example, in Burma, Ceylon, Hong Kong, India, Malaya, Pakistan, the Philippines and Singapore and also in Japan in the case of trade unions in the local public service). Under most regulations previous notice to the organisation concerned is required before the order of cancellation is made. While this implies the right of the organisation to be heard, the right to a hearing is specifically provided for in Japan and the Philippines.

In countries where the regulations provide for the right to judicial review of an order of the competent authority refusing registration, the same right is accorded with regard to an order of cancellation of the certificate, although in Japan the decision of the competent authority in the local public body appears to be final.

With respect to trade unions of public servants in Ceylon, the registration may also be cancelled by the court upon application by the Attorney-General for violation of any of the requirements specially applicable to such unions.

In the Philippines the procedure for the cancellation of registration applies only when an organisation fails to submit data required for maintaining registered status (annual financial reports and non-subversive affidavits of new officers) ; a special procedure is applied for dealing with violations of other requirements concerning internal administration. A minimum of 10 per cent. of the members of an organisation may report a violation to the Court of Industrial Relations, and if the efforts of the Court to correct the violation by the procedures authorised in the organisation's by-laws prove unavailing the violation may be dealt with as in the case of " unfair labour practices ".

In Ceylon, Hong Kong, Malaya and Singapore trade unions that fail to register within the prescribed period must be dissolved, failing which the leaders or officers become liable to criminal proceedings. The competent authority in the Republic of Korea may order the dissolution of a trade union for violation of the law or for action detrimental to the public interest. In Viet-Nam the power to dissolve industrial associations for non-compliance with the legal requirements has been vested in the ordinary courts.

Federations and international affiliations. In Burma, Ceylon, India, Japan, Pakistan and the Republic of Korea the definition of a trade union includes federations. In Viet-Nam federations may be formed under substantially the same legal conditions as basic organisations. This also appears to be the rule in countries where there are no special regulations concerning federations and where the right to form federations is obviously recognised in practice. In Malaya and Singapore a federation may be formed by registered trade unions whose members are employed in a similar occupation, trade or industry, and any trade union wishing to join a federation must obtain the consent of the majority of its members in a meeting specially called for the purpose.

Special regulations in Japan permit personnel organisations in the local public service to form or join a federation or federations among themselves, but in Ceylon a trade union of public servants may not federate (or amalgamate) with any other trade union.

In most countries there are no legal limitations to the right to join any international federation of workers' or employers' organisations. In Hong Kong the consent of the competent authority is required if thereby the local organisation or its members will come under the control of the international organisation.

Protection of the Right to Organise and to Bargain Collectively

Pakistan and the Philippines have both ratified the Right to Organise and Collective Bargaining Convention, 1949. In the Philippines, as well as in India, Japan, the Republic of Korea and Viet-Nam, regulations have been adopted to give more adequate protection to the right to organise and to bargain collectively. Where such protection has not been granted, employers' "victimisation" of workers on account of trade union membership or activity and the recognition of trade unions for purposes of collective bargaining are frequent issues in industrial disputes. Generally, such disputes have to be decided by the usual recourse to the weapons of economic warfare or eventually by the legally established machinery for the settlement of disputes; and in countries where the system of compulsory arbitration is in force industrial tribunals have often included in their awards orders for the reinstatement of victimised workers and the payment of arrears of wages.

Protection of the Right to Organise.

Regulations in India¹, the Republic of Korea and the Philippines generally prohibit employers from interfering with the exercise by workers of their right to organise. In Viet-Nam any collective agreement that does not contain stipulations concerning the workers' right to organise is thereby rendered null and void.

A more specific protection is provided in India, Japan, the Republic of Korea and the Philippines against acts of anti-union discrimination. An employer may not stipulate as a condition of employment that a person shall not join or shall withdraw from a trade union (Japan and the Philippines), or dismiss or discriminate against a worker for trade union membership or activity (Japan, the Republic of Korea and the Philippines) or for being an officer of a "recognised"² trade union (India).

¹ The regulations in India are embodied in the Indian Trade Unions (Amendment) Act, 1947 (*I.L.O. Legislative Series*, 1947 (Ind: 4)), but this has not been brought into force.

² Under the Indian Trade Unions (Amendment) Act, 1947, a trade union may be recognised by agreement between the parties, but a labour court may order an employer or employers' organisation to recognise a trade union that fulfils certain conditions (i.e., that all its ordinary members are employed in the same or allied industry, that it is representative of all the workmen employed therein, that membership is open to all such workers, etc.).

An employer is also prohibited from controlling or interfering with the formation or administration of a workers' organisation (India, Japan and the Philippines) or from giving any financial or other support to it (India and the Philippines) or from contributing to its operational expenses (Japan and the Republic of Korea). An employer may not discriminate with regard to conditions of employment for the purpose of encouraging (or discouraging) membership in a trade union (the Republic of Korea and the Philippines).

The Right and Duty to Bargain Collectively.

An employer may not in Japan refuse to bargain collectively with a trade union or in India with a recognised trade union.

In the Republic of Korea and the Philippines the right and duty to bargain collectively is imposed on both the employer and the trade union. In the Philippines the duty to bargain collectively is defined as the mutual obligation to meet and confer promptly and in good faith and, in the absence of voluntary arrangements between the parties, in accordance with a prescribed procedure. Where a collective agreement is in effect, it also means that neither party will terminate or modify the agreement without a prescribed period of notice and that they will in the meantime continue to observe all the terms of the agreement without resorting to a strike or lockout.

Enforcement and Sanctions.

In India and the Republic of Korea acts of anti-union discrimination or of interference with the formation or management of a trade union are penalised as offences. In Japan and the Philippines the prevention of proscribed acts (defined as unfair labour practices) has been entrusted to special agencies—the labour relations commissions in Japan and the Court of Industrial Relations in the Philippines—which are empowered to investigate charges of unfair labour practices and to issue orders for the correction of the acts complained of and the granting of appropriate relief.

COLLECTIVE BARGAINING

Development of Collective Bargaining

Collective bargaining has so far made but slight progress in most Asian countries. However, during the last few years it has in many countries become the object of more active interest, which found expression at the Asian Regional Conferences of 1947 and 1953.

At the 1947 Conference a resolution was adopted that emphasised the need, as one of the essential steps to create conditions favourable to the promotion and maintenance of production at the highest possible level, for establishing suitable consultative negotiating or statutory bodies for the speedy and equitable settlement of differences between labour and management.¹

The resolution concerning wages adopted by the Asian Regional Conference in 1953 contains a number of conclusions concerning collective bargaining. After stating that "collective agreements are normally the best means for the determination and adjustment of wages", it declares: "the development as soon as possible of systems of collective negotiation based on free associations of employers and workers should be actively promoted and encouraged by all concerned". However, in view of the actual situation, it goes on to state—

pending the general development of systems of collective negotiation in each country, there is pressing need for the immediate introduction of statutory measures to regulate wages in occupations in which collective bargaining is not effective or as a preliminary step to the development of collective negotiation.²

In India and Pakistan a method of establishing rules of employment is applied, which also appears to be a preliminary step to the development of collective bargaining. Under the Industrial Employment (Standing Orders) Act of 1946³ every industrial establishment employing 100 or more workers may be required to frame standing orders containing rules of employment on prescribed matters. An employer submits draft standing orders to the competent authority, which may approve them or order amendments to be made after hearing the views of the trade union (if one exists) or the workers. The employer may not alter the conditions of service embodied in approved standing orders without the agreement of the workers or the approval of the competent authority.

Several factors account for the slow growth of collective bargaining in Asian countries: the over-abundance of the labour supply for industry in comparison with the demand for it, the lack of a large enough body of workers (and perhaps even of employers) wholly or mainly and for a sufficiently long period of time dependent

¹ The establishment of collective bargaining machinery is also provided for in two instruments adopted by the International Labour Conference—the Right to Organise and Collective Bargaining Convention, 1949, and the Collective Agreements Recommendation, 1951.

² The following Asian countries have enacted minimum wage legislation: Burma, Ceylon, Hong Kong, India, Japan, Malaya, the Philippines and Viet-Nam.

³ *I.L.O. Legislative Series*, 1946 (Ind. 2).

on industry for a livelihood, the absence of a general outlook on the part of employers and workers alike to regard the industry in which they are engaged as a common enterprise and a common source of income—in short the absence of a sufficiently long industrial tradition. It cannot be too often repeated that in most Asian countries modern industry is still a small sector of the national economy.

It would also appear that the functioning of many Asian trade unions has not been directed to collective bargaining and the development of permanent relationships with employers. As far as industrial relations are concerned, their role appears to consist partly in the staging of strikes or slowdowns but primarily in the prosecution of demands before the authorities for the settlement of disputes.¹ In some countries this latter tendency may be due in part to the fact that many of the trade union leaders are lawyers who would prefer resorting to the legally established procedures rather than to direct methods.

In some countries the growth of collective bargaining also appears to have been handicapped by the dominant role assigned to compulsory arbitration in the settlement of disputes (for example in Burma, India, Indonesia and Pakistan). On this point the former Indian Minister for Labour has stated—

Internal settlement cannot find its fullest scope so long as compulsory arbitration looms in the background. If there is even some possibility of the dispute being referred to a tribunal for compulsory arbitration, neither party will disclose its hand or be prepared to go to the utmost limits of the concessions it could afford to offer.... If the parties knew that the consequences of disagreement would be a prolonged strike or lockout causing great loss to the employer and considerable sufferings and hardship to the worker, they would be far more accommodating and far more anxious for the settlement of disputes.²

In most countries such information as is available concerning collective agreements that have been concluded is limited to those

¹ In Ceylon this tendency was particularly noted by the Commissioner of Labour in his *Administration Report for 1953*, in which he contrasted the practice in Ceylon with that followed in advanced industrial countries as follows: "In the advanced industrial countries trade unions achieve benefits for their members, by virtue of their strength, by means of negotiation with the employers. In Ceylon, whether the unions are strong or not, the method generally adopted is to lodge a complaint with this Department, which is thereafter expected to obtain for them all that they have asked. While in the former countries an automatic check on excessive demands arises by the fact of direct negotiation based on strength, no such limitation arises when all that one has to do is to write a list of demands and forward it to this Department. The former method is a sign of trade union maturity, which it is desirable that unions in this country should adopt."

² *Proceedings of the 12th Session of the Indian Labour Conference, Nainital, 8-10 October 1952* (Ministry of Labour, Government of India).

reported to government offices. The number of such agreements is quite insignificant but it may not be a fair indication of the extent of collective bargaining in each country, since the parties are not obliged to file copies of their agreements with the government. However, it appears that collective bargaining is comparatively well developed in government enterprises in many countries, in the plantation industries in Ceylon, Indonesia and Malaya and in the textile and ironworks industries in India.

In Japan the Ministry of Labour makes periodic surveys of collective agreements. The survey made in 1952 shows that some 11,047 unions or 54.7 per cent. of the total number were able to conclude collective agreements covering 2,969,175 workers or 69.7 per cent. of total trade union membership.¹ Undoubtedly this development has been due to the new and favourable legislation enacted during the period following the Second World War, supported by an active policy of the Ministry of Labour to encourage collective agreements by supplementary measures, i.e. labour education programmes² and campaigns for the conclusion of collective agreements conducted at both the national and prefectural levels.

The beginnings of a similar development appear to be in evidence in the Philippines, under the impulse of its new Industrial Relations Act of 1953, the declared policy of which is to encourage collective bargaining. Aside from the provisions concerning the right to organise and to bargain collectively, the Act provides for the expansion of government facilities to assist the parties in the negotiation of collective agreements. Though figures are not available, it appears that since the Act took effect there has been a significant increase in the number of collective agreements concluded by direct negotiation or through conciliation.

The practice of collective bargaining in Asian countries is characterised by certain common features. Since most of the unions are organised at the company level, much of the collective bargaining takes place at this level. This is particularly the case in Japan and the Philippines; employers in Japan generally oppose collective bargaining on an industry-wide basis. However, in the plantation industries of Ceylon and Malaya and in the textile industry in certain regions of India the tendency has been towards industry-wide collective bargaining.

In many countries two or more unions claim the right to represent the same group of workers; trade union multiplicity appears to have become a serious problem in Burma, Indonesia

¹ *Year Book of Labour Statistics, 1952* (Tokyo, Ministry of Labour), p. 873.

² *Japan Labour Year Book, 1952* (Tokyo, Ministry of Labour), pp. 58-61.

and Pakistan. Generally, after the conclusion of a collective agreement, the relationship between the parties is deemed to have come to an end, to be resumed on the renewal or re-negotiation of the agreement. While in some countries there are a few exceptions to this rule, the practice of regular consultation between the parties during the life of a collective agreement appears to be as yet little developed.

Legal Conditions for Collective Bargaining

Recognition and Representative Capacity.

In many countries the question of whether the parties are to be recognised by each other and to bargain collectively with each other is left to be decided between the parties themselves. As noted earlier in connection with the protection of the right to bargain collectively, this question is covered by regulations in a number of countries. In India and Pakistan special regulations have been made for the recognition of trade unions of public servants.¹

The parties are also generally left free to determine the scope of their representative capacity, but a more complicated question arises when one workers' organisation claims the right to be the exclusive representative of all the workers in a particular establishment, occupation or industry or when rival organisations claim the right to represent the same group of workers.

In the Philippines a labour organisation may be designated by the majority of the workers in a collective bargaining unit to be the exclusive representative of all the workers in such unit. If any controversy arises concerning this question, the Court of Industrial Relations may conduct an investigation and certify the organisation that is to be the exclusive representative. In case of doubt a secret ballot is to be held under government supervision and the organisation receiving the majority of votes cast becomes entitled to certification.

In India the problem of multiplicity of unions is met by the procedure for the recognition of trade unions by order of a labour court, under which the union must be representative of all the workers employed in the industry or industries concerned.² In Hong Kong this question is dealt with through the procedure for the registration of trade unions; the competent authority may refuse to register a trade union if a previously registered union adequately represents, with respect to a particular trade, the purposes of the proposed union.

¹ *Report of the Royal Commission on Labour in India* (London, H.M. Stationery Office, 1931), p. 323. In Pakistan the question of recognition is now governed by the Cabinet Secretariat Notification of 30 Aug. 1948.

² Under the Indian Trade Unions (Amendment) Act, 1947.

Procedure of Negotiation.

In most countries also the parties may freely determine the procedure under which they will negotiate. In the Philippines the regulations concerning the duty to bargain collectively prescribe a procedure for cases where the parties have not provided for a more expeditious manner of collective bargaining.

A party desiring to negotiate an agreement may serve notice to the other party with a copy of its proposals, to which the other party is required to make a reply within ten days. In case differences arise, either party may request a conference, which must begin within ten days of receipt of the request. If no settlement is reached the parties must participate in meetings arranged by the Conciliation Service, such meetings being considered an extension of collective bargaining.

Joint Collective Bargaining Machinery

In a number of countries the regulation of the relations between employers and workers or the conclusion of collective agreements may be undertaken by joint machinery established by collective agreement or by legislation. In very rare instances industrial tribunals in India and Pakistan have included in their awards a recommendation to the parties for the establishment of such machinery.

Machinery Established by Collective Agreement.

Two types of machinery set up by collective agreements may be noted : (a) for the regular consideration of working conditions ; and (b) for dealing with disputes of a general character as well as those involving individual workers.

An example of the first type is the Joint Labour Council set up by an agreement of 1947 between the Ceylon Estates Employers' Federation and the Ceylon Estates Staff Workers' Union ; the Council, composed of seven members from each side, has as its regular function the consideration of working conditions, but it may also be asked to settle disputes. In Singapore a Government Council for Negotiation was set up in 1952 by agreement between the Government and trade unions of government employees to undertake consultation and negotiations on matters affecting certain categories of public servants. Its establishment increased to eight the total of permanent joint consultation and negotiation bodies set up in the colony, in which are represented 27 unions with a total membership of 18,761.¹

¹ *Annual Report, 1952, Colony of Singapore*, p. 53.

In Malaya also the policy of the Government is to encourage and assist the development of permanent joint consultation and negotiating machinery, particularly in the civil service. In 1953 two National Whitley Councils were set up, one for the monthly-paid staff and the other for the daily-paid staff in government service. Attempts to establish a joint industrial council within the rubber industry have not so far materialised, but some progress has been made in the establishment of joint consultation and negotiating machinery in other industries and concerns.¹

What is often referred to as the Ahmedabad machinery in India has gained prominence as an example of the second type. It has been established largely through the efforts of the late Mahatma Gandhi (who himself served for a time on the joint body) to embody his concept of non-violence in industrial relations. Originally set up in 1920 by agreement between the Millowners' Association and the Labour Association of Ahmedabad, the joint board is made a final resort for the internal settlement of disputes, after these have been dealt with at various levels.² Similar machinery has been established in the Indian Railways³ and by the Ceylon Estates Employers' Federation and the Ceylon Workers' Congress under an agreement concluded in 1951.⁴

Machinery Established by Law.

The establishment of joint machinery for the conclusion of collective agreements is provided for by regulations in Viet-Nam as well as in Japan with respect to public corporations and national enterprises.

In Viet-Nam the competent authority at the national level or at any regional level may, at the request of a representative industrial association, convene a mixed commission for the conclusion or modification of a collective agreement. The commission is composed of an equal number of representatives of employers and workers, chosen from representative organisations in the branch of economic activity concerned. If the commission is unable to reach agreement on any question, the general or regional inspector of labour may intervene to resolve the difficulty. Provisional minimum standards are established by the competent authority if no final agreement is reached.

With respect to the public corporations and national enterprises in Japan, collective bargaining is to be carried out exclusively between negotiating committees from each side. The enterprise con-

¹ *Annual Report, 1953*, Federation of Malaya, pp. 72-75.

² *Report of the Royal Commission on Labour in India*, op. cit., pp. 336-337.

³ Cf. *Industry and Labour*, Vol. VII, No. 7, 1 Apr. 1952, p. 260.

⁴ *Ibid.*, No. 4, 15 Feb. 1952, p. 141.

cerned and the employees or their union determine by agreement the units appropriate for collective bargaining, for each of which the principal trade union and the representatives of non-union workers appoint the workers' negotiating committee. Disputes concerning the designation of collective bargaining units and the representation of employees are decided by the Minister of Labour according to the standards prescribed by law; when circumstances require he may order and conduct employee elections by secret ballot to ascertain the wishes of the majority.

COLLECTIVE AGREEMENTS

Parties

By definition, a collective agreement may be concluded between an employer or employers' organisation and a workers' organisation (Ceylon, Japan, the Republic of Korea and Viet-Nam) or between two or more workers' organisations and two or more employers' organisations (Ceylon and Viet-Nam). In countries where the regulations are not more specific on the point, employers' organisations are generally recognised to have the same right as workers' organisations to enter into collective agreements.

In Viet-Nam representatives of associations must be provided with specific authority to negotiate collective agreements, either under the rules of the association or by resolution adopted at a meeting of the members or by written authorisation from each member, but agreements entered into without such authority may be ratified by the members.

Formalities : Scope of Agreement

The regulations in a number of countries expressly provide that a collective agreement must be drawn up in writing (Ceylon, Japan, the Republic of Korea and Viet-Nam). In the Philippines a collective agreement must be in writing if one of the parties requests it. In practice, in this as in other countries, collective agreements are generally made in writing.

In Ceylon reference must be made in the agreement to the parties, trade unions, employers and workers to be bound by it. Regulations in Viet-Nam require the determination in the agreement of both its territorial and occupational scope; an agreement is deemed to be regional if its scope does not extend beyond the territory of one of the three regions into which the country is divided.

The parties are generally free to include in the agreement such stipulations as they may agree upon, but in Viet-Nam, and in Japan in the case of public corporations and national and local public enterprises, the regulations require stipulations to

be made concerning prescribed matters. Apart from questions relating to working conditions (wage rates, hours of work, paid leave and holidays, discipline and dismissal), these matters include freedom of association, the constitution of the staff delegation, service and efficiency bonus (Viet-Nam); safety and sanitation, accident compensation and grievance machinery (Japan).

Legal Effects

In a number of countries the regulations define precisely the legal effects of collective agreements. In Ceylon and Viet-Nam collective agreements are legally binding on the contracting associations, their members and the employers and workers to whom the agreements relate. It is provided in Japan and the Republic of Korea that whenever an agreement applies to a proportion of the workers in a particular category normally employed in the undertaking (three-fourths in Japan and one-half in the Republic of Korea), it shall apply to all the workers in that category in the undertaking.

The provisions of a collective agreement are deemed to be implied conditions of employment between the employers and workers bound by it (Ceylon) or are deemed to be incorporated in the individual contracts of employment of the workers to whom it relates (Indonesia, Japan, the Republic of Korea and Viet-Nam). In case of conflict between the provisions of an individual contract of employment and those of a collective agreement the latter prevail (Japan, the Republic of Korea and Viet-Nam).

In Ceylon, however, a collective agreement does not take effect unless it is published in the *Government Gazette*, and this is ordered by the competent authority only if it is satisfied that the conditions of employment stipulated in the agreement are not less favourable than those applicable to any other workers in the same or a similar industry in the district covered by it. In Viet-Nam a collective agreement requires the approval of the competent authority, which may refuse to approve any provision that can be separated from the agreement while leaving it otherwise intact.

A collective agreement in Ceylon, whether for a fixed or indefinite period, may be terminated by either party upon notice to the competent authority and to any other party, employer or trade union bound by it. The competent authority in Viet-Nam may also withdraw the approval previously given to a collective agreement.

Extension of Agreements

The application of a collective agreement may be extended by order of the competent authority to other employers and workers

not originally bound by it (for example, in Ceylon, Japan, the Republic of Korea and Viet-Nam).

In Ceylon the terms of a collective agreement applying to an industry in a district are deemed to be the "recognised terms and conditions of employment" in the entire industry in that district if the parties to the agreement are associations of employers and workers the total number of whom form not less than a prescribed percentage of all the employers and workers engaged in the industry in the district and if such conditions as may be prescribed by the competent authority are complied with by the parties to the agreement. However, the duty to comply with the "recognised terms and conditions of employment" does not arise until the publication of the collective agreement in the *Government Gazette*.

In both Japan and the Republic of Korea the competent authority may issue an order, pursuant to a resolution of the appropriate labour relations commission or board, for the extension of a collective agreement that applies to a proportion of the workers (majority in Japan and two-thirds in the Republic of Korea) in a particular category in a district to all the workers in the same category in that district and to their employers. However, in Japan the labour relations commission may, in making its resolution on the extension, modify any provision of the agreement that it deems inappropriate.

The competent authority in Viet-Nam may order the extension of a collective agreement to all the employers and workers in the occupational category to which it applies who come within the territorial scope (regional or national) of the agreement. The order is made on the advice of the appropriate labour consultative council and after due notice has been given by publication of the conditions of the proposed extension and of an invitation to interested associations and persons to submit their observations within a prescribed period.

(To be continued)
