

International Labour Standards and Asian Countries

The applicability and application of its standards in countries with widely differing levels of economic and social advancement has always been a subject of concern for the International Labour Organisation. As more and more of the developing countries of Asia and Africa become independent and active participants in I.L.O. affairs, and because of the urgent need for improving living and working conditions in these countries, the relevance and value of the I.L.O.'s standard-setting activities to such efforts has become a question of major interest to the Organisation as a whole. The following article is based on a paper which was prepared for the Tenth Session of the Asian Advisory Committee of the I.L.O. (Geneva, November 1960). Although it views the question in its Asian setting, it may help to provide a clearer picture and a better understanding of the general issues involved.

ECONOMIC and social conditions in Asian countries¹ were summed up graphically by a Ceylon Government delegate to the 40th Session of the International Labour Conference in 1957 when he referred to the problems facing his country in the following words:

A rapidly growing population which is outstripping resources at an alarming rate; violent price fluctuations of the commodities we produce; extreme poverty of the countryside and a disequilibrium between the urban and agricultural sectors; lack of capital for development purposes; need of education for everybody in the widest sense; and finally, the socio-economic problems which need adjustment when the others are solved.²

A competent I.L.O. observer who had visited a number of countries in Asia some 20 years earlier had formulated his conclusions in similar terms—

Although there is a general endeavour to work towards international standards in regard to conditions of employment and a growing measure of success is being achieved, it would be misleading to suggest that these problems, important as they are, dominate the social consciousness of the

¹ For the purpose of this article the Asian countries under consideration are those which participate in the Asian Regional Conferences of the I.L.O.: Afghanistan, Burma, Ceylon, Republic of China (Taiwan), India, Indonesia, Japan, Federation of Malaya, Pakistan, Philippines, Thailand, Viet-Nam.

² International Labour Conference, 40th Session, Geneva, 1957: *Record of Proceedings* (Geneva, I.L.O., 1958), p. 214.

East. They necessarily yield priority to the fundamental and interlocking problems of population, poverty, illiteracy and disease.¹

The intervening two decades have, however, brought in their wake in Asia not only tremendous political upheavals but also a new consciousness of the urgent need for taking concerted and determined action to overcome these age-old problems. As this can only be done by raising the level of economic activity and productivity, the countries of the region are engaged in a gigantic effort to develop their material and human resources. If those responsible for the destinies of Asia are conscious of the vital necessity to push such plans ahead with the utmost speed, many are equally conscious of the need not to lose sight of the human factor, i.e. to link industrial and social progress as closely as possible. This basic approach was strikingly formulated by Mr. Nehru when he addressed the opening sitting of the Fourth Asian Regional Conference of the I.L.O. (1957). Mr. Nehru said—

In India we are very much concerned with increasing our production, because unless we produce wealth we shall not have any means for the betterment of man. But in the production of wealth we can never forget the social or human aspect of the process ; even if we should forget, conditions will remind us, because the people are politically conscious and will not put up with many things that they might have put up with in the past. In saying that it is necessary to be clear about our social ideals, I am not talking about a particular structure of society, but of basic needs.

The First Asian Regional Conference of the I.L.O., meeting ten years earlier, had in fact adopted a "Resolution concerning Programmes of Action", which was inspired by the same motives as those set forth by the Prime Minister of India, i.e. to link "the process of economic and social development now taking place in Asian countries" by taking "effective steps for the progressive application" of I.L.O. Conventions and Recommendations.

The role of these standards in the Asian context has been the subject of special comment by speakers from the region at recent sessions of the International Labour Conference and the opinions expressed have helped to focus attention on the major points at issue.

The Japanese Minister of Labour expressed the view in 1959 that—

... labour problems in all countries have characteristics stemming from their own particular national circumstances. I believe that in order to fulfil its aims the I.L.O., as an organ helping to raise workers' standards of living throughout the world, should have a better understanding of the traditions and various social and economic conditions of all member countries and should conduct all its activities on this basis. The same attitude might be

¹ I.L.O.: *Problems of Industry in the East*. With Special Reference to India, French India, Ceylon, Malaya and the Netherlands Indies. By Harold BUTLER. Studies and Reports, Series B, No. 29 (Geneva, 1938), p. 67.

applied to the traditional activity of the I.L.O. in establishing international standards.¹

The Indian Minister for Labour and Employment also spoke of this problem when he addressed the same session of the Conference—

The code of international standards which the I.L.O. has evolved through the decades is a remarkable product of co-operative endeavour among nations. A large leeway still remains to be made up in the acceptance and implementation of these standards. Very often what is lacking is not the will but the means to ensure minimum standards of well-being to the bulk of the population in the country. It is therefore only right and proper that the I.L.O. should apply itself increasingly to the study and the processes of economic and social change and the basic causes of the present incapacity of certain countries to keep pace with the rest in respect of the observance of the standards which have been laid down.²

At the 1960 Session of the Conference the Workers' delegate of Ceylon touched upon another facet of the same situation—

Those of us who come from countries in the less developed sector of the world should be forgiven if we tend to place excessive importance on this question of economic development of our region. Whilst we are gratified that the I.L.O. has paid a great deal of attention to this question, our own impatience at the slow rate of development is understandable. When it is realised that only very few of the Recommendations and Conventions of the I.L.O. itself can be implemented in the countries of Asia, Africa and Latin America because of the low levels of development and dangerous levels of unemployment, the frustration and sense of bitterness of peoples living in these areas can be understood.³

The above comments, which may be taken as representative of current opinion in Asian countries regarding I.L.O. standards, raise two basic questions. How has the I.L.O. gone about defining standards for countries with widely different economic and social conditions? What has been the effect of these efforts as apparent in the formal acceptance of I.L.O. standards and their practical application by Asian countries?

THE I.L.O. APPROACH TO DIFFERING ECONOMIC AND SOCIAL CONDITIONS

Constitutional Provisions

As a world-wide organisation the I.L.O. has always been faced with the problem of combining universality with a realistic appraisal of the degree of applicability of its standards in countries where

¹ International Labour Conference, 43rd Session, Geneva, 1959 : *Record of Proceedings* (Geneva, I.L.O., 1960), p. 126.

² *Ibid.*, p. 26.

³ International Labour Conference, 44th Session, Geneva, 1960 : *Record of Proceedings* (Geneva, I.L.O., 1961), p. 136.

economic and social conditions differ markedly from those in the more industrialised parts of the world. The question was already fully discussed at the Paris deliberations which led to the setting up of the Organisation in 1919, and the General Principles which formed part of the original Constitution of the I.L.O. were prefaced by a statement recognising "that difference of climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment. But . . . there are methods and principles for regulating labour conditions which all industrial communities should endeavour to apply, so far as their special circumstances will permit."

This flexible approach was re-emphasised in 1944 in the Declaration of Philadelphia¹, which is now annexed to the Constitution of the Organisation, and which concludes with an affirmation "that the principles set forth in this Declaration are fully applicable to all peoples everywhere and that, while the manner of their application must be determined with due regard to the stage of social and economic development reached by each people, their progressive application to peoples who are still dependent, as well as to those who have already achieved self-government, is a matter of concern to the whole civilised world".

To translate this approach into practical terms, article 19, paragraph 3, of the I.L.O. Constitution provides that—

In framing any Convention or Recommendation of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organisation, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

Special Countries Clauses

In accordance with this directive the Conference included special clauses for specified countries, providing for modifications of the general standards, in a number of Conventions. The clauses affecting Asian countries are to be found in twelve instruments.²

¹ Declaration concerning the Aims and Purposes of the International Labour Organisation, adopted by the 26th Session of the International Labour Conference, Philadelphia, 1944.

² The Hours of Work (Industry) Convention, 1919, contains special provisions for India and Japan. The Night Work (Women) Convention, 1919, contains special provisions for India and Siam. The Minimum Age (Industry) Convention, 1919, and the Night Work of Young Persons (Industry) Convention, 1919, contain special clauses for India and Japan. The Weekly Rest (Industry) Convention, 1921, authorises the countries for which the first-

The modifications of the general standard authorised by these special clauses either provide for a narrower scope of application or for a lower age of protection or for a combination of both relaxations.

It should also be recalled here that three Conventions¹ lay down a procedure under which the International Labour Conference may at a subsequent session amend the special clauses contained in them. It would seem possible to make these clauses applicable by means of such amendments to other member countries.

Apart from the inclusion of provisions authorising lower standards for specified States, article 19, paragraph 3, of the Constitution has also been used on a more general scale by the inclusion in some Conventions of modifications for all countries in which certain climatic, industrial or other conditions defined in the Convention exist. For example the Night Work (Women) Convention, 1919, provides that "in countries where the climate renders work by day particularly trying to the health, the night period may be shorter than prescribed in the above Articles, provided that compensatory rest is accorded during the day". Similarly, the Night Work of Young Persons (Industry) Convention, 1919, lays down that "in those tropical countries in which work is suspended during the middle of the day, the night period may be shorter than 11 hours if compensatory rest is accorded during the day".

Other Flexibility Devices

Over the years, and particularly since the Second World War, the International Labour Conference has made increasing use of a variety of other devices designed to facilitate the implementation of standards by a wide range of States. These various provisions, which are as a rule used in combination, have extended the concept of flexibility far beyond what was contemplated originally

mentioned Convention had laid down special provisions to define the scope of the Convention in accordance with these special provisions.

In revising the Night Work (Women) Convention, 1919, and the Night Work of Young Persons (Industry) Convention, 1919, the Conference maintained the special clauses concerning India, adding in 1948 similar ones concerning Pakistan. In revising the Minimum Age (Industry) Convention, 1919, a special clause for China was added to those already existing for India and Japan. Aside from these revisions of earlier Conventions, special clauses for India were inserted in four other instruments: the Minimum Age (Non-Industrial Employment) Conventions of 1932 and 1937, the Medical Examination of Young Persons (Industry) Convention, 1946, and the Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946.

¹ The Minimum Age (Industry) Convention (Revised), 1937; the Night Work (Women) Convention (Revised), 1948; and the Night Work of Young Persons (Industry) Convention (Revised), 1948.

in article 19, paragraph 3, of the Constitution. Inherent in all these methods is the concept of progressive application, which appears particularly relevant to the requirements of developing countries. Although there is no room here to describe these devices in any detail, a brief review of the principal types may help to illustrate the efforts made in the drafting of I.L.O. standards to meet the varying needs of member countries.

There is, first, the "new legislation clause", under which a State which has no legislation on the subject prior to its taking action to become a party to the Convention may ratify on the basis of a lower standard. Such a clause was first included in the Night Work (Women) Convention, 1919, and resorted to again on subsequent occasions. A variation of this clause is found in the Night Work of Young Persons (Industry) Convention (Revised), 1948, which permits the substitution of a lower age of protection if the laws and regulations existing before ratification fall short of the limit set in the Convention.

Another device found in a number of Conventions is the "excluded area clause" first used in the Sickness Insurance (Industry) Convention, and the Sickness Insurance (Agriculture) Convention, both of 1927. Under this provision, States the territory of which includes large and thinly populated areas or regions at a less advanced stage of development are permitted to exclude such areas from the application of the Convention.¹ This type of clause sometimes requires prior consultation of the employers' and workers' organisations concerned before resort is had to it.

The progressive application concept has also found expression in another device first used in 1938, namely ratification by parts. The device in question permits a ratifying State to exclude certain parts of a Convention from its ratification. The parts so excluded may be accepted subsequently and there is usually an obligation to report, meanwhile, on the progress made towards complete application. The most recently adopted instrument in this category is the Plantations Convention, 1958. Aside from its formal provisions, it consists of 12 parts dealing with all aspects of the employment of plantations workers, such as engagement and recruitment, wages, workmen's compensation, right to organise and collective bargaining, housing, etc. A ratifying State undertakes to comply with three compulsory parts and with at least two of the remaining nine optional parts. This leaves a considerable measure of latitude in limiting obligations to those which can be effectively discharged at the time of ratification. In addition to this Convention, the Conference has adopted four Conventions providing for ratification

¹ See in particular the Protection of Wages Convention, 1949.

by parts¹, one providing for the acceptance of alternative parts² and one providing for the exclusion of optional annexes from the ratification.³

In an effort to avoid excessive detail in the text of Conventions, the Conference has often combined a Convention with a complementary Recommendation. The Convention is drafted so as to make it as widely acceptable as possible, while technical and other matters are dealt with at greater length in the Recommendation. The most recent examples of this method are the Discrimination (Employment and Occupation) Convention and Recommendation, 1958; the fact that not less than 14 out of the 29 Conventions adopted since 1948 are linked with such complementary Recommendations indicates the increasing popularity of this device.

Over the years the Conference has evolved many other devices designed to extend the range of acceptability of its decisions. The increasing participation of countries from the less industrialised areas has certainly been a factor in this trend. Flexible scope provisions, the adoption of broader, more general language, the possibility of compliance through application of the Convention to a specified percentage of workers, the use of temporary exceptions, of transitory provisions, and other devices, all tend to achieve a maximum of latitude in the application of standards. The use of these devices naturally depends on the subject-matter to be dealt with. As a rule a variety of methods can be combined, the most striking example of this being the Social Security (Minimum Standards) Convention, 1952. This instrument not only provides for ratification by parts, as already noted above, but it also includes, *inter alia*, temporary exceptions for Members "whose economy and medical facilities are insufficiently developed", specified percentage clauses, and a system under which the level of benefits is linked to the national standard of living expressed, for example, in terms of the wages of "unskilled labour" or of the total amount of benefits paid.

In fact, the use of a wide variety of flexibility devices has become so general that, of the 47 substantive Conventions adopted since the Second World War, only three contain no such provisions. The exceptions are instruments dealing with fundamental human

¹ The Statistics of Wages and Hours of Work Convention, 1938; the Labour Inspection Convention, 1947; the Social Security (Minimum Standards) Convention, 1952; and the Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958.

² The Fee-Charging Employment Agencies Convention (Revised), 1949.

³ The Migration for Employment Convention (Revised), 1949.

rights¹ so that there can indeed be little room for any latitude in their implementation.

The fact that the I.L.O. has been setting international standards for over 40 years makes, in itself, for a broader choice of Conventions. The levels of protection fixed by the early texts have sometimes been raised in revising Conventions, but when the original instruments are still open to ratification they continue to secure formal acceptance, often by new States which become Members of the Organisation when they achieve independence. Thus the first 20 Conventions, adopted between 1919 and 1925, have during the past decade received 222 additional ratifications, an increase of about 40 per cent. over the total of 549 registered up to 1950. Far from being out of date, these early texts therefore constitute a link between the long-term and the more recent Members of the International Labour Organisation. They enable the latter to move gradually towards the levels which the former also often reached only by stages and over a period of time.

It should also be recalled here that the concept of progressive and flexible implementation can operate both before and after the ratification of a Convention. Under the system of reporting on unratified Conventions, introduced into article 19 of the Constitution in 1946, governments are called upon not only to state the obstacles in the way of full application but also to specify the measures taken or contemplated to overcome these obstacles. Similarly, the system of supervision governing ratified Conventions (article 22) works on the basis of a periodic follow-up designed to eliminate gradually any shortcomings found in the implementation of these binding obligations.

ACCEPTANCE AND APPLICATION OF I.L.O. STANDARDS BY ASIAN COUNTRIES

Have the efforts made by the I.L.O. to adapt its standards to the varying needs and conditions of its member States facilitated the acceptance of Conventions and Recommendations in Asia? What influence have these standards exercised and what are the factors which render full implementation difficult?

Discussion of Standards at Asian Regional Conferences

The first Asian Regional Conference, held in 1947, had on its agenda an item concerning a programme of action for the enforce-

¹ The Freedom of Association and Protection of the Right to Organise Convention, 1948; the Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955; and the Abolition of Forced Labour Convention, 1957.

ment of social standards embodied in Conventions and Recommendations not yet ratified or accepted. The conclusions reached on this item were incorporated in a detailed "Resolution concerning Programmes of Action"¹ already mentioned above, which recommended the "preparation by each Asian country of a national programme of action for a period of years consisting of proposals for the progressive application, by stages where necessary, of the existing international labour standards". Governments were to draw up and implement these programmes in consultation and co-operation with the employers' and workers' organisations in their countries. The resolution enumerated in this connection 16 Conventions to which special attention should be directed in carrying out national programmes of action, and requested the I.L.O. to afford expert assistance in the preparation and execution of these programmes.

Subsequent Asian Regional Conferences also concerned themselves with the application of standards. The meeting held in Nuwara Eliya (Ceylon) in 1950 called on governments to ratify and apply the Employment Service Convention, 1948, and the Fee-Charging Employment Agencies Convention (Revised), 1949.² The third Asian Regional Conference, held in Tokyo in 1953, adopted a resolution urging governments to keep under review the progress of their law and practice in relation to the provisions of international labour Conventions and Recommendations.³

Ratifications by Asian Countries

In order to review the position realistically, account might be taken not only of global ratification figures but also of the extent to which Conventions of major interest to Asia have been ratified. Such priority instruments would include (a) all those mentioned in the programme of action resolution of 1947⁴, (b) any subse-

¹ I.L.O. : *Official Bulletin* (Geneva), Vol. XXX, 1947, No. 3, p. 195.

² "Resolution concerning Employment Service Organisation", *ibid.*, Vol. XXXIII, 1950, No. 1, p. 23.

³ "Resolution concerning the Prompt Ratification of International Labour Conventions by Asian Countries", *ibid.*, Vol. XXXVI, 1953, No. 4, p. 96.

⁴ Hours of Work (Industry), 1919; Maternity Protection, 1919; Placing of Seamen, 1920; Weekly Rest (Industry), 1921; Workmen's Compensation (Accidents), 1925; Equality of Treatment (Accident Compensation), 1925; Sickness Insurance (Industry), 1927; Minimum Wage-Fixing Machinery, 1928; Forced Labour, 1930; Night Work (Women) (Revised), 1934; Unemployment Provision, 1934; Hours of Work (Coal Mines) (Revised), 1935; Holidays with Pay, 1936; Sickness Insurance (Sea), 1936; Minimum Age (Industry) (Revised), 1937; and Labour Inspection, 1947.

quent Conventions revising or supplementing these texts ¹, (c) any Conventions dealing with subjects to which Asian Regional Conferences have drawn special attention ², and (d) three other instruments adopted during the past decade which are clearly of fundamental importance.³ This list thus covers a total of 30 Conventions, i.e. about a quarter of all those adopted since 1919.

A tabulation of the ratifications of these priority Conventions, and of all Conventions, by Asian countries shows the following :

RATIFICATION OF ALL CONVENTIONS AND OF PRIORITY
CONVENTIONS BY ASIAN COUNTRIES

State Member	All Conventions	Priority Conventions
Afghanistan	6	2
Burma	21	11
Ceylon	19	6
China	16	7
India	27	13
Indonesia	6	4
Japan	24	6
Federation of Malaya	9	5
Pakistan	28	14
Philippines	17	10
Thailand	1	—
Viet-Nam	11	4
Total	185	82

It will be seen that a very sizeable proportion of the ratifications by Asian countries covers Conventions in the priority groups mentioned above.

If the progress of ratifications by Asian countries is traced over the years it is found that they rose successively from 20 in 1930, to 46 in 1940, to 83 in 1950 and to 185 at the present time. There are, moreover, additional ratifications pending for approval.

Taken as a percentage of the ratifications received from all member countries, Asian ratifications constituted about 5 per cent. during the Organisation's first two decades, rose to 7 per cent. in

¹ Night Work (Women) (Revised), 1948 ; Minimum Wage-Fixing Machinery (Agriculture), 1951 ; Holidays with Pay (Agriculture), 1952 ; Maternity Protection (Revised), 1952 ; and Abolition of Forced Labour, 1957.

² Right of Association (Agriculture), 1921 ; Statistics of Wages and Hours of Work, 1938 ; Freedom of Association and Protection of the Right to Organise, 1948 ; Employment Service, 1948 ; Right to Organise and Collective Bargaining, 1949 ; and Plantations, 1958.

³ Equal Remuneration, 1951 ; Indigenous and Tribal Populations, 1957 ; and Discrimination (Employment and Occupation), 1958.

1950 and represent at present 8 per cent. of the over-all total. The average number of ratifications per Asian State Member, which was ten a decade ago, has now risen to 15, the corresponding figure for the I.L.O. membership as a whole standing currently at 23.

The Influence of Standards

Evidence of the effect of ratified Conventions becomes available in a variety of ways. A government may indicate in a formal declaration that its programme aims at ensuring conformity with the decisions of the International Labour Conference. Thus, in the labour policy announced by the Pakistan Minister for Health and Social Welfare in 1959, the first of a number of principles preceding the statement declares that "the policy of the Government of Pakistan in the field of labour shall be based on I.L.O. Conventions ratified by Pakistan". In the operative part of the statement reference is made to the desirability of collective negotiations and agreements in accordance with the Right to Organise and Collective Bargaining Convention, 1949.

Interesting data have been given in publications of the Japanese Ministry of Labour. Speaking of the organisation of inspection agencies the Ministry explained that this "follows the principle embodied in the Recommendation adopted at the Fifth Session of the International Labour Conference in 1923 and the Convention adopted at the 30th Session of the International Labour Conference in 1947".¹ Japan ratified the Convention in 1953. With reference to legislation for the protection of women the Ministry of Labour indicated recently that the Japanese Labour Standards Law is "a codification of internationally approved labour standards . . . adopted since 1919".²

The *Indian Labour Year Book* also provides significant statements of this type. Thus, in a passage dealing with the Factories Act it was explained that "as a result of the ratification of the revised I.L.O. Conventions relating to night work of women and young persons, it became necessary to make suitable changes in the Act and consequently an amending Bill was introduced in the Rajya Sabha on 3 September 1953. . . . It was passed into an Act on 7 May 1954."³

The adoption of collective bargaining as the labour relations policy of the Philippines has been attributed, *inter alia*, to the participation of this country in the adoption of the Freedom of

¹ *Japan Labor Year Book for 1954*, Part IV: "Labor Standards", Ch. I, p. 62.

² *Japan Labor Bulletin*, Vol. II, May 1960, No. 5, p. 7.

³ *Indian Labour Year Book 1954-55*, Ch. II, p. 40.

Association and Protection of the Right to Organise Convention, 1948, and the Right to Organise and Collective Bargaining Convention, 1949, and to their ratification in 1956.¹

In certain cases the adoption of legislation, over the years, can be related to the existence of I.L.O. standards. Thus, in Ceylon legislation had already been enacted during the 1920s in order to give effect to Conventions regarding the minimum age of admission to industrial and maritime employment. This was followed by a 1937 ordinance to give effect to the Underground Work (Women) Convention, 1935, and finally by the Women, Young Workers and Children Act of 1956, which was enacted, according to the administration report of the Commissioner of Labour, to embody the 1948 Conventions on night work of women and young persons, the latter ratified by Ceylon.

However, Conventions, though ratified, may not be satisfactorily applied. This becomes apparent when the reports made by ratifying countries under article 22 of the Constitution are examined by the supervisory organs, i.e. by the Committee of Experts on the Application of Conventions and Recommendations and by the Conference Committee on the Application of Conventions and Recommendations. In such cases further measures are required in order to give effect to a Convention. Two examples of this type of action may be cited here. The Committee of Experts recently expressed its appreciation of the action taken by the Government of Viet-Nam in modifying its legislation to comply more fully with the Conventions dealing with the minimum age in industry and with holidays with pay ratified by that country. Similarly, amendments to the Indian Factory Act raised the minimum age for night work for young persons from 15 to 17 years in order to give effect to the Night Work (Young Persons) Convention (Revised), 1948, to which India is a party.²

But in addition to the cases where binding obligations exist as a consequence of ratification, international labour standards may exercise their influence, in Asia as in other parts of the world, even in the absence of ratification. Sometimes speakers bring this up in a general way at I.L.O. meetings. For example the Malayan Minister of Labour and Social Welfare explained that "whenever labour legislation is contemplated or any changes are considered, our first thought is always: 'What do I.L.O. Conventions say

¹ Cicero D. CALDERON: "From Compulsory Arbitration to Collective Bargaining in the Philippines", in *International Labour Review*, Vol. LXXXI, No. 1, Jan. 1960, pp. 10-11.

² V. K. R. MENON: "The Influence of International Labour Conventions on Indian Labour Legislation", *ibid.*, Vol. LXXXIII, No. 6, June 1956, pp. 552-571, contains many instances of the impact of I.L.O. standards on Indian law.

on the matter? ' Wherever possible we have always followed and will always follow the standards set by the Conventions.'¹ Similarly the Secretary of Labour of the Philippines told the International Labour Conference that his Government was implementing a set of labour laws, " most of them patterned after I.L.O. Conventions, for the benefit especially of unorganised workers". Among the laws mentioned were the Industrial Peace Act, the Minimum Wage Law, the Eight-Hour Labour Law, the Industrial Safety Law and the Workmen's Compensation Act.² And a Japanese Workers' delegate stated on another occasion: " We are perfectly aware of the defects or shortcomings in the structure of our trade unions and we are making every effort to correct them. The I.L.O. indicates the standards we could reach in many respects and shows us the way to overcome difficulties."³

National Machinery to Determine Labour Policy

The influence of I.L.O. standards can be traced most accurately when formal machinery exists at the national level to deal with the implementation of the decisions of the International Labour Conference. As noted above, the programmes of action resolution of 1947 calls for co-operation with employers' and workers' organisations in planning the progressive application of Conventions and Recommendations. The Government of India has done pioneering work in this direction⁴ and has undertaken a concerted and continuous effort, which has become a model of its kind; following a suggestion by the National Labour Conference, the Ministry of Labour set up a tripartite Committee on Conventions to examine I.L.O. standards in the light of prevailing conditions and to formulate a programme of phased implementation. This body has met regularly since 1954 and its deliberations have led to the ratification of such important Conventions as those on minimum age in industry, minimum-wage-fixing machinery, forced labour, employment service, equal remuneration and discrimination in employment and occupation.

Machinery for examining the possibility of giving effect to I.L.O. Conventions has been established in several other Asian countries. In Burma the tripartite Standing Joint Labour Advisory Board is entrusted, *inter alia*, with the preliminary examination of

¹ International Labour Conference, 42nd Session, Geneva, 1958 : *Record of Proceedings* (Geneva, I.L.O., 1959), p. 239.

² International Labour Conference, 38th Session, Geneva, 1955 : *Record of Proceedings* (Geneva, I.L.O., 1956), p. 74.

³ International Labour Conference, 44th Session, Geneva, 1960 : *Record of Proceedings*, op. cit., p. 144.

⁴ See also in this connection the article by V. K. R. MENON, referred to above.

the advisability of ratifying Conventions. If its findings indicate that legislative changes are necessary before a Convention can be ratified, the matter is placed before the Labour Legislation Committee, also a tripartite body, which reviews the position in order to determine whether the existing legislation should be revised or new measures enacted. The Government of the Republic of China (Taiwan) set up a committee in 1958 to review labour legislation in the light of I.L.O. standards. In the Federation of Malaya the National Joint Labour Advisory Council, which comprises representatives of trade unions and employers' organisations, has appointed an I.L.O. Conventions subcommittee. It is the normal practice in Pakistan to bring Conventions and Recommendations before the Tripartite Labour Conference before the Government reaches a final decision regarding the action to be taken on them.

The existence of formal machinery of this type ensures that the decisions of the International Labour Conference are closely and regularly examined with a view to possible action. This in turn facilitates compliance with article 19 of the I.L.O. Constitution, which requires Conventions and Recommendations to be brought before the competent national authorities "for the enactment of legislation or other action". Before submitting new standards to its Parliament, in accordance with the above article, the government can call on the advisory bodies for assistance in formulating its policy. The tripartite principle which underlies the definition of standards at the international level thus also operates in deciding on their implementation at the national level.

Implementation of Conventions and Recommendations

The information which Asian member States communicate to the International Labour Office on the submission of Conference decisions to their competent authorities throws interesting light on the results of this procedure. In 1958, for instance, the Government of Pakistan indicated that it had decided that the Vocational Training (Agriculture) Recommendation, 1956, could not be accepted in its entirety but that the provincial governments and the other authorities concerned should be asked to implement as many of its provisions as possible. With regard to the Welfare Facilities Recommendation, 1956, the Pakistan Tripartite Labour Conference recommended the Government to accept its provisions with the exception of certain stated paragraphs. The Government added that the provisions of the Recommendation would be modified in their application to meet local conditions.¹

¹ I.L.O. : *Summary of Information relating to the Submission to the Competent Authorities of Conventions and Recommendations Adopted by the Inter-*

More recently the Government of India recommended Parliament to approve the ratification of the Discrimination (Employment and Occupation) Convention, 1958, with the following statement :

The insertion of the phrase " by methods appropriate to national conditions and practice " in the operative part of the Convention lends an element of flexibility to the text of the instrument, and allows a degree of freedom on the part of a ratifying country in the matter of deciding upon the measures to be taken to give effect to its provisions.¹

The comprehensive surveys of the position in both ratifying and non-ratifying countries which the I.L.O. Committee of Experts on the Application of Conventions and Recommendations draws up on the basis of reports on unratified Conventions and on Recommendations have also at times assisted governments in reaching a decision, by clarifying the degree of latitude permitted in implementing a Convention once it is ratified. Thus, the Indian Committee on Conventions, to which reference was made above, stated in 1958 that it was re-examining the question of ratification of the Equal Remuneration Convention, 1951, since the Committee of Experts, in one of its surveys, had explained " the instrument in such a way as to limit the area of the Government's responsibility in the matter of enforcement ".² India ratified the Convention the same year. The Conference's efforts to leave governments some freedom in adapting the application of international standards to national conditions have clearly been of value in these cases.

Effect of Special Countries Clauses

Can the same be said of special clauses which some Conventions contain for certain Asian countries ? India has ratified seven of a possible 12 Conventions on this basis and has been able to proceed from the lower standards originally applicable to her towards the implementation of the general standards contained in certain Conventions. Thus the 60-hour week authorised under the Hours of Work (Industry) Convention, 1919, has since been reduced step by step to the 48-hour week laid down for all ratifying States.³ This is another example of the operation of the progressive application principle.

national Labour Conference, Report III (Part III), International Labour Conference, 43rd Session, Geneva, 1959 (Geneva, 1959), p. 7.

¹ Government of India, Ministry of Labour and Employment : *Statement for Parliament* (tabled March-April 1960), p. 15.

² *Indian Labour Gazette*, Vol. XV, No. 10, Apr. 1958.

³ See also MENON, *op. cit.*

China and Pakistan have become parties to the Conventions (one in the case of the former, and two in that of the latter) into which the Conference had written special standards in their respect. But neither Japan nor Thailand have undertaken formal obligations as regards any of the Conventions (four for Japan, two for Thailand) which specifically provide a measure of flexibility for them. Perhaps as a result of this somewhat limited response, the Conference has refrained since 1948 from inserting special countries clauses into Conventions and has instead, as already noted, made wide use of other flexibility devices thus enabling all countries whose economic, social and industrial conditions require such a course to take advantage of the latitude available.

Overcoming Obstacles to Ratification

The fact must be faced, however, that some countries of Asia have ratified no Conventions, or only very few, and that even those which pursue a systematic policy of accepting as many instruments as possible often encounter difficulties in doing so. The nature of these difficulties emerges from the reports on unratified Conventions requested by the Governing Body under article 19 of the I.L.O. Constitution, such as those in 1959 on five Conventions concerning the protection of young industrial workers. The Government of Burma, for example, stated in its reply that "the shortness of life expectancy, the fact that people of the tropical countries mature earlier than people of the temperate countries, the non-existence of the compulsory education system, the general economic conditions requiring people to support themselves at an early age and the absence of the necessary legislation for certain classes of industrial undertakings"¹ prevent the ratification of the Conventions at present. Other Asian countries also referred to the narrower scope of the relevant national legislation (India, Indonesia, Japan, Pakistan, Thailand) or to the lower age limits fixed by law (Ceylon, India, Indonesia, Viet-Nam) as preventing compliance with the I.L.O. Conventions on minimum age and night work of young persons in industry.

In its survey of the position the Committee of Experts examined these difficulties and pointed out that "although economic and climatic factors may play an important role, I.L.O. standards, especially those of Convention No. 90 [the Night Work of Young Persons (Industry) Convention (Revised), 1948], are sufficiently

¹ I.L.O.: *Summary of Reports on Unratified Conventions and on Recommendations*, Report III (Part II), International Labour Conference, 44th Session, Geneva, 1960 (Geneva, 1960), p. 5.

flexible to meet a great variety of circumstances. Not only do they allow a wide degree of latitude for fixing the beginning (and the end) of the night period but they also take account of the climate (Article 4 of Convention No. 90) and they even permit the night work prohibition to be limited to lower age groups if a country's legislation has so provided hitherto (Article 7). It is surprising that only one country has thus far ratified in making use of this latter clause."¹

Two years earlier, reports submitted under article 19 of the I.L.O. Constitution dealt with the I.L.O. instruments on minimum-wage-fixing machinery. Here the main obstacles to implementation cited arose in the field of agricultural employment. The Government of Pakistan, for instance, explained that minimum wage fixing does not appear feasible "because of the lack of organisation and small-scale structure of agriculture. It is difficult to distinguish between workers and employers. The peasant proprietor generally cultivates his own land, occasionally hires casual labour and occasionally works for others when there is no work on his own land."² Similar difficulties were mentioned by the Burmese, Japanese and Viet-Nameese Governments.

In its survey of the reports, the I.L.O. Committee of Experts referred to these obstacles. It pointed out that "agricultural minimum wage legislation frequently permits of a considerable flexibility in application—for example by providing for regional variations, the fixing of different rates for permanent, casual, and seasonal workers, and the evaluation of benefits in kind", and expressed the opinion that "in a number of countries, the obstacles mentioned . . . might be overcome if it were recognised that this flexible approach is possible".³

In the course of these surveys the Committee of Experts also found evidence that difficulties of implementation are being overcome. In 1958 it reported "an intense concern with the minimum wage problem . . . in countries with widely varying degrees of economic development. Reference may be made, by way of illustration, to the Indian Minimum Wages Act, which was enacted in 1948 and has undergone repeated amendment in the light of problems arising out of its operation . . . and to the discussions

¹ I.L.O.: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part IV), International Labour Conference, 44th Session, Geneva, 1960 (Geneva, 1960), p. 121.

² Idem: *Summary of Reports on Unratified Conventions and on Recommendations*, Report III (Part II), International Labour Conference, 42nd Session, Geneva, 1958 (Geneva, 1958), p. 40.

³ Idem: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part IV), International Labour Conference, 42nd Session, Geneva, 1958 (Geneva, 1958), p. 121.

proceeding in Japan and Pakistan with a view to the introduction of minimum wages systems." ¹ Similarly, in its survey of the effect given to the Conventions concerning young industrial workers, the Committee drew attention to action taken by India and Viet-Nam with a view to fuller implementation of certain of the Conventions concerned; it also referred to the Republic of China's intention to include provisions on night work and medical examination of young persons in its current revision of existing labour laws.

Technical Assistance

In dealing with the difficulties which prevent full implementation of I.L.O. standards the potential value of technical assistance must not be overlooked. As noted above, the programmes of action resolution of 1947 had asked the I.L.O. to assist Asian countries in the framing of laws and regulations on the basis of the decisions of the International Labour Conference. Since then a number of Asian countries have received this type of expert advice. A case in point is the minimum wage project carried out in Burma in two phases, in 1953 and 1956. As a consequence of this project wages councils were established and other measures were taken which subsequently enabled the Government to ratify the Minimum Wage-Fixing Machinery Convention, 1928. The I.L.O. has also provided assistance to the Governments of Afghanistan and Thailand in the fields of labour legislation and administration. The Committee of Experts on the Application of Conventions and Recommendations referred to the possible value of technical assistance in another important sphere, labour inspection, when it commented on the effect given to the Labour Inspection Convention, 1947, in an Asian country which has ratified this instrument.²

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Although a subject as vast and as varied as that of the application of I.L.O. standards in Asia hardly lends itself to any definite and general conclusions, some of the findings above may be summarised at this stage.

Taken together, Asian countries have not hitherto been able to accept formal obligations under international labour Conventions on as wide a scale as the I.L.O. membership as a whole. But a mere comparison of the average figures (15 and 23 respectively) does not tell the whole story. Two major Asian countries, India and Pakistan,

¹ I.L.O. : *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part IV), International Labour Conference, 42nd Session, Geneva, 1958, op. cit., p. 121.

² Ibid., 43rd Session, Geneva, 1959 (Geneva, 1959), p. 45.

have 27 and 28 ratifications to their credit, and three other countries in the region, Burma, Ceylon and Japan, have ratified 21, 19 and 24 Conventions respectively. The number of ratifications received from Asian countries during the past decade exceeds in fact the total for the previous 30 years.

Successive Asian Regional Conferences have concerned themselves with the implementation of standards, and the progress made since the first such meeting in 1947 shows that priority Conventions have been acted upon on a substantial scale. Whether this trend will continue, and whether in particular the fundamental human rights instruments—those dealing with freedom of association, with forced labour, with discrimination, and similar matters—will be more widely ratified, remains to be seen. However, ratification is not the only yardstick for measuring the influence of standards. This influence can make itself felt even in the absence of any formal commitment, and the examination of International Labour Conference decisions by the executive and legislative authorities in each country can help in the formulation of future policy.

It was seen that formal machinery for this purpose has been functioning successfully in India for the past six years. Similar arrangements exist in other Asian States. It is thus possible to review continuously the extent to which I.L.O. standards can be accepted and the steps required for overcoming the difficulties in the way of implementation. In some cases these may be inherent in the terms of the Conventions, e.g. in the definition of their scope and in other technical provisions. Nevertheless, economic and social conditions constitute the principal obstacles; and here the step-by-step approach recommended by Asian Regional Conferences has already yielded results in several countries.

It was brought out above how this gradual and flexible approach has become more and more firmly anchored in the standard-setting work of the I.L.O. This policy is not only laid down in the Constitution but the Conference has over the years evolved a variety of devices giving ratifying States a considerable degree of latitude in adapting Convention requirements to their national conditions. This tendency to limit firm obligations to essentials while leaving matters of detail to national discretion, subject to prior consultation of the workers and employers concerned, should in the long run enable the developing countries to make use of I.L.O. standards to an increasing extent, as part of their national policies for economic and social progress.
